



Education & Skills  
Funding Agency



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| <b>Contract Type</b>   | Contract for Services   |
| <b>Funding Period</b>  | 1 April 2019 – 31 July 2021   |
| <b>Between</b>         | the Secretary of State for Education (acting through the Education and Skills Funding Agency) |
| <b>And</b>             | PADDINGTON DEVELOPMENT TRUST  |
| <b>Funding for</b>     | European Social Fund  |
| <b>Contract Number</b> | ESFA-15022  |

## ACCEPTANCE BY THE CONTRACTOR

By accepting this Contract via Manage your education and skills funding service the person taking this action on behalf of the Contractor represents and warrants that the Contractor has read and understood this Contract, the Contractor agrees to be bound by this Contract and that he/she is duly authorised to accept this Contract and legally bind the Contractor.

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

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

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

ESF Contract for Services –  
Education and Skills Funding Agency  
[www.gov.uk/ESFA](http://www.gov.uk/ESFA)

Education and Training

Contract Reference ESFA-15022

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## Terms and Conditions

This Contract is made on the date the Contract is digitally signed by the Contractor

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PADDINGTON DEVELOPMENT  
TRUST

122 Great Western Studios  
65 Alfred Road  
London  
W2 5EU

Companies Registration Number:  
03652559

Hereinafter called the  
Contractor

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

Hereinafter called the  
ESFA

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## GENERAL TERMS AND CONDITIONS

It is agreed as follows.

### 1 DEFINITIONS

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| <b>“Children”</b>                 | means persons under the age of 18.  |
| <b>“Combined Authority”</b>       | means a legal structure comprising two or more local authorities to undertake certain statutory or delegated functions.   |
| <b>“Confidential Information”</b> | means any information, including Personal Data as defined by the Data Protection Act 2018, and any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, knowhow, personnel, and suppliers of the Parties including all IPRs, together with all information derived from any |

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|                               | of the above, and any other information clearly designated as being confidential or which ought reasonably be considered to be confidential (whether or not it is marked "confidential").   |
| <b>“Contract”</b>             | means the Contract between the above named parties consisting of these Terms and Conditions, the Specification, the Contractor's response to the Specification including the Delivery Plan, the Funding Rules, the 2014 to 2020 ESF Programme ESF Specifications Deliverables Evidence Requirements, the European Social Fund Operational Programme 2014-2020 and any other documents (or parts thereof) specified in the Contract and any variations to the Contract agreed in writing and signed by both Parties. |
| <b>“Contract Finder”</b>      | means the Government's publishing portal for public sector procurement opportunities.   |
| <b>“Contractor Personnel”</b> | means all persons employed or engaged by the Contractor together with the Contractor's servants, agents, consultants and sub-contractors (and all persons employed by any sub-contractor together with the sub-contractor's servants, consultants, agents, Contractor's and sub-contractors) used in the performance of its obligations under this Contract;  |

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| <b>“Contract Period”</b>             | means the period between the Commencement Date and the Expiry Date, unless terminated earlier on the Termination Date;   |
| <b>“Controller”</b>                  | has the meaning given to it in the GDPR.   |
| <b>“Crown Body”</b>                  | means any department, office or agency of the Crown, including Ofsted, the Care Quality Commission, the Charity Commission, the Office for Students, any and all local authority or Combined Authority bodies.   |
| <b>“Data Loss Event”</b>             | means any event that results, or may result, in unauthorised access to Personal Data held by the Contractor under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract, including any Personal Data Breach.     |
| <b>“DPA 2018”</b>                    | means the Data Protection Act 2018.  |
| <b>“Data Protection Legislation”</b> | means the (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA Act 2018 to the extent that it relates to processing of personal data and privacy; (ii) all applicable law about the processing of personal data |

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|  | and privacy.  |
| <b>“Data Protection Laws”</b>              | means the Data Protection Act 2018 and Electronic Communications (EC Directive) Regulations 2003 and any other data protection laws and regulations applicable in the UK (or any relevant part thereof), including the General Data Protection Regulation (EU) 2016/679 or similar and any codes of practice, guidelines and recommendations issued by the Information Commissioner, any replacement body to any other relevant supervisory authority, all of which are current at the time of any Data processing by the Contractor (and in the event of any conflict between the Data Protection Laws and Law, Data Protection Laws shall take precedence). |
| <b>“Data Protection Impact Assessment”</b> | means an assessment by the ESFA of the impact of the envisaged processing on the protection of Personal Data.   |
| <b>“Data Protection Officer”</b>           | has the meaning given to it in the GDPR.  |

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| <b>“Data Subject”</b>         | has the meaning given to it in the GDPR.  |
| <b>“Data Subject Request”</b> | means a request made by, or on behalf, of a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.   |
| <b>“Devolution Agreement”</b> | means the agreement between the Government and the Combined Authority devolving certain function to the Combined Authority.   |
| <b>“EIR”</b>                  | means the Environmental Information Regulations 2004.   |
| <b>“Effective Date”</b>       | means the date on which this Contract entered into by the Contractor digitally signing the Contract on the Manage your education and skills funding service.  |
| <b>“Exempt Information”</b>   | means any information or class of information (including but not limited to any document, report, contract or other material containing information) relating to this Contract or otherwise relating to the Contractor, which potentially falls within an exemption to FOIA (as set out therein). |
| <b>“Expiry Date”</b>          | means 31 July 2021 or such later date as is notified in writing to the Contractor by the ESFA in accordance with Clause 2.2;  |

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| <b>“FOIA”</b>          | means the Freedom of Information Act 2000 and all regulations made there from time to time or any superseding or amending enactment and regulations, and words and expressions defined in the FOIA shall have the same meaning in Clause 6.   |
| <b>“FOIA Notice”</b>   | means a decision notice, enforcement notice and/or an information notice.   |
| <b>“Funding Rules”</b> | <p>means the document which sets out the detailed requirements with which the Contractor must comply in respect of each Learning Programme delivered under this Contract as may be amended by the ESFA from time to time; as follows.</p> <p>Funding and performance management rules 2014 to 2020 European Social Fund (ESF) programme:</p> <p><a href="https://www.gov.uk/government/publications/esffunding-rules">https://www.gov.uk/government/publications/esffunding-rules</a></p> |

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| <b>“GDPR”</b>               | means General Data Protection Regulation (Regulation (EU) 2016/679);  |
| <b>“GLA”</b>                | means the Greater London Authority consisting of the Mayor of London and members of the London Assembly.  |
| <b>“High Needs Learner”</b> | means a Learner aged 16 to 18, or any young person aged 19 to 25 subject to an Education Health and Care Plan, who requires additional support.   |
| <b>“Inspectorates”</b>      | means one, any or all of the inspectorates: Office for Standards in Education, Children’s Services and Skills (Ofsted), Her Majesty’s Inspectorate for Education and Training in Wales (Estyn), the Quality Assurance Agency for Higher Education, the Office for Students, and the Care Quality Commission (CQC).  |
| <b>“Law”</b>                | means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-laws, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgement of a relevant court, or directives or requirements by which the Contractor is bound. |
| <b>“Learner”</b>            | means any third party including any student, apprentice, trainee or similar to whom the Contractor is required to deliver any of the Services, as termed  |

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|   | Participant in the Specification for the Services.   |
| <b>“Learner Files”</b>                      | means any information relating to a Learner generated by the Contractor, the Learner or a third party for the purpose of the delivery of the Learning Programme. |
| <b>“Learning Programme”</b>                 | means a programme of education and/or training delivered by the Contractor under this Contract   |
| <b>“LED”</b>                                | means the Law enforcement Directive (Directive (EU) 2016/680);   |
| <b>“Local Enterprise Partnership (LEP)”</b> | means a formalised partnership between local authorities to determine local economic priorities and lead economic growth and job creation within its area.       |
| <b>“Managing Agent”</b>                     | Means the Contractor.  |



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| <b>“Minor Breach”</b>                       | shall have the meaning given to it in Clause 20.2  |
| <b>“Offender Management”</b>                | means an officer from the National Offender Management Service who is working directly with an offender serving their sentence in the community.   |
| <b>“Ofsted”</b>                             | means the Office for Standards in Education.   |
| <b>“Parties”</b>                            | means the ESFA acting on behalf of the Crown and the Contractor.   |
| <b>“Personal Data”</b>                      | has the meaning given to it in the GDPR.   |
| <b>“Personal Data Breach”</b>               | has the meaning given to it in the GDPR.   |
| <b>“Premises”</b>                           | means the location where the Services are to be performed, as detailed in the Contract.  |
| <b>“Processor”</b>                          | has the meaning given in the GDPR.   |
| <b>“Processor Personnel”</b>                | means all directors, officers, employees, agents, consultants and contractors of the Contractor and subcontractor engaged in the performance of its obligations under this Contract.   |
| <b>“Protective Measures”</b>                | means appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of such measures. |
| <b>“Register of Training Organisations”</b> | means the register maintained by the ESFA of organisations qualified to receive funding from the ESFA.   |
| <b>“Regulatory Body”</b>                    | means those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate or investigate the matters dealt with in this Contract or any other affairs of the Contractor or the ESFA, including, without limitation Ofsted.                                |
| <b>“RIDDOR”</b>                             | means the reporting of Injuries, Diseases, and Dangerous Occurrences Regulations 2013;   |
| <b>“Serious Breach”</b>                     | shall have the meaning given to it in Clause 20.3  |

ESF Contract for Services – Education and Training

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| <b>“Services”</b>                  | means the services to be provided as specified in the Contract.   |
| <b>“Service Commencement Date”</b> | means 1 April 2019 or such later date as is advised by the ESFA to the Contractor, in writing   |
| <b>“SME”</b>                       | means an enterprise falling within the category of micro and medium sized enterprises as defined by the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium – sized enterprises. |
| <b>“Specification”</b>             | means the document setting out the ESFA’s requirements for the Services to be provided under this Contract.   |
| <b>“Termination Date”</b>          | means any date on which this Contract terminates in accordance with Clause 21.  |
| <b>“VCSE”</b>                      | means a non-governmental organisation that is value driven and which principally reinvests its surpluses to further social, environmental or cultural objectives.   |

## 2 COMMENCEMENT AND CONTINUATION

2.1 The Contract shall commence on the Effective Date and terminate on the Expiry Date unless terminated earlier in accordance with Clause 21 (Termination).

2.2 The Contractor shall deliver the Services in full from the Service Commencement Date.

2.3 The ESFA may extend the Contract on more than one occasion as long as the aggregate of all contract extensions does not exceed 27 months. If the ESFA wants to extend the Contract it shall do so by the following procedure;

2.3.1 The ESFA shall give the Contractor written notice of its intention to extend the Contract Period and shall state the duration of the extension and the date the extensions will start and end, unless it is terminated earlier in accordance with the provisions of this Contract.

2.3.2 The Contractor shall confirm acceptance of the extension.

2.3.3 The definition of Expiry Date shall be updated to reflect the end date of the Contract Period as set out in the notice referred to in Clause 2.3.1.

## 3 CONTRACT MANAGEMENT

3.1 The ESFA and the Contractor will each nominate a contact for the purpose of dealing with queries and issues under this Contract and advise the other party in writing of the contact details.

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- 3.2 The Contractor must ensure appropriate members of staff register as users on the user role management system at <http://logon.fasst.org.uk> to enable the Contractor to digitally sign and agree the Contract online. It is the Contractor's responsibility to maintain appropriate user roles on an on-going basis.

## **4 SERVICE DELIVERY**

- 4.1 The Services to be delivered under this Contract are the delivery of the Learning Programmes as set out in Appendix 1, (Summary of Programme Funding), and at Appendix 2 (Funding Agreement). The detailed requirements in respect of each Learning Programme are set out in the Funding Rules as amended from time to time by the ESFA and which form part of the terms and conditions of this Contract.
- 4.2 The Services are to be delivered in accordance with the specific requirements of the ESFA, the Specification, the Contractor's response to the Specification including the Delivery Plan, the Funding Rules, the 2014 to 2020 ESF Programme ESF Specifications Deliverables Evidence Requirements, the European Social Fund Operational Programme 2014-2020 and the Supporting Documentation as attached at Appendix 2 (Funding Agreement) which sets out the scheduled payment profiles for the Services agreed by the Parties, which all form part of the Terms and Conditions of the Contract.
- 4.3 The Contractor must work in partnership with the LEP and, where the Contractor is working in an area covered by a Devolution Agreement and/or the GLA, the Contractor must work with the Combined Authority and/or the GLA to ensure delivery of the Services takes account of the local economic and skills and education priorities.
- 4.4 The Contractor, as Managing Agent, shall enter into a legally binding Grant Agreement with each Recipient Organisation. The Contractor is responsible for determining the terms of each Grant Agreement, and thereafter enforcing those terms, provided always that the terms and conditions of each Grant Agreement incorporate the requirements of the Specification and include such further elements of this Contract as are necessary to ensure that the terms and conditions of this Contract that are applicable to the Recipient Organisation are passed down to it on a binding basis, taking into account the Recipient Organisation's organisational status and the specific purpose of the Community Grant.
- 4.5 The entering into of the Grant Agreements shall not relieve the Contractor of any obligation or duty attributable to it under this Contract. The Contractor is responsible for all the actions of the Recipient Organisations connected to or arising out of the delivery of the Services for which it awards a Community Grant.

## **5 ASSIGNMENT AND SUB-CONTRACTING**

- 5.1 Where the Contractor has not previously sub-contracted any part of Services under this Contract or under any other agreement that that Contractor holds or has held with the ESFA then the Contractor must seek the approval of the ESFA, in writing, before awarding a sub-contract for the first time. Thereafter the Contractor must follow the sub-contractor reporting processes as set out in Clause 5.2 and the Funding Rules.

- 5.2 Where the Contractor sub-contracts or intends to sub-contract any duties or obligations arising out of this Contract, the Contractor must provide the ESFA with details of all sub-contractors at least bi-annually by fully and accurately making a declaration of sub-contractors in accordance with the deadline set out in the Funding Rules. If the Contractor is not sub-contracting then a nil return must be received by the deadline date. The Contractor must notify the ESFA of any within year changes to its sub-contractors that take place between the submission dates of their declaration of sub-contractors as set out in the guidance <https://www.gov.uk/guidance/subcontracting-using-funding-to-offereducation-and-training> The ESFA reserves the right to require the Contractor not to enter into, or to terminate, any sub-contract to deliver the Services under this Contract.
- 5.3 The Contractor must comply with the requirements on sub-contracting delivery of the Services set out in the Funding Rules. Sub-contracting any part of the Contract shall not relieve the Contractor of any obligation or duty attributable to it under the Contract or these conditions. The Contractor is responsible for all the actions of its sub-contractors connected to or arising out of the delivery of the Services which it sub-contracts.
- 5.4 Services under this Contract may only be sub-contracted to one level unless the Contractor obtains the consent of the ESFA in writing.
- 5.5 Where the Contractor has sub-contracted any duties or obligations arising out of this Contract, the Contractor shall ensure that there is in place a legally binding sub-contract and send copies of the sub-contract to the ESFA if requested in writing to do so. Where the Contractor enters into a sub-contract
- for the purpose of performing the Contract, the Contractor shall ensure that the sub-contract includes any terms specified in the Funding Rules.
- 5.6 The Contractor shall ensure that all sub-contractors are selected fairly following a lawful, open and transparent tendering process, and have sufficient capacity, capability, quality and financial standing to deliver the Services.
- 5.7 In addition to the requirement set out at Clause 5.6 where the value of the Contract, as set out in Appendix 1 and Appendix 2 exceeds £5,000,000 (five million pounds) per annum the Contractor shall:
- 5.7.1 subject to Clause 5.9, advertise on Contracts Finder all sub-contract opportunities arising from or in connection with the provisions of the Services above a minimum threshold of £25,000 that arise during the Contract Period;
- 5.7.2 within 90 days of awarding a sub-contract to a sub-contractor, update the notice on Contracts Finder with the details of the successful subcontractor;
- 5.7.3 monitor the number, type and value of the sub-contract opportunities placed on Contracts Finder advertised and awarded during the Contract Period;

- 5.7.4 notwithstanding the requirements in Clause 5.2 provide reports on the information at Clause 5.7.3 to the ESFA in the format and frequency as reasonably specified by the ESFA; and
- 5.7.5 promote Contracts Finder to its suppliers and encourage those organisations to register on Contracts Finder.
- 5.8 Each advert referred to in Clause 5.7.1 above shall provide a full and detailed description of the sub-contract opportunity with each of the mandatory fields being completed on Contracts Finder by the Contractor;
- 5.9 The obligation in Clause 5.7.1 shall apply only in relation to sub-contract opportunities arising after the contract award date.
- 5.10 Notwithstanding Clause 5.7, the ESFA may, by giving its prior written approval, agree that a sub-contract opportunity is not required to be advertised on Contracts Finder.
- 5.11 The Contractor shall ensure that any sub-contract entered into for the purpose of delivering the Services under this Contract contains a term providing that the ESFA has the right to enforce the terms of the sub-contract.
- 5.12 The Contractor shall make payment to any sub-contractor within 30 days of receiving a valid claim for payment and ensure that any sub-contract entered into for the purpose of delivering the Services under this Contract contains a term giving effect to this requirement.
- 5.13 The Contractor may not assign any rights, duties or obligations under this Contract without the consent of the ESFA.
- 5.14 The Contractor must notify the ESFA in writing if there is a change in its name at least one month prior to the change taking effect.
- 5.15 The Contractor must notify the ESFA in writing if there is a change in its ownership at least 12 weeks prior to the change taking effect.
- 5.16 The Contractor shall not without the prior written consent of the ESFA assign, novate or otherwise dispose of or deal in any other manner with (including by means of a change in ownership of the Contractor) any or all of its rights, obligations or liabilities under this Contract. The Contractor shall give the ESFA at least 12 weeks' notice of any such plans. The ESFA reserves the right to take whatever actions it deems necessary, including but not limited to terminating the Contract if it considers in its absolute discretion that any, or any proposed, assignment, novation, disposal or other dealing, including any change in ownership of the Contractor, may or would
- a. put public funds at risk,
  - b. put at risk the delivery of the Services to Learners, and/or
  - c. The ESFA has any other material concerns about the proposed assignment, novation, disposal or other dealing.

5.17 The Contractor must consider the criteria set out in the Funding higher-risk organisations and sub-contractors document which is published on the ESFA's website

<https://www.gov.uk/government/publications/sfa-financial-assurance-higher-riskproviders-and-subcontractors>

## **6 FREEDOM OF INFORMATION AND CONFIDENTIALITY**

### **6.1 Freedom of Information**

6.1.1 The Contractor acknowledges and agrees that the ESFA is subject to legal duties under FOIA, which may require the ESFA to disclose on request information relating to this Contract or otherwise relating to the Contractor.

6.1.2 The Contractor acknowledges and agrees that the ESFA is required by law to consider each and every request made under FOIA for information.

6.1.3 The Contractor acknowledges and agrees that all decisions made by the ESFA pursuant to a request under FOIA are solely a matter for and at the discretion of the ESFA.

6.1.4 Notwithstanding anything in this Contract to the contrary (including without limitation any obligations of confidentiality), the ESFA shall be entitled to disclose information in whatever form pursuant to a request made under FOIA, save that in relation to any information that is Exempt Information the ESFA shall use reasonable endeavours (but shall not be obliged) to consult the Contractor and shall not:

a) confirm or deny that information is held by the ESFA;

or

b) disclose information requested

to the extent that in the ESFA's opinion the information is eligible in the circumstances for an exemption and therefore the ESFA may lawfully refrain from doing either of the things described in parts (a) and (b) of this Clause 6.1.4.

6.1.5 In relation to information relating to the Contractor or the Contract which the Contractor requests should be exempt under the FOIA the Contractor shall indemnify the ESFA for any and all costs (including legal fees) incurred by the ESFA in:

a) assessing the application of any exemption under FOIA; and/or

b) responding to any FOIA notice; and/or

c) lodging any appeal against a decision of the Information Commissioner in relation to disclosure

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



6.1.6 The ESFA shall on no account be liable for any loss, damage, harm or detriment, howsoever caused, arising from or in connection with the disclosure under FOIA of any Exempt Information or other information whether relating to this Contract or otherwise relating to the Contractor.

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

## 6.2 Confidentiality

The Contractor hereby warrants that:

6.2.1 any person employed or engaged by it (in connection with this Contract in the course of such employment or engagement) shall treat all Confidential Information belonging to the ESFA as confidential, safeguard it accordingly and only use such Confidential Information for the purposes of this Contract; and

6.2.2 any person employed or engaged by it (in connection with this Contract in the course of such employment or engagement) shall not disclose any Confidential Information to any third party without prior written consent of the ESFA, except where disclosure is otherwise expressly permitted by the provisions of this Contract.

6.3 The Contractor shall take all necessary precautions to ensure that all Confidential Information obtained from the ESFA is treated as confidential and not disclosed (without prior approval) or used other than for the purposes of this Contract by any of its employees, servants, agents or sub-contractors.

6.4 The provisions of Clauses 6.2 and 6.3 shall not apply to any information:

6.4.1 which is or becomes public knowledge (other than by breach of Clauses 6.2 and 6.3);

6.4.2 which was in the possession of the receiving party, without restriction as to its disclosure, before the date of receipt from the disclosing party;

6.4.3 which must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the party making the disclosure, including any requirements for disclosure under the FOIA or the EIR.

6.5 Nothing in this Clause 6 shall be deemed or construed to prevent the ESFA from disclosing any Confidential Information obtained from the Contractor:

6.5.1 to any other Central Government Body, Non-Departmental or Quasi Government Body or agency, central or local;

6.5.2 to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;

6.5.3 to any professional adviser, consultant, contractor or other person engaged by the ESFA directly in connection with this Contract, provided that such information is treated as confidential by the receiving consultant, contractor or any other person;

- 6.5.4 to the European Union in conjunction with the European Social Fund requirements;
- 6.5.5 on a confidential basis to any proposed successor body in connection with any assignment disposal of its rights, obligations or liabilities under this Contract.
- 6.6 In order to ensure that no unauthorised person gains access to any Confidential Information or any data obtained in the course of the Services, the Contractor undertakes to maintain adequate security arrangements that meet the requirements of professional standards and best practice.
- 6.7 The Contractor will immediately notify the ESFA of any breach of security in relation to Confidential Information and all data obtained in the course of the Services and will keep a record of such breaches. The Contractor will use its best endeavours to recover such Confidential Information or data however it may be recorded. The Contractor will co-operate with the ESFA in any investigation that the ESFA considers necessary to undertake as a result of any breach of security in relation to Confidential Information or data.
- 6.8 The Contractor shall, at its own expense, alter any security systems at any time during the Contract Period at the ESFA's request if the ESFA reasonably believes the Contractor has failed to comply with Clause 6.7.
- 6.9 The ESFA reserves the right to publish details of this Contract and the payments made under it to comply with the Government's transparency requirements.
- 6.10 The provisions of this Clause 6 will apply for the duration of the Contract Period after its termination.

## **7 EQUALITY OF OPPORTUNITY**

- 7.1 The Contractor shall not unlawfully discriminate within the meaning and scope of the provisions of the Equality Act 2010 or any statutory modification or reenactment thereof or any other statutory provision relating to discrimination in employment or the provision of services. The Contractor shall take all reasonable steps to ensure the observance of these provisions by all servants, employees or agents of the Contractor and all sub-contractors employed in the execution of the Contract. The Contractor will comply with the detailed requirements in relation to equality of opportunity set out in Clauses 7.2 to 7.4.
- 7.2 The Contractor must, in delivering the Services under this Contract, demonstrate that it has had regard to the duties placed on the ESFA and the Contractor by the Equality Act 2010. The Contractor must take all reasonable steps to ensure the observance of these provisions by all servants, employees or agents of the Contractor and all sub-contractors engaged in the delivery the Services.
- 7.3 The Contractor shall ensure that equality of opportunity is built into all aspects of Services; the business planning process; and the self-assessment process. The Contractor shall use analysis of data to inform future planning to improve the representation, participation and success of underrepresented and underachieving groups and challenge stereotyping. The Contractor shall use appropriate, specific and



measurable objectives. These must be proportionate, relevant and aligned to the Services the Contractor is funded to deliver.

- 7.4 The ESFA may use a variety of equality information and data to support judgements about quality and eligibility for funding. These may include, but are not limited to: inspection judgements for equality and diversity, judgements from the Equality and Human Rights Commission, and the success and participation rates of different groups of Learners.

## **8 LEARNER HEALTH, SAFETY & WELFARE**

- 8.1 The Contractor shall ensure so far as reasonably practicable that learning takes place in safe, healthy and supportive environments, which meet the needs of Learners. The Contractor shall provide information to the ESFA, as and when specifically requested, to give assurance that adequate arrangements exist for Learner health, safety and welfare.
- 8.2 Where part of the learning takes place in an environment outside the direct control of the Contractor, the Contractor shall take all reasonable steps to ensure that adequate arrangements are in place to ensure the health and safety of Learners.
- 8.3 The Contractor shall make arrangements for ensuring that the Provision is provided with a view to safeguarding and promoting the welfare of Children receiving education or training at the institution or under the auspices of the Contractor in an environment outside the direct control of the Contractor. In doing so, the Contractor shall have regard to any guidance published, from time to time, by the Secretary of State for Education which sets out the expectations in relation to safeguarding practice within further education institutions. References to 'must' in any such guidance shall be treated as 'should' for the purposes of this Agreement, save for any references to legal requirements arising from the Safeguarding Vulnerable Groups Act 2006 in respect of referrals to the Disclosure and Barring Service. Failure to do so may constitute a Serious Breach of this Contract.
- 8.4 The Contractor shall make arrangements for ensuring that the Provision is provided with a view to safeguarding and promoting the welfare of High Needs Learners aged 18 to 25 receiving education or training at their institution or under the auspices of the Contractor in an environment outside the direct control of the Contractor. This must include the adoption of safer recruitment procedures. In doing so, the Contractor shall make those arrangements as if such Learners were Children and will have regard to any guidance published, from time to time, by the Secretary of State for Education which sets out the expectations in relation to safeguarding practice within further education institutions as if it applied to those Learners as if they were Children. References to 'must' in any such guidance shall be treated as 'should' for the purposes of this Agreement, save for any references to legal requirements arising from the Safeguarding Vulnerable Groups Act 2006 in respect of referrals to the Disclosure and Barring Service. Failure to do so may constitute a Serious Breach of this Contract.
- 8.5 The Contractor must carry out appropriate disclosure and barring service checks on all overseas applicants for employment where such applicants would be employed to work in regulated activity relating to Children or vulnerable adults (as defined by the ESF Contract for Services – Education and Training

Safeguarding Vulnerable Groups Act 2006) if successful, and must seek additional information about an applicant's conduct

- 8.6 In working with other organisations/bodies, the Contractor shall make arrangements to co-ordinate and co-operate effectively for reasons of Learner health, safety and welfare. In particular, respective responsibilities shall be clearly identified and documented as appropriate, to ensure understanding.
- 8.7 In providing the Services, the Contractor must ensure it actively promotes the fundamental British values of democracy, the rule of law, individual liberty, and mutual respect and tolerance of those with different faiths and beliefs, and promote principles that support equality of opportunity for all.
- 8.8 In providing the Services, the Contractor must comply with the general duty on specified authorities in section 26 of the Counter-Terrorism and Security Act 2015 (the Prevent duty) and must have regard to statutory guidance issued under section 29 of the Counter-Terrorism and Security Act 2015. Failure to do so may constitute a Serious Breach of this Contract.
- 8.9 In providing the Services the Contractor must comply with the duty on partners of a panel in section 38 of the Counter-Terrorism and Security Act 2015 (the Channel co-operation duty). Failure to do so may constitute a Serious Breach of this Contract.
- 8.10 The Contractor shall not employ or engage, or continue to employ or engage, any person who is subject to a prohibition order made under section 141B of the Education Act 2002 to carry out teaching work (as defined in regulation 3 of the Teachers' Disciplinary (England) Regulations 2012), or an interim prohibition order made under regulation 14 of the Teachers' Disciplinary (England) Regulations 2012 in respect of any Learners under the age of 19 and High Needs Learners aged 19 to 25 (as if those Learners were pupils for the purposes of the definition of teaching work in regulation 3 of the Teachers' Disciplinary (England) Regulations 2012).
- 8.11 Before employing or engaging a person to carry out teaching work in respect of any Learners under the age of 19 and High Needs Learners aged 19 to 25 (as if those Learners were pupils for the purposes of the definition of teaching work in regulation 3 of the Teachers' Disciplinary (England) Regulations 2012), the Contractor shall take reasonable steps to ascertain whether that person is subject to a prohibition order made under section 141B of the Education Act 2002, or an interim prohibition order made under regulation 14 of the Teachers' Disciplinary (England) Regulations 2012.
- 8.12 The Contractor shall, in circumstances where it sub-contracts the management and/or delivery of the Services under this Contract, ensure that all the provisions in respect of Learner health, safety and welfare in this Clause 8 are included in its contract with each sub-contractor.
- 8.13 The Contractor shall inform the ESFA of the death of any Learner which is a result of work undertaken whilst in employment and who is undertaking a related Learning Programme. This shall be done by informing the ESFA's representative by telephone or email immediately upon the Contractor becoming aware of the death.

- 8.14 The Contractor shall report RIDDOR reportable incidents, and shall investigate or assess the circumstances of all Learner incidents within the scope of RIDDOR and follow HSE guidance 'Investigating accidents and incidents: A workbook for employers, unions, safety representatives and safety professionals' (HSG245) ISBN 0717628272. The Contractor shall only use persons competent to investigate/assess Learner incidents with a view to identifying the causes of any incident and lessons to be learned.
- 8.15 The Contractor shall also monitor, and act on, any other harm to Learners to the extent that the Contractor could reasonably be expected to do so and/or where the harm could affect the quality of the learning experience. Harm includes (but is not limited to) incidents that cause absence from learning, any loss to the Learner of any physical or mental faculty or any disfigurement and incidents of bullying and harassment.
- 8.16 The Contractor shall co-operate with the ESFA and Department for Work and Pensions for the purposes of the Industrial Injuries Disablement Benefit (IIDB) in respect of those Learners to which it applies.
- 8.17 The Contractor and its sub-contractors must be able to demonstrate that they have robust record-keeping procedures in respect of health, safety and safeguarding through checks on record keeping undertaken. Failure to do so will constitute a Serious Breach.
- 8.18 Where the Contractor or one of its sub-contractors refer;
- 8.18.1 A safeguarding concern related to sexual violence to the Local Authority children's social care/adult care and/or the police; or
- 8.18.2 An allegation of abuse made against a teacher or other member of staff to the designated officer(s) at the local authority,
- The Contractor must, as soon as practicable, inform the ESFA via the Contact Form: General Enquires at <https://www.gov.uk/government/organisations/education-and-skills-fundingagency>. Such notification must include the name of the institution, a high level summary of the nature of the incident (without sharing personal information about its victims or alleged perpetrators) and confirmation of whether it is, or is scheduled to be, investigated by the Local Authority and/or the police.
- 8.19 Where the Contractor makes a referral of an individual for the purposes of determining whether that individual should be referred to a panel for the carrying out of an assessment under section 36 of the Counter-Terrorism and Security Act 2015 of the extent to which that individual is vulnerable to being drawn into terrorism, the Contractor shall ensure it notifies the ESFA that a referral has been made.
- 8.20 Where the Contractor has made a referral or provided information to the Disclosure and Barring Service in compliance with any duties of the Body under the Safeguarding Vulnerable Groups Act 2006, the Contractor shall ensure that it informs the ESFA that a referral has been made / information has been provided.

## 9 LIABILITY

- 9.1 Neither Party limits its liability for death or personal injury caused by the negligence of itself or any of its servants, employees or agents acting in the course of their employment or in respect of misrepresentations made fraudulently in respect of any breach of an implied term in respect of title to goods.
- 9.2 Subject to Clause 9.4 the Contractor shall indemnify and keep indemnified the ESFA, their servants, employees, and agents against all loss, damage or liability (whether civil or criminal), claims, demands, costs and expenses incurred by or made against the ESFA, their servants, employees, or agents in respect of any loss or damage or personal injury (including death) which arises out of or in the course of or caused by the negligent act or omission or willful default of the Contractor, their servants or agents in the delivery of the Service except to the extent (if any) that it was also caused or contributed to by the negligent act or omission or willful default of the ESFA or their servants or agents.
- 9.3 The Contractor warrants to the ESFA that to the best of its knowledge and belief all works carried out under the Contract will not infringe, in whole or in part, any copyright or any other intellectual property right of any person and agrees to indemnify the ESFA against any and all claims, demands, proceedings, expenses and losses, including any of a consequential nature, arising directly or indirectly out of any act of the foregoing in relation to any works, where such an act is, or is alleged to be, an infringement of a third party's copyright or other intellectual property right. This warranty and indemnity shall survive the termination of the Contract and shall exist for the life of the copyright or other intellectual property right.
- 9.4 The Contractor's liability under Clause 9.2 shall be limited as follows;
- 9.5 In accordance with Clause 9.1 it shall be unlimited;
- 9.6 Otherwise it shall not exceed twice the value of the Contract or £1,000,000 (one million pounds), whichever is the greater.
- 9.7 Notwithstanding anything to the contrary contained in the Contract, the ESFA's liability whether arising from breach of contract tort including negligence breach of statutory duty or otherwise shall be limited as follows;
- 9.8 In accordance with Clause 9.1 it shall be unlimited;
- 9.9 In respect of all other liability falling outside of Clause 9.1 arising out of or in connection with its obligations (other than its obligation to pay for the Services) under this Contract and all actions, claims, demands, proceedings, costs and expense arising in respect of it to a maximum aggregate value of £100,000 (one hundred thousand pounds) This maximum liability limit all claims made within the contract term being the Contract Period and any extension of it in accordance with Clause 2.3, and any and all claims made within that period.
- 9.10 The ESFA shall not be liable to the Contractor for any Indirect Losses.

9.11 The ESFA reserves the right to require the Contractor to secure the provision of an appropriate guarantee in respect of the Contractor's liabilities under this Contract.

## **10 INSURANCE**

10.1 The Contractor shall maintain at its own cost a policy or policies of insurance to cover the liability of the Contractor in respect of any act or default for which it may become liable to indemnify the ESFA under this Contract. The ESFA reserves the right to require the Contractor to insure against any act or default which arises as a result of fraud or other criminal activity by the Contractor, its employees, agents or sub-contractors. The Contractor should provide copies of any insurance certificates to the ESFA including professional indemnity, employers' liability and public liability insurance following a written request from the ESFA.

## **11 ACCESS AND MONITORING**

11.1 When appropriate the ESFA shall give the Contractor reasonable advance notice in writing of proposed visits to the Contractor or its sub-contractors, to observe the delivery of the Services, by any person who has taken or will take no direct part in the conduct or content of the Services.

11.2 For monitoring and evaluation purposes, the ESFA or their representatives, the Secretary of State or their representatives, the National Audit Office, Representatives of the European Commission and the European Court of Auditors, the Inspectorates and HM Treasury shall have the right to visit all or any site(s) and view operations relating to the provision and to inspect relevant documents and interview Learners and the Contractor's staff during these visits in order to:

- a) examine, audit or take copies of any original or copy documentation, accounts, books and records of the Contractor and its sub-contractors that relate to the Contract;
- b) visit, view or assess the design, management and delivery relating to the Contract at any Premises where those operations are carried out (including those of sub-contractors) and conduct relevant interviews, including interviews with Learners, during these visits at any reasonable time;
- c) carry out examinations into the economy, efficiency and effectiveness with which the Contractor has used the ESFA's resources in the performance of the Contract.

11.3 The Contractor shall, if required by any of the representatives stated at Clause 11.2 provide appropriate oral or written explanations.

11.4 The ESFA reserves the right, at any reasonable time, and as it may deem necessary to require the Contractor at its own cost to:

- 11.4.1 provide evidence of financial resources and the level of turnover sufficient to enable it to continue to perform the Contract;
- 11.4.2 provide such assurance as the ESFA may require that the delivery of the Services complies with the requirements of the Contract;

11.4.3 obtain a report by an independent accountant of the ESFA's choice on;

11.4.3.1. the financial systems and controls operated by the Contractor or its sub-contractors;

11.4.3.2 the accuracy and regularity of funding claims in respect of payments claimed or received under the Contract;

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

The Contractor must agree the instructions for the work with the ESFA this may include the ESFA discussing the terms of reference directly with the independent accountant where necessary. The report and the work required in order to produce the report shall be carried out to the satisfaction of the ESFA, and the ESFA must be able to place reliance on it. The Contractor shall provide a copy of any draft report at all stages of reporting and the final report to the ESFA as soon as they are available. The ESFA reserves the right to require the Contractor to publish the final report.

11.4.4 provide a copy of the Contractor's latest audited Accounts and submit further copies of the audited Accounts as they become available;

11.4.5 submit any claim for payment or management information provided to support a claim for payment to be audited by an independent auditor chosen by the ESFA;

11.4.6 provide any additional evidence to support payments made under this Contract, as the ESFA shall reasonably require.

11.5 The Contractor shall in performing the Services comply fully with all relevant rules and regulations of the ESFA in force from time to time especially when on the ESFA's premises.

11.6 In addition to the other requirements to provide information set out in this Contract the ESFA reserves the right to request information from the Contractor in order to exercise its responsibilities and/or to fulfill requirements to provide information to the Secretary of State, to account to Parliament and to meet European funding requirements. On occasion, the ESFA will require urgent information from the Contractor.

11.7 The Contractor shall provide the ESFA or agents acting on its behalf with the information it requires under Clause 11.4.6 at the times and in the formats specified. This information shall be of sufficient quality to meet the purposes for which it has been requested.

11.8 Failure to comply with any request for information under Clause 11.6, at all or in the required timescales, will constitute a Minor / Serious Breach of this Contract.

11.9 Where the ESFA has undertaken an investigation or received a report from an independent accountant or otherwise, in relation to the Contractor, it may as a consequence of that investigation or report, impose additional conditions of funding upon the Contractor.



11.10 The Contractor must comply with any additional conditions of funding imposed under Clause 11.9.

11.11 If the ESFA assesses that the Contractor has failed to comply with any additional conditions of a funding imposed under Clause 11.9 within such time as the ESFA deems reasonable, the ESFA may take actions as it deems appropriate which may include but is not limited to action under Clauses 20.5 20.7 (Minor Breach) or Clauses 20.8 - 20.12 (Serious Breach).

## **12 FUNDING AND PAYMENT**

12.1 In consideration of the Services to be provided by the Contractor, the ESFA agrees to pay the Contractor the amounts calculated as described in 'European Social Fund Funding Rates & Formulas 2016 - 2017' (<https://www.gov.uk/government/publications/ESFA-european-social-fund-esffunding-rates-and-formula>) and set out in Appendix 2 of this Contract on condition that the Contractor delivers the Services in accordance with the terms and conditions of the Contract and provided that the Contractor is not assessed as being at serious risk of failure to deliver the Services under this Contract by the ESFA following any review of the quality of the Services.

12.2 The Maximum Value of each Learning Programme as shown in Appendix 2 of this Contract may not be exceeded for any reason. The ESFA will not be liable to make any payment in excess of the Maximum Value of each Learning Programme unless this has been agreed and evidenced by a variation in writing.

12.3 Where the ESFA identifies that the Contractor is failing to deliver the value of learning of this Contract it reserves the right in its absolute discretion to reduce the overall maximum value for that Learning Programme.

12.4 The Contractor shall comply with the Funding Rules published by the ESFA as amended from time to time.

12.5 The ESFA reserves the right to give three months' notice to reduce the overall maximum value for any Learning Programme.

12.6 Payment by the ESFA shall be without prejudice to any claims or rights, which the ESFA may have against the Contractor and shall not constitute any admission by the ESFA as to the performance by the Contractor of its obligations hereunder. Prior to any such payment, the ESFA shall be entitled to make deductions or deferments in respect of any disputes or claims whatsoever with or against the Contractor, arising from this Contract or any other Contract between the Contractor and the ESFA.

12.7 Where a review, investigation or audit of a sample of the evidence which the Contractor is required to provide under the Contract to support the payments made by the ESFA and identifies errors in that evidence which it deems are material, the ESFA reserves the right at its absolute discretion to require the Contractor to carry out 100% audit of all or part of the Services and/or to recover from the Contractor an amount based on the error rate identified and the total value of the Contract. Such amounts may be recovered by making adjustments to data submitted by the Contractor under the

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Contract, or by raising an invoice for payment by the Contractor, or making deductions from future payments due to the Contractor under the Contract. Failure to settle such amounts by the Contractor will constitute a Serious Breach under Clause 20 of the Contract. The decision of the ESFA as to the amount of recovery under this Clause 12 is final.

12.8 All payments by the ESFA will be made via BACS.

12.9 The ESFA is generally unable to recover any Value Added Tax charged. The maximum sum payable under this Contract, as set out in Appendix 1 includes the cost of the service and any other VAT or taxes to be charged, where they apply.

12.10 Under the provision of Item 5A to Group 6 of Schedule 9 of the VAT Act 1994, the supply of education or vocational training funded by the ESFA and the supply by the person providing that education or vocational training, of any goods or services essential to that provision, is considered to be an exempt supply for VAT purposes.

### **13 REVIEW OF CONTRACTUAL PERFORMANCE AND RECONCILIATION OF CONTRACTS**

13.1 Contractual performance and reconciliation will be carried out in accordance with the Funding Rules.

13.2 Where the Contractor's actual delivery will result or has already resulted in an overpayment to the Contractor by the ESFA, the ESFA will withhold from, or deduct the amount owed from, payments due to the Contractor under the Contract for current or subsequent months or years accordingly.

13.3 Where the Contractor's actual delivery has resulted in an underpayment to the Contractor by the ESFA, the ESFA will adjust the amount due to the Contractor accordingly. This adjustment shall not exceed the overall maximum value set out in Appendix 1 of this Contract.

13.4 Should there be an under or over payment to the Contractor, the ESFA may at their absolute discretion require a Contract variation.

13.5 A Contract review will take place at the end of the period of this Contract in respect of the Services specified in Appendix 1 of this Contract. The ESFA will notify the Contractor of the actual amount of money, which has been earned against the Services delivered, and compare this to the total profile payments made and to the overall maximum value specified in Appendix 1. At this stage final cash reconciliation will take place. Any overpayment made to the Contractor by the ESFA will be repayable within 30 days of receiving an invoice. The ESFA reserves the right to reduce future payments to recover any overpayments. The ESFA will pay any outstanding monies owed, up to the overall maximum value specified in Appendix 1 of this Contract, within 30 days of final reconciliation being completed.

13.6 The evidence required in respect of each Learning Programme is set out in the Funding Rules and the Contractor must retain such evidence for inspection on demand.



## **14 PROHIBITED ACTIVITIES**

- 14.1 The Contractor shall not offer or give, or agree to give, to any member, employee or representative of the ESFA any gift or consideration of any kind as an inducement or reward for doing or refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of this or any other Contract with the ESFA or for showing or refraining from showing favour or disfavour to any person in relation to this or any such Contract. The Contractor's attention is drawn to the criminal offences created by the Bribery Act 2010. Any offence by the Contractor or its employees or by anyone acting on its behalf under the Bribery Act 2010 in relation to this or any Contract with the ESFA or Her Majesty's Government shall entitle the ESFA to terminate the Contract and recover from the Contractor the amount of any loss resulting from such termination and/or to recover from the Contractor the amount of value of any gift, consideration or commission.
- 14.2 The Contractor shall not enter into any Contract with any political or religious organisation using any funding provided by the ESFA under this Contract if the effect of that Contract would be to promote a particular political or religious point of view.
- 14.3 The Contractor shall not hold itself out as acting on behalf of the ESFA without the ESFA's permission.

## **15 DATA PROTECTION**

- 15.1 The Parties acknowledge that for the purposes of Data Protection Legislation, the ESFA is the Controller and the Contractor is the Processor and the Parties are referred to as such within this Clause 15. The only processing that the Processor is authorised to do is listed in Schedule 2.
- 15.2 The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.
- 15.3 The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Controller, include;
- 15.3.1 a systematic description of the envisaged processing operations and the purpose of the processing;
- 15.3.2 an assessment of the necessity and proportionality of the processing operations in relation to the Services;
- 15.3.3 an assessment of the risks to the rights and freedoms of Data Subjects; and
- 15.3.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 15.4 The Processor shall, in relation to any Personal Data processed in connection with its obligations under this Contract;

15.4.1 process that Personal Data only in accordance with Schedule 2 unless the Processor is required to do otherwise by Law. If it is so required the Processor shall promptly notify the Controller before processing the Personal Data, unless prohibited by Law;

15.4.2 ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Controller may reasonably reject (but failure to reject will not amount to approval by the Controller of the adequacy of the protective Measures), having taken into account the;

15.4.2.1 nature of the data to be protected;

15.4.2.2 harm that might result from a Data Loss Event;

15.4.2.3 state of technological development; and 15.4.2.4 cost of implementing any measures; ensure that:

- (i) the Processor Personnel do not process Personal Data except in accordance with this Contract (and in particular Schedule 2);
- (ii) it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
  - (A) are aware of and comply with the Processor's duties under this clause;
  - (B) are subject to appropriate confidentiality undertakings with the Processor or any Subprocessor;
  - (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Controller or as otherwise permitted by this Contract; and
  - (D) have undergone adequate training in the use, care, protection and handling of Personal Data; and

15.4.3 not transfer Personal Data outside of the EU unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:

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

15.4.4 at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Contract unless the Processor is required by Law to retain the Personal Data.

15.5 Subject to clause 15.6, the Processor shall notify the Controller immediately if it:

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

15.6 The Processor's obligation to notify under Clause 15.5 shall include the provision of further information to the Controller in phases, as details become available.

15.7 Taking into account the nature of the processing, the Processor shall provide the Controller with full assistance in relation to either Party's obligations under the Data Protection Legislation and any complaint, communication or request made under Clause 15.5 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing;

15.7.1 the Controller with full details and copies of the complaint, communication or request;

15.7.2 such assistance as is reasonable required by the Controller to enable the Controller to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;

15.7.3 the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;

15.7.4 assistance as required by the Controller following any Data Loss Event;

15.7.5 assistance as requested by the Controller with respect to any request from the Information Commissioner's Office or any consultation by the Controller with the Information Commissioner's Office.

15.8 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this Clause 15. This requirement does not apply where the Processor employs fewer than 250 staff, unless;

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- 15.8.1 the Controller determines that the processing is not occasional;
- 15.8.2 the Controller determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of GDPR; or
- 15.8.3 the Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 15.9 The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.
- 15.10 Each Party shall designate its own data protection officer if required by the Data Protection Legislation.
- 15.11 Before allowing any sub-contractor ("sub-processor") to process any personal Data related to this Contract the Processor must;
  - 15.11.1 notify the Controller in writing of the intended sub-contractor and processing;
  - 15.11.2 obtain the written consent of the Controller;
  - 15.11.3 enter into a written agreement with the sub-contractor which gives effect to the terms set out in this Clause 15 such that they apply to the sub-contractor; and
  - 15.11.4 provide the Controller with such information regarding the subcontractor as the Controller may reasonably require.
- 15.12 The Processor shall remain fully liable for all acts or commissions of any of its sub-contractors.
- 15.13 The Controller may, at any time on not less than 30 Working Days' revise this Clause 15 by replacing it with any applicable controller or processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Contract).
- 15.14 The Parties agree to take into account any guidance issued by the Information Commissioner's Office. The Controller may on not less than 30 Working days' notice amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- 15.15 Where the Contractor is providing the Services to Learners claiming out of work benefits, the Secretary of State for Work and Pensions (or their successor) is the Controller in relation to Personal Data which the Contractor is required to provide to the Secretary of State for Work and Pensions. This Clause 15 will be enforceable by the Secretary of State for Work and Pensions by the Contractor on their behalf.
- 15.16 Where the Contractor is providing Services to Learners who are subject to the active management of the Offender manager in respect of an order or licence the Secretary of State for Justice (or their successor) is the Controller in relation to Personal Data with the Contractor is required to provide to the Secretary of State for Justice.

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## 16 SUBMISSION OF LEARNER DATA

- 16.1 The Contractor must supply the ESFA data on each individual learner, in accordance with the data collections framework set out in the 'ILR specification, validation rules and appendices 2018 to 2019' as amended and updated, which
- is published on the ESFA's website <https://www.gov.uk/government/publications/ilrspecification-validation-rules-and-appendices-2018-to-2019> in accordance with the '*Provider Support Manual*' as amended and updated.
- 16.2 The Contractor must supply the ESFA with data in accordance with the following:
- 16.2.1 in line with agreed audit arrangements;
  - 16.2.2 in adherence with the Data Protection Act;
  - 16.2.3 to support payments to be made;
  - 16.2.4 to enable reconciliation to take place; and
  - 16.2.5 to support the contract management and allocation processes.
- 16.3 Data collected must be transmitted to the ESFA through the ESFA's web portal <https://www.gov.uk/government/publications/ESFA-the-hub>. Access to the ESFA's web portal is restricted and the Contractor agrees to comply with the conditions of use regarding the supply of data to the ESFA set out in this Clause 16 and in 'Individualised Learner Record Specification 2018/19 and relevant Provider Support Manual as amended and updated available on the ESFA's web site.
- 16.4 The Contractor will only submit data to claim payments under this Contract when the evidence defined in the Funding Rules is available to verify the delivery of the service claimed.
- 16.5 The Contractor will endeavour to collect the full data set for each Learner and work with Learners to minimise the use of 'not knowns' or 'prefer not to say' options.
- 16.6 Where the ESFA is concerned about the quality of the data, including the completeness or accuracy of the data, provided by the Contractor, the ESFA may require the Contractor to supply data more frequently for such a period as the ESFA shall require.
- 16.7 The ESFA reserves the right to require the Contractor, at its own cost, to carry out such work as the ESFA deems necessary to improve the quality of data.
- 16.8 The ESFA reserves the right to suspend payments to the Contractor under the Contract where data quality gives rise to concern about the accuracy of the data provided by the Contractor.

- 16.9 Failure to transmit complete and accurate data to the ESFA in accordance with this Clause 16 will constitute a Serious Breach of Contract in accordance with Clause 20 of the Terms and Conditions of the Contract.
- 16.10 Where the Contractor is providing the Services to Learners claiming out of work benefits, it must provide data to the Secretary of State with responsibility for unemployment or their nominated representative in accordance with the requirements notified to the Contractor. Failure to transmit complete and accurate data under this Clause 16 will constitute a Serious Breach of Contract in accordance with Clause 20 of the General Terms and Conditions of the Contract and may result in payments for this part of the Services to be delayed or withheld.
- 16.11 The Contractor must update the course information funded by the ESFA at [www.coursedirectoryproviderportal.org.uk](http://www.coursedirectoryproviderportal.org.uk) in accordance with the course directory data requirements which can be found at <https://coursedirectoryproviderportal.org.uk/Help>.
- 16.12 The Contractor shall register with UKRLP and maintain contact details on an on-going basis. (<http://www.ukrlp.co.uk/>).
- 16.13 The Contractor must submit data about any member of its workforce delivering GCSE English and Maths in the format and to the timescales as required by the ESFA.
- 16.14 The Contractor shall complete the Supplementary Data submission to claim activity and costs not reportable through the ILR. The Supplementary Data must be transmitted to the ESFA through the ESFA's web portal: <https://www.gov.uk/government/publications/ESFA-the-hub>

## **17 QUALITY ASSURANCE AND RAISING STANDARDS**

- 17.1 The Contractor undertakes to the ESFA that it has the resources and skills necessary to carry out the Contractor's obligations pursuant to this Contract.
- 17.2 The Contractor shall comply with the Funding Rules published by the ESFA as amended from time to time and any other requirements, which may from time to time be issued by the ESFA, Ofsted, the awarding bodies and other regulatory bodies and of which the Contractor is made aware.
- 17.3 The Contractor shall ensure that all activities carried out pursuant to this Contract shall be documented in accordance with the requirements of the ESFA and shall provide such documentation to them as the ESFA shall request from time to time.
- 17.4 The Contractor shall continuously seek to improve the Services and raise standards to benefit the Learner. The Contractor shall have the primary responsibility for improving standards and will need to demonstrate to the ESFA's satisfaction that it has an effective quality assurance system based on the implementation of its own quality improvement process. The ESFA reserves the right to require the Contractor to provide the ESFA or an Inspectorate evidence to support the quality improvement processes.



17.5 The Contractor shall use all reasonable endeavours to:

- 17.5.1 minimise dropout rates and deliver high completion and achievement rates and appropriate progression;
  - 17.5.2 at least meet the minimum quality standards that apply to the appropriate Services purchased. These minimum quality standards will be set out by the ESFA;
  - 17.5.3 ensure competent and appropriately qualified staff deliver and assess learning. The Contractor shall be responsible for the professional development and training of its staff;
  - 17.5.4 offer equality of access to learning opportunities and close equality gaps in learning and outcomes;
  - 17.5.5 provide a safe, healthy and supportive environment, which meets the needs of Learners;
  - 17.5.6 provide good management and leadership of the learning process;
  - 17.5.7 deliver value for money and financial probity; and
  - 17.5.8 ensure all sub-contractors delivering Services under the Contract on behalf the Contractor comply with the requirements set out in 17.5.1 to 17.5.7 above.
- 17.6 Failure to meet the requirements set out in clauses 17.5.1 to 17.5.8 may result in the ESFA assessing the Contractor to be in Serious Breach of the Contract under Clause 20 of the Contract.
- 17.7 Where appropriate, the Contractor shall confirm in writing to the ESFA that their Centre Approval Status is still current. The written statement will need to confirm approved centre status for the specific Regulated Qualification Framework (RQF) titles and levels, including awarding body name(s). The Contractor must notify the ESFA immediately in writing if it receives any sanction from an awarding body.
- 17.8 The ESFA may assess the quality and delivery of the Services and the Contractor's compliance with the requirements in clause 17.5.1 to 17.5.8 during the term of the Contract. The Contractor will be informed of the outcome of that process. Where the ESFA assesses the Contractor to be in Serious Breach of Contract following such assessment the ESFA will issue a notice in accordance with clause 20.9 of the Contract which may:
- 17.8.1 require the Contractor to meet improvement indicators to improve the quality of its Services. The ESFA will meet with the Contractor to discuss and reach agreement on implementation of these actions and improvement indicators and to agree arrangements for monitoring and reviewing progress. In such cases reviews will take place at the frequency specified by the ESFA and in agreement with the Contractor;
  - 17.8.2 agree detailed improvement plans and measures that set out clearly the expected timescale for improvement;
  - 17.8.3 agree arrangements for more frequent monitoring of quality improvement plans.

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- 17.9 As part of the delivery of the Services, The Contractor must provide high quality and easily accessible information and advice to help Learners to understand the opportunities and support available to them about education, training or connected matters (including employment);
- 17.9.1 Where one of the main objectives of the Services to be provided under this Contract is to deliver information and advice, the Contractor will have to have or attain the matrix Standard accreditation within six months of the Contract being awarded; and
- 17.9.2 If the information and advice is embedded as part of the delivery of the Services the Contractor should work towards achieving the matrix Standard accreditation within 12 months of the start of the Contract.
- 17.9.3 Where the Services are delivered by a sub-contractor on behalf of the Contractor, the requirements set out in clauses 17.9.1 and 17.9.2 must be applied to the sub-contractor. This does not apply where the Contractor retains responsibility for the delivery of information and advice to the Learners.
- 17.9.4 Once achieved, matrix Standard accreditation is valid for three years. As part of their accreditation the Contractor is required to successfully demonstrate their continuous improvement activities to their matrix Assessor through the use of the online Self Reflection Tool on an annual basis.
- 17.10 The Contractor must take all reasonable steps to meet the relevant requirements for data gathering for the FE Choices Performance Indicators as outlined currently at <https://www.gov.uk/government/collections/fe-choicesinformation-for-providers> and in any subsequent updates to these web pages.

## **Financial Health**

- 17.11 The ESFA reserves the right to undertake a desk based assessment of financial health and control. Should the ESFA, at its absolute discretion, consider that the outcome of any financial health and/or control assessment is inadequate, the ESFA may, in its absolute discretion take one or more of the following actions:
- 17.11.1 require the Contractor to, and the Contractor shall, accept and comply with additional Contract obligations relating to the improvement of financial health and/or control arrangements;
- 17.11.2 require the Contractor to suspend the recruitment of Learners to the Services and/or cap any growth in Learner numbers;
- 17.11.3 give consideration to what changes, if any, are required in its allocations when finalising the amount of funding in any subsequent Contract between the parties; and/or
- 17.11.4 terminate in accordance with Clause 21.2.8
- 17.12 Where the Contractor fails to comply with requirements imposed under Clauses 17.11.1 and/or 17.11.2, the ESFA shall consider Termination under Clause 21.2.9



## **Ofsted Inspection**

17.13 The ESFA may at their discretion agree a programme of support for the Contractor to assist it in taking action to improve the quality of the Services.

17.14 When the Contractor receives notification from Ofsted that the Services are to be inspected, the Contractor shall on request provide the ESFA with details of its quality improvement activity, and any other relevant information in accordance with the required timescale of Ofsted. The Contractor must notify the ESFA of the date of the meeting at which Ofsted give feedback on the inspection and allow the ESFA's nominated representative to attend the meeting. The Contractor must confirm to the ESFA in writing the outcome of the inspection within 5 working days of receiving the feedback from Ofsted.

17.15 Ofsted may, at any time during the Term, undertake an inspection of the Contractor. The ESFA will consider the outcome of any such inspection as follows:

### **Inadequate in part**

17.15.1 Ofsted has assessed the Services to be inadequate in any sector specific areas, the ESFA may, in its absolute discretion take one or more of the following actions:

- 17.15.1.1 require the Contractor to accept and comply with additional Contract obligations relating to the improvement of the Services assessed as inadequate; and/or
- 17.15.1.2 require the Contractor to suspend the recruitment of Learners to, and/or to cap any growth in, the Services which is assessed as inadequate; and/or
- 17.15.1.3 give consideration to the Services which are assessed as inadequate in its allocations when finalising the amount of Funding in any subsequent Contracts between the Parties; and/or
- 17.15.1.4 reduce, suspend or recover payment to the Contractor in respect of that part of the Services assessed as inadequate; and/or
- 17.15.1.5 terminate in accordance with Clause 21.2.11

### **Inadequate overall**

17.15.2 Where the ESFA is made aware that Ofsted has provisionally assessed the Services to be inadequate overall, the ESFA may, in its absolute discretion take one or more of the following actions:

- 17.15.2.1 require the Contractor to accept and comply with temporary additional Contract obligations relating to the improvement of the overall Services, including but not limited to, requiring the Contractor to temporarily suspend the recruitment of Learning and/or temporarily cap any growth in those Learning Programmes which are assessed as inadequate.

17.15.2.2 commence discussions with the Contractor and the Local Authority within whose area the Contractor is located, either with Ofsted or not, as part of considering what actions as specified in Clause 17.15.3 may be taken.

17.15.3 Where Ofsted has confirmed its assessment that the Services is inadequate overall, the ESFA may, in its absolute discretion take one or more of the following actions:

17.15.3.1 require the Contractor to accept and comply with additional Contract obligations relating to the improvement of the overall Services; and/or

17.15.3.2 require the Contractor to suspend the recruitment of Learners to, and/or to cap any growth in, those Learning Programmes which are assessed as inadequate; and/or

17.15.3.3 give consideration to the assessment of inadequate in its allocations when finalising the amount of Funding in any subsequent Contracts between the Parties; and/or

17.15.3.4 reduce, suspend or recover payment to the contractor; and/or

17.15.3.5 terminate this Contract in accordance with Clause 21.2.11 (Termination).

17.15.4 The failure of the Contractor, as assessed by the ESFA, to comply with any requirements of Clauses 17.15.3.1 – 17.15.3.2 within such time as the ESFA may deem reasonable may lead to the ESFA taking such actions as it deems appropriate which may include, but is not limited to, terminating in accordance with Clause 21.2.11 (Termination).

17.15.5 The ESFA will take action based on Ofsted's provisional and confirmed outcomes as in Clauses 17.15.2 - 17.15.3 above. Where the ESFA is made aware that the Contractor has made a complaint about the graded outcome of the overall assessment by Ofsted, the ESFA will continue to progress action under Clause 17.15.2 -17.15.3 but will be mindful of the implications arising from the outcome of a complaint. The ESFA will review any decisions made at such time as outcomes of any complaint are made known.

### **Minimum standards**

17.16 The ESFA may, at any time during the Term, undertake an assessment of the quality and delivery of the Services. Where the ESFA assesses that the Services, in whole or in part, fall below the required standards, the ESFA may, in its absolute discretion, take one or more of the following actions:

17.16.1 require the Contractor to accept and comply with additional Contract obligations relating to the improvement of the Services. Such conditions to apply until the Contractor can demonstrate the required improvement to the ESFA's absolute satisfaction; and/or

17.16.2 require the Contractor to suspend the recruitment of Learners to, and/or to cap any growth in, those Learning Programmes which are identified as below the required standards; and/or

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17.16.3 give consideration to the Services which are below the required standards in its allocations when finalising the amount of Funding in any subsequent Contracts between the Parties; and/or

17.16.4 reduce, suspend or recover payment to the contractor in respect of that part of the Provision to which the failure to meet the required standards relate; and/or

17.16.5 terminate this Contract in accordance with Clause 21.2.12 (Termination) in full, or that part of the Provision failing to meet the required standards.

17.17 The failure of the Contractor, as assessed by the ESFA, to comply with any requirements of Clauses 17.16.1 – 17.16.2 within such time as the ESFA may deem reasonable may lead to the ESFA taking such actions as it deems appropriate which may include, but is not limited to, terminating in accordance with Clause 21.2.12 (Termination).

17.18 Where the Contractor sub-contracts any part of the Services under this Contract, the Contractor must ensure that the sub-contractor is able to meet the minimum quality standards and any other quality threshold required by the ESFA or identified through an inspection by Ofsted. The ESFA may request evidence from the Contractor that the Services delivered by the sub-Contractor meet the requirements of the Contract.

17.19 The Contractor shall for those staff delivering the services be responsible for their professional development and training and meeting any legal requirements to ensure that they are appropriately qualified and trained.

## **17A ADDITIONAL CONTRACTUAL OBLIGATIONS**

17A.1 The ESFA reserves the right to impose additional contractual obligations where it considers it is necessary to do so to secure the delivery of education and training of a reasonable quality by the Contractor, or to ensure that the resources provided by the ESFA are being used effectively and efficiently or to require the Contractor to address concerns about its financial viability

## **18 FRAUD AND IRREGULARITY**

18.1 The Contractor shall notify the ESFA immediately where it becomes aware of any instance of suspected fraud or financial irregularity in the delivery of the Contract including, but not limited to, cases of:

18.1.1 collusion with members of the staff of the ESFA or employees of the Department for Education;

18.1.2 computer fraud;

18.1.3 the submission to the ESFA of inaccurate, incomplete, misleading or falsified information for the purpose of a claim for funding;

18.1.4 fraud involving awarding bodies;

18.1.5 fraud involving sub-contractors;

provided that nothing in this Clause 18 shall require the Contractor to do anything, which may cause it to infringe any law.

18.2 Where the ESFA has reasonable cause to suspect that fraud or irregularity has occurred in relation to the delivery of the Contract and payments made hereunder, the ESFA shall have the right of access to the Contractor's premises at any reasonable time with or without notice to examine and remove or copy all relevant documents and records including electronic records and to interview the Contractor's servants or agents engaged with the delivery of the Contract.

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

18.4 The Parties shall co-operate in the identification of Learners who may be unlawfully claiming benefits. The ESFA may from time to time brief the Contractor as to the co-operation and assistance it reasonably requires including the provision of information regarding fraud by Learners. The ESFA

shall provide a named contact or telephone answering machine for receiving such information.

## **19 PUBLICITY AND USE OF LOGOS**

19.1 The Contractor will comply with the ESF programme publicity requirements set out in the Funding Rules. Failure to comply with these requirements will incur financial penalties from external auditors that the ESFA will recover from the Contractor.

## **20 BREACH**

20.1 For the purpose of this Clause 20, the following definitions shall have the meanings set out below:

20.2 "Minor Breach" shall mean a delay or non-performance by either Party of its obligations under the Contract which does not materially, adversely or substantially affect the performance or delivery of the Service or the provision of a safe, healthy and supportive learning environment;

20.3 "Serious Breach" shall mean any breach defined as a Serious Breach in the Contract or any breach or breaches which adversely, materially or substantially affect the performance or delivery of the Services or compliance with the terms and conditions of the Contract or the provision of a safe, healthy and supportive learning environment. Failure to comply with legislation, or actions or omissions by the Contractor that endanger the Health or Safety of Learners would constitute a Serious Breach.

20.4 For the avoidance of doubt:

- a) neither Party shall be liable for any Minor Breach or Serious Breach under this Clause 20, which occurs as a direct result of any act or omission by the other Party, its staff or agents;
- b) in the event of a breach the Party not in breach may enforce the Clauses in the Contract relating to breach even if it has not done so in the event of earlier breaches.

#### *Minor Breach*

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

20.6 The Party not in breach shall be entitled to serve written notice on the Party in breach, giving full details of the breach and requiring the other Party to remedy the breach within a specified period.

20.7 If the Party in breach fails to remedy the Minor Breach within the time specified in notice served under Clause 20.6 or such other period as may be agreed between the Parties it shall constitute a Serious Breach by the Party in breach.

#### *Serious Breach*

20.8 Without prejudice to any other remedy, in the event of a Serious Breach, which is capable of remedy, the Parties shall adopt the following procedure:

20.9 The Party not in breach shall be entitled to serve written notice on the other Party giving full details of the breach and requiring the Party in breach to remedy the breach within a specified time period.

20.10 Where the ESFA has served a notice under clause 20.9 the ESFA has the right to require the Contractor to suspend the recruitment of Learners until the ESFA has confirmed that the breach has been remedied.

20.11 In the event that a Serious Breach of the Contract by the Contractor cannot be remedied within the period specified in the notice served under Clause 20.9 or such other period as may be agreed between the Parties the ESFA may cease funding the Contractor in respect of that part of the Service to which the Serious Breach relates.

20.12 In the event that any Serious Breach cannot be remedied at all or within the period specified in the notice served in accordance with Clause 20.9 or such other period as may be agreed between the Parties, the Party not in breach may at its sole discretion terminate the Contract or that part of the Service to which the breach relates with immediate effect on notice in writing to the other Party.

## **21 TERMINATION**

21.1 The Contractor shall notify the ESFA in writing immediately upon the occurrence of any of the following events:

21.1.1 where the Contractor is an individual and if a petition is presented for the Contractor's bankruptcy or a criminal bankruptcy order is made against the Contractor, or it makes

any composition or arrangements with or for the benefit of creditors, or makes any conveyance or assignment for the benefit of creditors, or if an administrator is appointed to manage their affairs; or

21.1.2 where the Contractor is not an individual but is a firm; or a number of persons acting together in any capacity; if any event in clauses 21.1.1 or 21.1.3 of this condition occurs in respect of any partner in the firm or any of those persons or a petition is presented for the Contractor to be wound up as an unregistered company; or

21.1.3 where the Contractor is a company, if the company passes a resolution for winding-up or the court makes an administration order or a winding-up order, or the company makes a composition or management with its creditors, or an administrator, receiver or manager is appointed by the company, a creditor or by the court, or possession is taken of any of its property under the terms of a floating charge.

21.2 The ESFA may terminate the Contract without liability to the Contractor by giving to the Contractor, or where relevant their representatives written notice, having effect immediately or after such periods as the ESFA may determine as follows;

21.2.1 Where any of the events in Clause 21.1 occur;

21.2.2 In accordance with Clause 20.8 (Serious Breach);

21.2.3 Where the Contractor is an individual, if he shall die or be adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Health Act 1983;

21.2.4 In the event that the ESFA is of the reasonable opinion that the conduct of the Contractor amounts to a fundamental breach of the Contract which is incapable of remedy;

21.2.5 ceases to be on the Register of Training Organisations and/or the Register of Apprenticeship Training Providers maintained by the ESFA;

21.2.6 The Contractor or any employee shall have committed any offence under the Bribery Act 2010;

21.2.7 On the occurrence of the statutory provisos contained in regulation 73 (1) (a) to (c) of the Public Contracts Regulations 2015;

21.2.8 The outcome of any financial health and/or control assessment undertaken in relation to the Contractor is inadequate;

21.2.9 The Contractor fails to comply with requirements imposed under Clauses 17.11.1 and/or 17.11.2;

21.2.10 The Contractor fails to comply with requirements imposed under Clauses 17.15.3.1, and / or 17.15.3.2;

21.2.11 An Ofsted inspection results in the Services in part or overall thereof being assessed as inadequate;



21.2.12 the ESFA assesses that the Services delivered under this Contract, in whole or part, are below the minimum standards;

21.2.13 where the ESFA is in receipt of a notice from the Contractor, pursuant to Clause 5.16. and at its absolute discretion the ESFA is satisfied that the change of control will prejudice the Contractor's ability to deliver the Services.

21.3 In addition to the rights of termination under any this and any other clauses of this Contract, the ESFA shall be entitled to terminate this Contract in respect of all or part of the Service provided under the Contract by giving to the other not less than three months' notice to that effect without the need to give a reason for termination.

21.4 Termination under Clause 21 shall not prejudice or affect any right of action or remedy, which shall have accrued or shall thereupon accrue to the Parties under this Contract.

21.5 Where the Contractor goes into administration or liquidation, the ESFA must be assumed to be a creditor of the Contractor. The Contractor must take steps to ensure that the ESFA is provided with details of the administrator or liquidator and receives notification of any creditors meetings. The ESFA will confirm whether in fact it is a creditor within 8 weeks of being notified that the Contractor is in administration or liquidation.

21.6 The Contractor shall upon termination of the Contract immediately deliver up to the ESFA all correspondence, documents, specification papers and other property belonging to the ESFA, which may be in its possession or under its control.

21.7 Notice of termination of the Contract under Clause 17, Clause 20 or this Clause 21 shall result in the Contractor being removed from the Register of Training Organisations and/or the Register of Apprenticeship Training Providers maintained by the ESFA.

21.8 The Contractor must not recruit new Learners after notice of termination of the Contract has been given under Clause 17, Clause 20 or this Clause 21. The ESFA will not be liable to make payments in respect of any Learners recruited in breach of this Clause.

## **22 TRANSFER OF RESPONSIBILITY AND TRANSFER OF UNDERTAKINGS (PROTECTION OF EMPLOYMENT) REGULATIONS 2006 PROVISIONS ON EXPIRY OR TERMINATION**

22.1A Where there are Transferring Former Supplier Employees (as defined in Schedule 1) between the Former Supplier (as defined in Schedule 1) and the Contractor, the provisions set out in Schedule 1 to this Contract shall apply.

22.1 The Parties agree that if upon termination of this Contract or any part of the Service being provided under the Contract, circumstances arise in which the Transfer of Undertakings (Protection of Employment) Regulations 2006 are applicable, the provisions of Schedule 1 shall apply.

22.2 The Parties agree that on termination or expiry of this Contract for any reason, the continuity of the Services is of paramount importance. The Contractor shall do its utmost to minimise disruption caused to Learners and to assist the implementation of ESF Contract for Services – Education and Training

any contingency plan proposed by the ESFA either prior to or after the termination or expiry of this Contract, to deal with the effects of such termination or expiry in so far as it is practicable to do so.

- 22.3 On termination or expiry of this Contract for any reason the Learner Files will become the property of the ESFA. The Contractor shall allow the ESFA his servants or agent to have access to its premises to remove Learner Files or otherwise comply with a request by the ESFA to transfer Learner Files to any third party nominated by the ESFA.
- 22.4 The Contractor shall, at no cost to the ESFA, promptly provide such assistance and comply with such timetable as the ESFA may reasonably require for the purpose of ensuring an orderly transfer of responsibility for provision of the Services (or its equivalent) upon the expiry or other termination of this Contract. The Contractor shall use all reasonable endeavours to ensure that its employees and its sub-contractors are under a similar obligation. The ESFA shall be entitled to require the provision of such assistance both prior to and after the expiry or other termination of this Contract.
- 22.5 Such assistance may include, (without limitation) delivery of documents and data in the possession or control of the Contractor or its sub-contractors, which relate to performance, monitoring, management and reporting of the Programme, including the documents and data, if any, referred to in the Schedules.
- 22.6 The Contractor undertakes that it shall not knowingly do or omit to do anything which may adversely affect the ability of the ESFA to ensure an orderly transfer of responsibility for provision of the Services.

## **23 FORCE MAJEURE**

- 23.1 Neither party shall be liable for any delay or failure to meet its obligations under this Contract due to any cause outside its reasonable control, including (without limitation), inclement weather, Acts of God, war, riot, malicious acts of damage, civil commotion, strike, lockout, industrial dispute, refusal of licence, power failure or fire. If performance of the service is substantially prevented for a continuous period of 6 months by virtue of any of the aforesaid events, then either party may terminate this Contract by written notice to the other.

## **24 PUBLIC REPUTATIONS OF THE PARTIES/PRESS RELEASES**

- 24.1 Both Parties recognise their respective public reputations and legal responsibilities. Each Party shall use all reasonable endeavours not to harm or compromise these.
- 24.2 The text of any press release or other communication to be published by or in the media concerning the subject matter of this Contract shall require the approval of each Party which shall not be unreasonably withheld or delayed.

## **25 NOT USED 26 RETENTION OF DOCUMENTS**

- 26.1 The Contractor must retain the documentation to verify the delivery of the Services as set out in the Funding Rules.



26.2 Without prejudice to any of the other rights under the Contract to recover funds, the ESFA will be entitled to recover from the Contractor any sums which it is required to repay to the European Social Fund as a result of the Contractor's failure to comply with this Clause 26.

26.3 The provisions of this Clause 26 shall apply during the continuance of this Contract and after its termination howsoever arising.

## **27 STATUS OF CONTRACT**

27.1 Nothing in this Contract shall have the effect of making the Contractor, the servant or agent of the ESFA, the Contractor (if an individual) represents that he is regarded by both the Inland Revenue and the Department for Work and Pensions as self-employed and accordingly shall indemnify the ESFA against tax, national insurance contributions or similar imposed for which the ESFA may be liable in respect of the Contractor by reason of this Contract.

## **28 WAIVER**

28.1 No failure or delay on the part of either Party hereto to exercise any right or remedy under this Contract shall be construed or operate as a waiver thereof nor shall any single or partial exercise of any right or remedy as the case may be. The rights and remedies provided in this Contract are cumulative and are not exclusive of any rights or remedies provided by law.

## **29 THIRD PARTY RIGHTS**

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

## **30 NOTICE**

30.1 Any notice or other document to be given under this Contract shall be in writing and shall be deemed to have been duly given if left at or sent by first class post by Royal Mail Special Delivery or other fast postal service or by facsimile or other electronic media to a Party at the address or relevant telecommunications number for such Party or such other address as the Party may from time to time designate by written notice to the other.

30.2 All such notices and documents shall be in the English language. Any notice or other document shall be deemed to have been received by the addressee two working days following the date of despatch of the notice or other document by post or, where the notice or other document is sent by hand or on the day of delivery or where notice is given by facsimile or other electronic media, on the working day following the delivery or transmission provided that a printed report is obtained confirming successful transmission or if the addressee acknowledges receipt. To prove the giving of a notice or other document it shall be sufficient to show that it was despatched.

## **31 GOVERNING / JURISDICTION**

31.1 This Contract shall be governed by and construed in accordance with English Law.  
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## **32 DISPUTE RESOLUTION**

- 32.1 Any dispute, difference or question arising between the Parties either during the currency of the Contract or afterwards shall be referred to the nominated contacts for the ESFA and the Contractor for discussion and review in order to try to resolve the same.
- 32.2 In the event of the nominated contacts being unable to resolve the relevant issue, either party may request in writing that the matter is referred to the ESFA's nominated representative and the Contractor's representative nominated for this purpose (jointly "the Dispute Resolution Panel") for formal review and consideration. Any request for referral to the Dispute Resolution Panel must include details of the dispute and any proposals to resolve it.
- 32.3 The Dispute Resolution Panel must meet within 28 days of receiving a request for referral made in accordance with Clause 32.2 above.

## **33 FEEDBACK AND COMPLAINTS**

- 33.1 The primary responsibility for receiving feedback and investigating complaints promptly and thoroughly in respect of the Services shall rest with the Contractor shall have procedures in place, which are acceptable to the ESFA, to gather and act upon feedback and complaints from Learners and/or their representatives and employers and the wider community.
- 33.2 The Contractor must ensure that Learners are made aware of its procedure for dealing with complaints and that the procedure is clear and accessible to Learners who wish to complain.
- 33.3 The Contractor shall be responsible for resolving complaints in accordance with its own procedures and any guidance issued by the ESFA.
- 33.4 Where a complaint has not been resolved to the satisfaction of the complainant the Contractor will advise the complainant of his or her right to complain to the ESFA and co-operate with any investigation carried out by the ESFA and act on any recommendations made by the ESFA following the investigation.

## **34 STATE AID**

- 34.1 The Contractor should satisfy itself, if the European rules on State Aid apply to the Services delivered under this Contract and comply with the programme requirements set out in the Funding Rules.
- 34.2 Where the rules on State Aid apply, the ESFA will supply to the Contractor details of the records that the Contractor will need to collect and retain.
- 34.3 The ESFA reserves the right to require the Contractor to obtain a contribution towards the cost of the Services delivered under this Contract from the employer of any participant. Where a contribution is required, the ESFA will confirm to the Contractor in writing the exact percentage of the contribution.

34.4 Where ESFA requires the Contractor to obtain a contribution towards the cost of the Services under Clause 34.3 above, the Contractor must provide evidence that the contribution has been received.

34.5 In the event that any funding paid under this Contract is deemed to constitute unlawful state aid the ESFA reserves the right to require immediate repayment of any such funding.

## **35 INTELLECTUAL PROPERTY RIGHTS**

### **35.1 Definitions**

#### **“Background Intellectual Property”**

Any Intellectual Property, other than Foreground Intellectual Property, which is used in performing the Services or comprises part of the Work;

#### **“Confidential Information”**

Includes all designs, drawings, data, specifications and all other technical business and similar information relating to the Services including all readable or computer or other machine readable data or material and any material relating to or comprising software which may be part of the provision of the Services;

#### **“Foreground Intellectual Property”**

Is any Intellectual Property that arises or is obtained or developed by, or on behalf of, the Contractor in respect of the Work in the course of or in connection with the provision of the Services excluding Learner Files;

#### **“Intellectual Property”**

Is any patent, registered design, copyright, database right, design right, topography right, trade mark, trade name, application to register any of the aforementioned rights, trade secret, inventions, right in unpatented know-how, right of confidence and any other intellectual or industrial property right of any nature whatsoever in any part of the world including, without limitation:

- (a) any renewals, revisions and extensions created or provided by the laws of any country;
- (b) all rights of action and remedies (including but not limited to an injunction, damages and/or an account of profits) in relation to past infringements; and
- (c) the right to apply for registration of any such rights in any country of the world;

#### **“Work”**

Means all materials created by the Contractor as a result of the provision of the Services including Confidential Information.

35.2 In consideration of the ESFA making the payments to the Contractor in connection with the Services the Contractor hereby grants (and, where relevant, shall procure from any ESF Contract for Services – Education and Training

necessary third parties the grant) to the ESFA a non-exclusive, irrevocable, worldwide, royalty-free licence (with the right to license others) of any of the Contractor's Foreground Intellectual Property that the ESFA may reasonably require to be able fully to exploit, develop and commercialise the results of the Services, including, without limitation, the Work.

35.3 The provisions of this Clause 35 shall apply during the continuance of this Contract and after its termination howsoever arising.

## **36 DISPOSAL OF ASSETS AND CHANGE OF USE**

36.1 In respect of Assets whose value exceeds £2,500 including VAT the following provisions shall apply.

36.2 For the purposes of this section:

- a) 'Asset' shall mean any property, real or personal, tangible or intangible;
- b) an Asset shall be considered to have been financed by the ESFA if it has been acquired wholly or partly with funds provided by the ESFA;
- c) the use of any Asset shall be considered to have changed if the Contractor uses it for any purpose other than for the provision or connected with the provision of Services under the Contract;
- d) 'the appropriate proportion thereof' shall be the proportion represented by the amount of funding provided by the ESFA to acquire, develop or improve an asset in relation to the entire price paid for its acquisition, or its market value when its development or improvement have been completed.

36.3 The Contractor shall ensure that any Asset financed by the ESFA is adequately insured.

36.4 The Contractor shall inform the ESFA if it proposes to dispose of, or change the use of, any Asset that has been financed by the ESFA.

36.5 The Contractor shall not dispose of any Asset financed by monies provided by the ESFA unless it has first obtained the written consent of the ESFA to such a disposal.

36.6 Where the Contractor disposes of the Asset it shall pay to the ESFA whichever is the greater either the amount of funding provided by the ESFA in respect of the Asset or the net proceeds of any disposal of an Asset, or the appropriate proportion thereof, to the ESFA unless otherwise agreed with the ESFA.

36.7 If the Contractor changes the use of any such Asset it will be treated as a disposal and the Contractor shall make a payment to the ESFA in accordance with Clause 36.6 above.

36.8 In the event of the Contractor being taken over, merging or going into liquidation, all Assets financed by the ESFA, or the equivalent portion of their market value, will become the property of the ESFA.

ESF Contract for Services – Education and Training

36.9 The provisions of this Clause 36 shall apply during the continuance of this Contract and after its termination howsoever arising. The ESFA shall reserve the right to decide when its interest in Assets financed by the ESFA under the terms of the Contract shall cease.

## **37 HEADINGS**

37.1 The headings to conditions shall not affect their interpretation.

## **38 ENTIRE CONTRACT / AMENDMENTS**

38.1 The Contract shall comprise the following:

Terms and Conditions

Appendix 1 & Appendix 2

Schedule 1 Staff Transfer

Schedule 2 Processing, Personal Data and Data Subjects

The Specification

The Contractor's response to the Specification including the Delivery Plan

Funding Rules

The 2014 to 2020 ESF Programme ESF Specifications Deliverables Evidence Requirements

The European Social Fund Operational Programme 2014-2020

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

## APPENDIX 1 - SUMMARY OF FUNDING

|  |                              |                   |                                 |                                |
|--|------------------------------|-------------------|---------------------------------|--------------------------------|
| <b>Organisation Name:</b>              | PADDINGTON DEVELOPMENT TRUST |                   |                                 |                                |
| <b>UKPRN:</b>                          | 10019380                     |                   |                                 |                                |
|  | <b>Contract Ref</b>          | <b>Start Date</b> | <b>End Date</b>                 | <b>Maximum Contract Values</b> |
| COMMUNITY GRANTS - London (West)       | ESF-5045                     | 01/04/2019        | 31/07/2021                      | £1,348,129                     |
| <b>Total Funding for this contract</b> |                              |                   |                                 | <b>£1,348,129</b>              |
| Education and Skills Funding Agency    | Appendix 1                   |                   | Master Contract ref: ESFA-15022 |                                |

Date: Thursday, May 2, 2019 11:52 AM

## Funding Agreement

## COMMUNITY GRANTS - London (West)

### (Appendix 2)

### London LEP

**Provider:** PADDINGTON DEVELOPMENT TRUST

**Master Contract Ref:** ESFA-15022

**Start Date:** 01/04/2019

**Contract Ref:** ESF-5045

**Tender Specification Ref:** itt\_30424

**Specification Title:** Community Grants

**LEP:** London LEP

REDACTED UNDER FOIA SECTION 43(2)



European Union

European  
Social Fund

**UKPRN:** 10019380

**End Date:** 31/07/2021

**Lot Ref:** R22304

**Agreement:** 23S17C02087



## Funding Agreement

## COMMUNITY GRANTS - London (West)



### (Appendix 2)

### London LEP

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## Funding Agreement

## COMMUNITY GRANTS - London (West)



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**End Date:** 31/07/2021

**Lot Ref:** R22304

**Agreement:** 23S17C02087

REDACTED UNDER FOIA SECTION 43(2)

## **SCHEDULE 1 TRANSFER OF UNDERTAKINGS (PROTECTION OF EMPLOYMENT) REGULATIONS 2006 AND PENSIONS ASPECTS**

### **Staff Transfer**

#### **1 DEFINITIONS**

In this Schedule, the following definitions shall apply:

|                              |  |
|------------------------------|--|
| <b>“Admission Agreement”</b> | An admission agreement in the form available on the Civil Service Pensions website immediately prior to the Relevant Transfer Date to be entered into by the Supplier where it agrees to participate in the Schemes in respect of the Services;  |
| <b>“Eligible Employee”</b>   | any Fair Deal Employee who at the relevant time is an eligible employee as defined in the Admission Agreement;   |
| <b>“Fair Deal Employees”</b> | those Transferring Authority Employees who are on the Relevant Transfer Date entitled to the protection of New Fair Deal (and, in the event that Part B of this Schedule 9.1 applies, any Transferring Former Supplier Employees who originally transferred pursuant to a Relevant Transfer under the Employment Regulations (or the predecessor legislation to the Employment Regulations), from employment with a public sector employer and who were once eligible to participate in the Schemes and who at the Relevant Transfer Date become entitled to the protection of New Fair Deal); |
| <b>“Former Supplier”</b>     | a supplier supplying services to the Authority before the Relevant Transfer Date that are the same as or substantially similar to the Services (or any part of the Services) and shall include any sub-contractor of such supplier (or any subcontractor of any such sub-contractor);  |
| <b>“New Fair Deal”</b>       | the revised Fair Deal position set out in the HM Treasury guidance: <i>“Fair Deal for staff pensions: staff transfer from central government”</i> issued in October 2013 including any amendments to that document immediately prior to the Relevant Transfer Date;  |

|                                     |   |
|-------------------------------------|---|
| <b>“Notified Subcontractor”</b>     | a sub-contractor identified in the Annex to this Schedule to whom Transferring Authority Employees and/or Transferring Former Supplier Employees will transfer on a Relevant Transfer Date;   |
| <b>“Replacement Sub-contractor”</b> | a sub-contractor of the Replacement Supplier to whom Transferring Supplier Employees will transfer on a Service Transfer Date (or any subcontractor of any such sub-contractor);  |
| <b>“Relevant Transfer”</b>          | a transfer of employment to which the Employment Regulations applies;   |
| <b>“Relevant Transfer Date”</b>     | in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place;  |
| <b>“Schemes”</b>                    | the Principal Civil Service Pension Scheme available to Civil Servants and employees of bodies under Schedule 1 of the Superannuation Act 1972 (and eligible employees of other bodies admitted to participate under a determination under section 25 of the Public Service Pensions Act 2013), as governed by rules adopted by Parliament; the Partnership Pension Account and its (i) Ill health Benefits Scheme and (ii) Death Benefits Scheme; the Civil Service Additional Voluntary Contribution Scheme; and the Designated Stakeholder Pension Scheme and “Alpha” introduced under The Public Service (Civil Servants and Others) Pensions Regulations 2014; |
| <b>“Service Transfer”</b>           | any transfer of the Services (or any part of the Services), for whatever reason, from the Supplier or any sub-contractor to a Replacement Supplier or a Replacement Sub-contractor;   |
| <b>“Service Transfer Date”</b>      | the date of a Service Transfer or, if more than one, the date of the relevant Service Transfer as the context requires;   |
| <b>“Staffing Information”</b>       | <p>in relation to all persons identified on the Supplier's Provisional Supplier Personnel List or Supplier's Final Supplier Personnel List, as the case may be, such information as the Authority may reasonably request (subject to all applicable provisions of the DPA), but including in an anonymised format:</p> <p>(a) their ages, dates of commencement of</p>  |

employment or engagement, gender and place of work;

- (b) details of whether they are employed, self employed contractors or consultants, agency workers or otherwise;
- (c) the identity of the employer or relevant contracting Party;
- (d) their relevant contractual notice periods and any other terms relating to termination of employment, including redundancy procedures, and redundancy payments;
- (e) their wages, salaries, bonuses and profit sharing arrangements as applicable;
- (f) details of other employment-related benefits, including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and company car schedules applicable to them;
- (g) any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);
- (h) details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long term absence;
- (i) copies of all relevant documents and materials relating to such information, including copies of relevant contracts of employment (or relevant standard contracts if applied generally in respect of such employees); and
- (j) any other “employee liability information” as such term is defined in regulation 11 of the Employment Regulations;  
a list provided by the Supplier of all Supplier Personnel who will transfer under the Employment Regulations on the Service Transfer Date;  
a list prepared and updated by the Supplier of all Supplier Personnel who are at the date of the list wholly or mainly engaged in or assigned to the

**“Supplier's Final  
Supplier  
Personnel List”**

**“Supplier's  
Provisional  
Supplier**

**Personnel List”**

provision of the Services or any relevant part of the Services which it is envisaged as at the date of such list will no longer be provided by the Supplier;

**“Transferring Authority Employees”**

those employees of the Authority to whom the Employment Regulations will apply on the Relevant Transfer Date;

**“Transferring Former Supplier Employees”**

in relation to a Former Supplier, those employees of the Former Supplier to whom the Employment Regulations will apply on the Relevant Transfer Date; and

**“Transferring Supplier Employees”**

those employees of the Supplier and/or the Supplier’s sub-contractors to whom the Employment Regulations will apply on the Service Transfer Date.

**2 INTERPRETATION**

Where a provision in this Schedule imposes an obligation on the Supplier to provide an indemnity, undertaking or warranty, the Supplier shall procure that each of its subcontractors shall comply with such obligation and provide such indemnity, undertaking or warranty to the Authority, Former Supplier, Replacement Supplier or Replacement Sub-contractor, as the case may be.

## **PART A: NOT USED**



## **ANNEX TO PART A: NOT USED**

## **PART B: Transferring Former Supplier Employees at commencement of Services**

### **1 RELEVANT TRANSFERS**

1.1 The Authority and the Supplier agree that:

- (a) the commencement of the provision of the Services or of any relevant part of the Services will be a Relevant Transfer in relation to the Transferring Former Supplier Employees; and
- (b) as a result of the operation of the Employment Regulations, the contracts of employment between each Former Supplier and the Transferring Former Supplier Employees (except in relation to any terms disapplied through the operation of regulation 10(2) of the Employment Regulations) shall have effect on and from the Relevant Transfer Date as if originally made between the Supplier and/or Notified Sub-contractor and each such Transferring Former Supplier Employee.

1.2 The Authority shall procure that each Former Supplier shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of all the Transferring Former Supplier Employees in respect of the period up to (but not including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part in respect of the period up to (but not including) the Relevant Transfer Date) and the Supplier shall make, and the Authority shall procure that each Former Supplier makes, any necessary apportionments in respect of any periodic payments.

### **2 FORMER SUPPLIER INDEMNITIES**

2.1 Subject to Paragraph 2.2, the Authority shall procure that each Former Supplier shall indemnify the Supplier and any Notified Sub-contractor against any Employee Liabilities arising from or as a result of:

- (a) any act or omission by the Former Supplier in respect of any Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee arising before the Relevant Transfer Date;
- (b) the breach or non-observance by the Former Supplier arising before the Relevant Transfer Date of:
  - (i) any collective agreement applicable to the Transferring Former Supplier Employees; and/or

- (ii) any custom or practice in respect of any Transferring Former Supplier Employees which the Former Supplier is contractually bound to honour;
- (c) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
  - (i) in relation to any Transferring Former Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date; and
  - (ii) in relation to any employee who is not a Transferring Former Supplier Employee and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Former Supplier to the Supplier and/or any Notified Sub-contractor as appropriate, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations in respect of the period to (but excluding) the Relevant Transfer Date;
- (d) a failure of the Former Supplier to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Supplier Employees in respect of the period to (but excluding) the Relevant Transfer Date;
- (e) any claim made by or in respect of any person employed or formerly employed by the Former Supplier other than a Transferring Former Supplier Employee for whom it is alleged the Supplier and/or any Notified Sub-contractor as appropriate may be liable by virtue of this Agreement and/or the Employment Regulations and/or the Acquired Rights Directive; and
- (f) any claim made by or in respect of a Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee relating to any act or omission of the Former Supplier in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Supplier or any sub-contractor to comply with regulation 13(4) of the Employment Regulations.

2.2 The indemnities in Paragraph 2.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier or any sub-contractor whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities:

- (a) arising out of the resignation of any Transferring Former Supplier Employee before the Relevant Transfer Date on account of substantial

detrimental changes to his/her working conditions proposed by the Supplier or any sub-contractor to occur in the period from (and including) the Relevant Transfer Date; or

- (b) arising from the failure by the Supplier and/or any sub-contractor to comply with its obligations under the Employment Regulations.

2.3 If any person who is not identified by the Authority as a Transferring Former Supplier Employee claims, or it is determined in relation to any person who is not identified by the Authority as a Transferring Former Supplier Employee, that his/her contract of employment has been transferred from a Former Supplier to the Supplier and/or any Notified Sub-contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:

- (a) the Supplier shall, or shall procure that the Notified Sub-contractor shall, within 5 Working Days of becoming aware of that fact, give notice in writing to the Authority and, where required by the Authority, to the Former Supplier; and
- (b) the Former Supplier may offer (or may procure that a third party may offer) employment to such person within 15 Working Days of the notification by the Supplier and/or the Notified Sub-contractor or take such other reasonable steps as the Former Supplier considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law.

2.4 If an offer referred to in Paragraph 2.3(b) is accepted, or if the situation has otherwise been resolved by the Former Supplier and/or the Authority, the Supplier shall, or shall procure that the Notified Sub-contractor shall, immediately release the person from his/her employment or alleged employment.

2.5 If by the end of the 15 Working Day period specified in Paragraph 2.3(b):

- (a) no such offer of employment has been made;
- (b) such offer has been made but not accepted; or
- (c) the situation has not otherwise been resolved,

the Supplier and/or any Notified Sub-contractor may within 5 Working Days give notice to terminate the employment or alleged employment of such person.

2.6 Subject to the Supplier and/or any Notified Sub-contractor acting in accordance with the provisions of Paragraphs 2.3 to 2.5 and in accordance with all applicable proper employment procedures set out in Law, the Authority shall procure that the Former Supplier indemnifies the Supplier and/or any Notified Sub-contractor (as appropriate) against all Employee Liabilities arising out of the termination of employment pursuant to the provisions of Paragraph 2.5 provided that the Supplier takes, or shall procure that the Notified Sub-

contractor takes, all reasonable steps to minimise any such Employee Liabilities.

2.7 The indemnity in Paragraph 2.6:

- (a) shall not apply to:
    - (i) any claim for:
      - (A) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
      - (B) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,
    - in any case in relation to any alleged act or omission of the Supplier and/or any sub-contractor; or
  - (ii) any claim that the termination of employment was unfair because the Supplier and/or Notified Sub-contractor neglected to follow a fair dismissal procedure; and
- (b) shall apply only where the notification referred to in Paragraph 2.3(a) is made by the Supplier and/or any Notified Sub-contractor (as appropriate) to the Authority and, if applicable, the Former Supplier, within 6 months of the Effective Date.

2.8 If any such person as is described in Paragraph 2.3 is neither re-employed by the Former Supplier nor dismissed by the Supplier and/or any Notified Subcontractor within the time scales set out in Paragraph 2.5, such person shall be treated as having transferred to the Supplier or Notified Sub-contractor and the Supplier shall, or shall procure that the Notified Sub-contractor shall, comply with such obligations as may be imposed upon it under the Law.

### **3 SUPPLIER INDEMNITIES AND OBLIGATIONS**

3.1 Subject to Paragraph 3.2, the Supplier shall indemnify the Authority and/or the Former Supplier against any Employee Liabilities arising from or as a result of:

- (a) any act or omission by the Supplier or any sub-contractor in respect of any Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee whether occurring before, on or after the Relevant Transfer Date;
- (b) the breach or non-observance by the Supplier or any Sub-contractor on or after the Relevant Transfer Date of:

- (i) any collective agreement applicable to the Transferring Former Supplier Employee; and/or
  - (ii) any custom or practice in respect of any Transferring Former Supplier Employees which the Supplier or any Sub-contractor is contractually bound to honour;
- (c) any claim by any trade union or other body or person representing any Transferring Former Supplier Employees arising from or connected with any failure by the Supplier or a Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;
- (d) any proposal by the Supplier or a Sub-contractor prior to the Relevant Transfer Date to make changes to the terms and conditions of employment or working conditions of any Transferring Former Supplier Employees to their material detriment on or after their transfer to the Supplier or a Sub-contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Former Supplier Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
- (e) any statement communicated to or action undertaken by the Supplier or a Sub-contractor to, or in respect of, any Transferring Former Supplier Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Authority and/or the Former Supplier in writing;
- (f) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
  - (i) in relation to any Transferring Former Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date; and
  - (ii) in relation to any employee who is not a Transferring Former Supplier Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Former Supplier to the Supplier or a Sub-contractor, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date;

- (g) a failure of the Supplier or any Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Supplier Employees in respect of the period from (and including) the Relevant Transfer Date;
  - (h) any claim made by or in respect of a Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee relating to any act or omission of the Supplier or any Subcontractor in relation to obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the Former Supplier's failure to comply with its obligations under regulation 13 of the Employment Regulations; and
  - (i) a failure by the Supplier or any sub-contractor to comply with its obligations under Paragraph 2.8 above
- 3.2 The indemnities in Paragraph 3.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Former Supplier whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Former Supplier's failure to comply with its obligations under the Employment Regulations.
- 3.3 The Supplier shall comply, and shall procure that each Sub-contractor shall comply, with all its obligations under the Employment Regulations (including without limitation its obligation to inform and consult in accordance with regulation 13 of the Employment Regulations) and shall perform and discharge, and shall procure that each Sub-contractor shall perform and discharge, all its obligations in respect of all the Transferring Former Supplier Employees, on and from the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and any other sums due under the Admission Agreement which in any case are attributable in whole or in part to the period from (and including) the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between the Supplier and the Former Supplier.

#### **4 INFORMATION**

The Supplier shall, and shall procure that each Sub-contractor shall, promptly provide to the Authority and/or at the Authority's direction, the Former Supplier, in writing such information as is necessary to enable the Authority and/or the Former Supplier to carry out their respective duties under regulation 13 of the Employment Regulations. The Authority shall procure that the Former Supplier shall promptly provide to the Supplier and each Notified Sub-contractor in writing such information as is necessary to enable the Supplier and each Notified Sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations.



## **5 PRINCIPLES OF GOOD EMPLOYMENT PRACTICE**

5.1 The Supplier shall, and shall procure that each sub-contractor shall, comply with any requirement notified to it by the Authority relating to pensions in respect of any Transferring Former Supplier Employee as set down in:

- (a) the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised 2007;
- (b) HM Treasury's guidance "Staff Transfers from Central Government: A Fair Deal for Staff Pensions of 1999;
- (c) HM Treasury's guidance: "Fair deal for staff pensions: procurement of Bulk Transfer Agreements and Related Issues" of June 2004; and/or (d) the New Fair Deal.

5.2 Any changes embodied in any statement of practice, paper or other guidance that replaces any of the documentation referred to in Paragraph 5.1 shall be agreed in accordance with the Change Control Procedure.

## **6 PROCUREMENT OBLIGATIONS**

Notwithstanding any other provisions of this Part B, where in this Part B the Authority accepts an obligation to procure that a Former Supplier does or does not do something, such obligation shall be limited so that it extends only to the extent that the Authority's contract with the Former Supplier contains a contractual right in that regard which the Authority may enforce, or otherwise so that it requires only that the Authority must use reasonable endeavours to procure that the Former Supplier does or does not act accordingly.

## **7 PENSIONS**

The Supplier shall, and shall procure that each sub-contractor shall, comply with the pensions provisions in the following Annex.

## **ANNEX TO PART B PENSIONS**

### **1 PARTICIPATION**

- 1.1 The Supplier undertakes to enter into the Admission Agreement.
- 1.2 The Supplier and the Authority:
- (a) undertake to do all such things and execute any documents (including the Admission Agreement) as may be required to enable the Supplier to participate in the Schemes in respect of the Fair Deal Employees;
  - (b) agree that the arrangements under paragraph 1.1 of this Annex include the body responsible for the Schemes notifying the Authority if the Supplier breaches any obligations it has under the Admission Agreement; and
  - (c) agree that notwithstanding sub-paragraph (b) the Supplier shall notify the Authority in the event that it breaches any obligation it has under the Admission Agreement and when it intends to remedy such breaches.
- 1.3 The Supplier shall bear its own costs and all costs that the Authority reasonably incurs in connection with the negotiation, preparation and execution of documents to facilitate the Supplier participating in the Schemes including without limitation current Civil Service pensions administrator onboarding costs .

### **2 FUTURE SERVICE BENEFITS**

- 2.1 If the Supplier is rejoining the Schemes for the first time, the Supplier shall procure that the Fair Deal Employees shall be either admitted to or offered continued membership of the relevant section of the Schemes that they became eligible to join on the Relevant Transfer Date and shall continue to accrue or accrue benefits in accordance with the provisions governing the relevant section of the Schemes for service from (and including) the Relevant Transfer Date.
- 2.2 If staff have already been readmitted to the Schemes, the Supplier shall procure that the Fair Deal Employees, shall be either admitted into, or offered continued membership of, the relevant section of the Schemes that they currently contribute to, or were eligible to join immediately prior to the Relevant Transfer Date and the Supplier shall procure that the Fair Deal Employees continue to accrue benefits in accordance with the provisions governing the relevant section of the Schemes for service from (and including) the Relevant Transfer Date.
- 2.3 The Supplier undertakes that should it cease to participate in the Schemes for whatever reason at a time when it has Eligible Employees, that it will, at no extra cost to the Authority, provide to any Fair Deal Employee who immediately prior to such cessation remained an Eligible Employee with access to an occupational pension scheme certified by the Government Actuary's Department or any actuary nominated by the Authority in accordance with relevant guidance produced by the Government Actuary's Department as

providing benefits which are broadly comparable to those provided by the Schemes on the date the Eligible Employees ceased to participate in the Schemes.

2.4 The Parties acknowledge that the Civil Service Compensation Scheme and the Civil Service Injury Benefit Scheme (established pursuant to section 1 of the Superannuation Act 1972) are not covered by the protection of New Fair Deal.

### **3 FUNDING**

3.1 The Supplier undertakes to pay to the Schemes all such amounts as are due under the Admission Agreement and shall deduct and pay to the Schemes such employee contributions as are required by the Schemes.

3.2 The Supplier shall indemnify and keep indemnified the Authority on demand against any claim by, payment to, or loss incurred by the Schemes in respect of the failure to account to the Schemes for payments received and the nonpayment or the late payment of any sum payable by the Supplier to or in respect of the Schemes.

### **4 PROVISION OF INFORMATION**

The Supplier and the Authority respectively undertake to each other:

- (a) to provide all information which the other Party may reasonably request concerning matters (i) referred to in this Annex and (ii) set out in the Admission Agreement, and to supply the information as expeditiously as possible; and
- (b) not to issue any announcements to the Fair Deal Employees prior to the Relevant Transfer Date concerning the matters stated in this Annex without the consent in writing of the other Party (not to be unreasonably withheld or delayed).

### **5 INDEMNITY**

The Supplier undertakes to the Authority to indemnify and keep indemnified the Authority on demand from and against all and any Losses whatsoever arising out of or in connection with any liability towards the Fair Deal Employees arising in respect of service on or after the Relevant Transfer Date which relate to the payment of benefits under and/or participation in an occupational pension scheme (within the meaning provided for in section 1 of the Pension Schemes Act 1993) or the Schemes.

### **6 EMPLOYER OBLIGATION**

The Supplier shall comply with the requirements of the Pensions Act 2008, section 258 of the Pensions Act 2004 and the Transfer of Employment (Pension Protection) Regulations 2005 for all transferring staff.

## **7      SUBSEQUENT TRANSFERS**

The Supplier shall:

- (a) not adversely affect pension rights accrued by any Fair Deal Employee in the period ending on the Service Transfer Date;
- (b) provide all such co-operation and assistance as the Schemes and the Replacement Supplier and/or the Authority may reasonably require to enable the Replacement Supplier to participate in the Schemes in respect of any Eligible Employee and to give effect to any transfer of accrued rights required as part of participation under the New Fair Deal; and
- (c) for the applicable period either
  - (i) after notice (for whatever reason) is given, in accordance with the other provisions of this Agreement, to terminate the Agreement or any part of the Services; or
  - (ii) after the date which is two (2) years prior to the date of expiry of this Agreement,

ensure that no change is made to pension, retirement and death benefits provided for or in respect of any person who will transfer to the Replacement Supplier or the Authority, no category of earnings which were not previously pensionable are made pensionable and the contributions (if any) payable by such employees are not reduced without (in any case) the prior approval of the Authority (such approval not to be unreasonably withheld). Save that this sub-paragraph shall not apply to any change made as a consequence of participation in an Admission Agreement.

## **8      BULK TRANSFER**

Where the Supplier has set up a broadly comparable pension scheme in accordance with the provisions of paragraph 2.2 above of this Annex, the Supplier agrees to:

- (a) fully fund any such broadly comparable pension scheme in accordance with the funding requirements set by that broadly comparable pension scheme's actuary or by the Government Actuary's Department;
- (b) instruct any such broadly comparable pension scheme's actuary to, and to provide all such co-operation and assistance in respect of any such broadly comparable pension scheme as the Replacement Supplier and/or the Customer may reasonably require, to enable the Replacement Supplier to participate in the Schemes in respect of any Fair Deal Employee that remain eligible for New Fair Deal protection following a Service Transfer;
- (c) allow, in respect of any Fair Deal Employee that remains eligible for New Fair Deal protection, following a Service Transfer, the bulk transfer of past service from any such broadly comparable pension scheme into the Schemes on a day for day service basis and to give effect to any transfer of accrued rights required as part of participation under New Fair Deal, for the avoidance of doubt should the amount offered by the broadly

comparable pension scheme be less than the amount required by the Schemes to fund day for day service ("the Shortfall"), the Supplier agrees to pay the Shortfall to the Schemes; and

- (d) indemnify the Customer on demand for any failure to pay the Shortfall as required under sub-paragraph (c) above.

## **PART C: No transfer of employees at commencement of Services**

### **2 PROCEDURE IN THE EVENT OF TRANSFER**

- 1.1 *The Authority and the Supplier agree that the commencement of the provision of the Services or of any part of the Services will not be a Relevant Transfer in relation to any employees of the Authority and/or any Former Supplier.*
- 1.2 *If any employee of the Authority and/or a Former Supplier claims, or it is determined in relation to any employee of the Authority and/or a Former Supplier, that his/her contract of employment has been transferred from the Authority and/or the Former Supplier to the Supplier and/or any sub-contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:*
- (a) the Supplier shall, and shall procure that the relevant sub-contractor shall, within 5 Working Days of becoming aware of that fact, give notice in writing to the Authority and, where required by the Authority, give notice to the Former Supplier; and
  - (b) the Authority and/or the Former Supplier may offer (or may procure that a third party may offer) employment to such person within 15 Working Days of the notification by the Supplier or the sub-contractor (as appropriate) or take such other reasonable steps as the Authority or Former Supplier (as the case may be) considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law.
- 1.3 If an offer referred to in Paragraph 1.2(b) is accepted (or if the situation has otherwise been resolved by the Authority and/or the Former Supplier), the Supplier shall, or shall procure that the sub-contractor shall, immediately release the person from his/her employment or alleged employment.
- 1.4 If by the end of the 15 Working Day period specified in Paragraph 1.2(b):
- (a) no such offer of employment has been made;
  - (b) such offer has been made but not accepted; or (c) the
- situation has not otherwise been resolved,
- the Supplier and/or the sub-contractor may within 5 Working Days give notice to terminate the employment or alleged employment of such person.

### **2 INDEMNITIES**

- 2.1 Subject to the Supplier and/or the relevant sub-contractor acting in accordance with the provisions of Paragraphs 1.2 to 1.4 and in accordance with all applicable employment procedures set out in applicable Law and subject also to Paragraph 2.4, the Authority shall:



- (a) indemnify the Supplier and/or the relevant sub-contractor against all Employee Liabilities arising out of the termination of the employment of any employees of the Authority referred to in Paragraph 1.2 made pursuant to the provisions of Paragraph 1.4 provided that the Supplier takes, or shall procure that the Notified Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities; and
  - (b) procure that the Former Supplier indemnifies the Supplier and/or any Notified Sub-contractor against all Employee Liabilities arising out of termination of the employment of the employees of the Former Supplier referred to in Paragraph 1.2 made pursuant to the provisions of Paragraph 1.4 provided that the Supplier takes, or shall procure that the relevant sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 2.2 If any such person as is described in Paragraph 1.2 is neither re employed by the Authority and/or the Former Supplier as appropriate nor dismissed by the Supplier and/or any sub-contractor within the 15 Working Day period referred to in Paragraph 1.4 such person shall be treated as having transferred to the Supplier and/or the sub-contractor (as appropriate) and the Supplier shall, or shall procure that the sub-contractor shall, comply with such obligations as may be imposed upon it under Law.
- 2.3 Where any person remains employed by the Supplier and/or any sub-contractor pursuant to Paragraph 2.2, all Employee Liabilities in relation to such employee shall remain with the Supplier and/or the sub-contractor and the Supplier shall indemnify the Authority and any Former Supplier, and shall procure that the sub-contractor shall indemnify the Authority and any Former Supplier, against any Employee Liabilities that either of them may incur in respect of any such employees of the Supplier and/or employees of the subcontractor.
- 2.4 The indemnities in Paragraph 2.1:
  - (a) shall not apply to:
    - (i) any claim for:
      - (A) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
      - (B) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,
    - in any case in relation to any alleged act or omission of the Supplier and/or any sub-contractor; or

- (ii) any claim that the termination of employment was unfair because the Supplier and/or any sub-contractor neglected to follow a fair dismissal procedure; and
- (b) shall apply only where the notification referred to in Paragraph 1.2(a) is made by the Supplier and/or any sub-contractor to the Authority and, if applicable, Former Supplier within 6 months of the Effective Date.

### **3 PROCUREMENT OBLIGATIONS**

Where in this Part C the Authority accepts an obligation to procure that a Former Supplier does or does not do something, such obligation shall be limited so that it extends only to the extent that the Authority's contract with the Former Supplier contains a contractual right in that regard which the Authority may enforce, or otherwise so that it requires only that the Authority must use reasonable endeavours to procure that the Former Supplier does or does not act accordingly.

## **PART D: Employment Exit Provisions**

### **3 PRE-SERVICE TRANSFER OBLIGATIONS**

- 1.1 The Supplier agrees that within 20 Working Days of the earliest of:
- (a) receipt of a notification from the Authority of a Service Transfer or intended Service Transfer;
  - (b) receipt of the giving of notice of early termination or any Partial Termination of this Agreement;
  - (c) the date which is 12 months before the end of the Term; and
  - (d) receipt of a written request of the Authority at any time (provided that the Authority shall only be entitled to make one such request in any 6 month period),
- it shall provide in a suitably anonymised format so as to comply with the DPA, the Supplier's Provisional Supplier Personnel List, together with the Staffing Information in relation to the Supplier's Provisional Supplier Personnel List and it shall provide an updated Supplier's Provisional Supplier Personnel List at such intervals as are reasonably requested by the Authority.
- 1.2 At least 20 Working Days prior to the Service Transfer Date, the Supplier shall provide to the Authority or at the direction of the Authority to any Replacement Supplier and/or any Replacement Sub-contractor:
- (a) the Supplier's Final Supplier Personnel List, which shall identify which of the Supplier Personnel are Transferring Supplier Employees; and
  - (b) the Staffing Information in relation to the Supplier's Final Supplier Personnel List (insofar as such information has not previously been provided).
- 1.3 The Authority shall be permitted to use and disclose information provided by the Supplier under Paragraphs 1.1 and 1.2 for the purpose of informing any prospective Replacement Supplier and/or Replacement Sub-contractor.
- 1.4 The Supplier warrants, for the benefit of the Authority, any Replacement Supplier, and any Replacement Sub-contractor that all information provided pursuant to Paragraphs 1.1 and 1.2 shall be true and accurate in all material respects at the time of providing the information.
- 1.5 From the date of the earliest event referred to in Paragraph 1.1(a), 1.1(b) and 1.1(c), the Supplier agrees, that it shall not, and agrees to procure that each sub-contractor shall not, assign any person to the provision of the Services who is not listed on the Supplier's Provisional Supplier Personnel List and shall not without the approval of the Authority (not to be unreasonably withheld or delayed):

- (a) replace or re-deploy any Supplier Personnel listed on the Supplier Provisional Supplier Personnel List other than where any replacement is of equivalent grade, skills, experience and expertise and is employed on the same terms and conditions of employment as the person he/she replaces;
- (b) make, promise, propose, permit or implement any material changes to the terms and conditions of employment of the Supplier Personnel (including any payments connected with the termination of employment);
- (c) increase the proportion of working time spent on the Services (or the relevant part of the Services) by any of the Supplier Personnel save for fulfilling assignments and projects previously scheduled and agreed;
- (d) introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Supplier's Provisional Supplier Personnel List;
- (e) increase or reduce the total number of employees so engaged, or deploy any other person to perform the Services (or the relevant part of the Services); or
- (f) terminate or give notice to terminate the employment or contracts of any persons on the Supplier's Provisional Supplier Personnel List save by due disciplinary process,

and shall promptly notify, and procure that each sub-contractor shall promptly notify, the Authority or, at the direction of the Authority, any Replacement Supplier and any Replacement Sub-contractor of any notice to terminate employment given by the Supplier or relevant sub-contractor or received from any persons listed on the Supplier's Provisional Supplier Personnel List regardless of when such notice takes effect.

1.6 During the Term, the Supplier shall provide, and shall procure that each subcontractor shall provide, to the Authority any information the Authority may reasonably require relating to the manner in which the Services are organised, which shall include:

- (a) the numbers of employees engaged in providing the Services;
- (b) the percentage of time spent by each employee engaged in providing the Services;
- (c) the extent to which each employee qualifies for membership of any of the Schemes or any broadly comparable scheme set up pursuant to the provisions of paragraph 2.2 of the Annex (Pensions) to Part A of this Call Off Schedule 10 or paragraph 2.3 of the Annex (Pensions) to Part B of this Call Off Schedule 10 (as appropriate); and

- (d) a description of the nature of the work undertaken by each employee by location.

1.7 The Supplier shall provide, and shall procure that each sub-contractor shall provide, all reasonable cooperation and assistance to the Authority, any Replacement Supplier and/or any Replacement Sub-contractor to ensure the smooth transfer of the Transferring Supplier Employees on the Service Transfer Date including providing sufficient information in advance of the Service Transfer Date to ensure that all necessary payroll arrangements can be made to enable the Transferring Supplier Employees to be paid as appropriate. Without prejudice to the generality of the foregoing, within 5 Working Days following the Service Transfer Date, the Supplier shall provide, and shall procure that each sub-contractor shall provide, to the Authority or, at the direction of the Authority, to any Replacement Supplier and/or any Replacement Sub-contractor (as appropriate), in respect of each person on the Supplier's Final Supplier Personnel List who is a Transferring Supplier Employee:

- (a) the most recent month's copy pay slip data;
- (b) details of cumulative pay for tax and pension purposes;
- (c) details of cumulative tax paid;
- (d) tax code;
- (e) details of any voluntary deductions from pay; and
- (f) bank/building society account details for payroll purposes.

## **2 EMPLOYMENT REGULATIONS EXIT PROVISIONS**

2.1 The Authority and the Supplier acknowledge that subsequent to the commencement of the provision of the Services, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination or Partial Termination of this Agreement or otherwise) resulting in the Services being undertaken by a Replacement Supplier and/or a Replacement Sub-contractor. Such change in the identity of the supplier of such services may constitute a Relevant Transfer to which the Employment Regulations and/or the Acquired Rights Directive will apply. The Authority and the Supplier further agree that, as a result of the operation of the Employment Regulations, where a Relevant Transfer occurs, the contracts of employment between the Supplier and the Transferring Supplier Employees (except in relation to any contract terms disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Service Transfer Date as if originally made between the Replacement Supplier and/or a Replacement Sub-contractor (as the case may be) and each such Transferring Supplier Employee.

2.2 The Supplier shall, and shall procure that each sub-contractor shall, comply with all its obligations in respect of the Transferring Supplier Employees arising

under the Employment Regulations in respect of the period up to (and including) the Service Transfer Date and shall perform and discharge, and procure that each sub-contractor shall perform and discharge, all its obligations in respect of all the Transferring Supplier Employees arising in respect of the period up to (and including) the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and all such sums due as a result of any Fair Deal Employees' participation in the Schemes which in any case are attributable in whole or in part to the period ending on (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the Supplier and/or the sub-contractor (as appropriate); and (ii) the Replacement Supplier and/or Replacement Subcontractor.

2.3 Subject to Paragraph 2.4, the Supplier shall indemnify the Authority and/or the Replacement Supplier and/or any Replacement Sub-contractor against any Employee Liabilities arising from or as a result of:

- (a) any act or omission of the Supplier or any Sub-contractor in respect of any Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee whether occurring before, on or after the Service Transfer Date;
- (b) the breach or non-observance by the Supplier or any sub-contractor occurring on or before the Service Transfer Date of:
  - (i) any collective agreement applicable to the Transferring Supplier Employees; and/or
  - (ii) any other custom or practice with a trade union or staff association in respect of any Transferring Supplier Employees which the Supplier or any sub-contractor is contractually bound to honour;
- (c) any claim by any trade union or other body or person representing any Transferring Supplier Employees arising from or connected with any failure by the Supplier or a sub-contractor to comply with any legal obligation to such trade union, body or person arising on or before the Service Transfer Date;
- (d) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
  - (i) in relation to any Transferring Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on and before the Service Transfer Date; and

- (ii) in relation to any employee who is not identified in the Supplier's Final Supplier Personnel list, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Supplier to the Authority and/or Replacement Supplier and/or any Replacement Sub-contractor, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or before the Service Transfer Date;
- (e) a failure of the Supplier or any sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Supplier Employees in respect of the period up to (and including) the Service Transfer Date);
- (f) any claim made by or in respect of any person employed or formerly employed by the Supplier or any sub-contractor other than a Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel list for whom it is alleged the Authority and/or the Replacement Supplier and/or any Replacement Sub-contractor may be liable by virtue of this Agreement and/or the Employment Regulations and/or the Acquired Rights Directive; and
- (g) any claim made by or in respect of a Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee relating to any act or omission of the Supplier or any sub-contractor in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Authority and/or Replacement Supplier to comply with regulation 13(4) of the Employment Regulations.

2.4 The indemnities in Paragraph 2.3 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Replacement Supplier and/or any Replacement Sub-contractor whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities:

- (a) arising out of the resignation of any Transferring Supplier Employee before the Service Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Replacement Supplier and/or any Replacement Sub-contractor to occur in the period on or after the Service Transfer Date); or
- (b) arising from the Replacement Supplier's failure, and/or Replacement Sub-contractor's failure, to comply with its obligations under the Employment Regulations.

2.5 If any person who is not identified in the Supplier's Final Supplier Personnel list claims, or it is determined in relation to any person who is not identified in the



Supplier's Final Supplier Personnel list a Transferring Supplier Employee, that his/her contract of employment has been transferred from the Supplier or any sub-contractor to the Replacement Supplier and/or Replacement Subcontractor pursuant to the Employment Regulations or the Acquired Rights Directive, then:

- (a) the Authority shall procure that the Replacement Supplier shall, or any Replacement Sub-contractor shall, within 5 Working Days of becoming aware of that fact, give notice in writing to the Supplier; and
- (b) the Supplier may offer (or may procure that a sub-contractor may offer) employment to such person within 15 Working Days of the notification by the Replacement Supplier and/or any and/or Replacement Subcontractor or take such other reasonable steps as it considers appropriate to deal with the matter provided always that such steps are in compliance with Law.

2.6 If such offer is accepted, or if the situation has otherwise been resolved by the Supplier or a sub-contractor, the Authority shall procure that the Replacement Supplier shall, or procure that the Replacement Sub-contractor shall, immediately release or procure the release of the person from his/her employment or alleged employment.

2.7 If after the 15 Working Day period specified in Paragraph 2.5(b) has elapsed:

- (a) no such offer of employment has been made;
- (b) such offer has been made but not accepted; or
- (c) the situation has not otherwise been resolved

the Authority shall advise the Replacement Supplier and/or Replacement Subcontractor, as appropriate that it may within 5 Working Days give notice to terminate the employment or alleged employment of such person.

2.8 Subject to the Replacement Supplier and/or Replacement Sub-contractor acting in accordance with the provisions of Paragraphs 2.5 to 2.7, and in accordance with all applicable proper employment procedures set out in applicable Law, the Supplier shall indemnify the Replacement Supplier and/or Replacement Sub-contractor against all Employee Liabilities arising out of the termination of employment pursuant to the provisions of Paragraph 2.7 provided that the Replacement Supplier takes, or shall procure that the Replacement Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.

2.9 The indemnity in Paragraph 2.8:

- (a) shall not apply to:
  - (i) any claim for:

(A) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or

(B) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,

in any case in relation to any alleged act or omission of the Replacement Supplier and/or Replacement Sub-contractor; or

(ii) any claim that the termination of employment was unfair because the Replacement Supplier and/or Replacement Subcontractor neglected to follow a fair dismissal procedure; and

(b) shall apply only where the notification referred to in Paragraph 2.5(a) is made by the Replacement Supplier and/or Replacement Subcontractor to the Supplier within 6 months of the Service Transfer Date.

2.10 If any such person as is described in Paragraph 2.5 is neither re-employed by the Supplier or any sub-contractor nor dismissed by the Replacement Supplier and/or Replacement Sub-contractor within the time scales set out in Paragraphs 2.5 to 2.7, such person shall be treated as a Transferring Supplier Employee.

2.11 The Supplier shall comply, and shall procure that each sub-contractor shall comply, with all its obligations under the Employment Regulations and shall perform and discharge, and shall procure that each sub-contractor shall perform and discharge, all its obligations in respect of any person identified in the Supplier's Final Supplier Personnel list before and on the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and such sums due as a result of any Fair Deal Employees' participation in the Schemes and any requirement to set up a broadly comparable pension scheme which in any case are attributable in whole or in part in respect of the period up to (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between:

(a) the Supplier and/or any sub-contractor; and

(b) the Replacement Supplier and/or the Replacement Sub-contractor.

2.12 The Supplier shall, and shall procure that each sub-contractor shall, promptly provide to the Authority and any Replacement Supplier and/or Replacement sub-contractor, in writing such information as is necessary to enable the Authority, the Replacement Supplier and/or Replacement Sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations. The Authority shall procure that the Replacement Supplier and/or Replacement Sub-contractor, shall promptly provide to the Supplier and each

sub-contractor in writing such information as is necessary to enable the Supplier and each sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations.

2.13 Subject to Paragraph 2.14, the Authority shall procure that the Replacement Supplier indemnifies the Supplier on its own behalf and on behalf of any Replacement Sub-contractor and its sub-contractors against any Employee Liabilities arising from or as a result of:

- (a) any act or omission of the Replacement Supplier and/or Replacement Sub-contractor in respect of any Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Supplier Employee;
- (b) the breach or non-observance by the Replacement Supplier and/or Replacement Sub-contractor on or after the Service Transfer Date of:
  - (i) any collective agreement applicable to the Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List; and/or
  - (ii) any custom or practice in respect of any Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List which the Replacement Supplier and/or Replacement Subcontractor is contractually bound to honour;
- (c) any claim by any trade union or other body or person representing any Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List arising from or connected with any failure by the Replacement Supplier and/or Replacement Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or after the Service Transfer Date;
- (d) any proposal by the Replacement Supplier and/or Replacement Subcontractor to change the terms and conditions of employment or working conditions of any Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List on or after their transfer to the Replacement Supplier or Replacement Sub-contractor (as the case may be) on the Service Transfer Date, or to change the terms and conditions of employment or working conditions of any person identified in the Supplier's Final Supplier Personnel List who would have been a Transferring Supplier Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Service Transfer Date as a result of or for a reason connected to such proposed changes;
- (e) any statement communicated to or action undertaken by the Replacement Supplier or Replacement Sub-contractor to, or in respect of, any Transferring Supplier Employee identified in the Supplier's Final

Supplier Personnel List on or before the Service Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Supplier in writing;

- (f) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
- (i) in relation to any Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date; and
- (ii) in relation to any employee who is not a Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Supplier or sub-contractor, to the Replacement Supplier or Replacement Sub-contractor to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date;
- (g) a failure of the Replacement Supplier or Replacement Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List in respect of the period from (and including) the Service Transfer Date; and
- (h) any claim made by or in respect of a Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Supplier Employee relating to any act or omission of the Replacement Supplier or Replacement Subcontractor in relation to obligations under regulation 13 of the Employment Regulations.

2.14 The indemnities in Paragraph 2.13 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier and/or any sub-contractor (as applicable) whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities arising from the failure by the Supplier and/or any subcontractor (as applicable) to comply with its obligations under the Employment Regulations.

## **ANNEX: LIST OF NOTIFIED SUB-CONTRACTORS**

## **APPENDIX G TO CLAUSE 1 OF SCHEDULE 1**

### **TRANSFER VALUES**

Bulk transfer values will be inserted in the Contract prior to signing.

## Schedule 2

### Processing, Personal Data and Data Subjects

| Description                           | Details   |
|---------------------------------------|---|
| Subject matter of the Processing      | <p>The subject matter is the personal data of Learners on education or training programmes administered by the ESFA that are subject to this Contract as defined in the ESFA privacy notice and ILR specification and its appendices.</p> <p><a href="https://www.gov.uk/government/publications/esfa-privacy-notice">https://www.gov.uk/government/publications/esfa-privacy-notice</a></p> <p><a href="https://www.gov.uk/government/collections/individualised-learnerrecord-ilr">https://www.gov.uk/government/collections/individualised-learnerrecord-ilr</a></p> |
| Duration of the Processing            | <p>The duration of the Processing covers the data returns to the ESFA as defined in Appendix A of the ILR specification to enable funding and audit of the learning programmes defined in this Contract.</p> <p><a href="https://www.gov.uk/government/collections/individualised-learnerrecord-ilr">https://www.gov.uk/government/collections/individualised-learnerrecord-ilr</a></p>   |
| Nature and purposes of the Processing | <p>The nature and purposes of the processing is defined in the ESFA privacy notice.</p> <p><a href="https://www.gov.uk/government/publications/esfa-privacy-notice">https://www.gov.uk/government/publications/esfa-privacy-notice</a></p> <p>The Contractor will be required to submit the data to the ESFA as set out in Clause 16 Submission of Learner Data of this Contract.</p>   |
| Type of personal data                 | <p>The personal data to be processed is defined in the ILR specification.</p> <p><a href="https://www.gov.uk/government/collections/individualised-learnerrecord-ilr">https://www.gov.uk/government/collections/individualised-learnerrecord-ilr</a></p>  |
| Categories of data subject            | <p>The data subjects are Learners on education or training programmes administered by the ESFA that are subject to this Contract.</p>   |



| Description   | Details   |
|---|---|
| <p>Retention and destruction of the data once the processing is complete<br/>UNLESS requirement under union or member state law to preserve that type of data</p> | <p>Information on how the data must be supplied to the ESFA is detailed in the ILR specification and its appendices.</p> <p><a href="https://www.gov.uk/government/collections/individualised-learnerrecord-ilr">https://www.gov.uk/government/collections/individualised-learnerrecord-ilr</a></p> <p>For the purposes of both the DfE and the Department for Work &amp; Pensions as data controllers of the data, the Contractor is required to retain the data for the funding and audit purposes set out in this Contract until 31 December 2030</p> <p>The Contractor (and any other data controller) is responsible for determining any further need to process the data, including its retention, prior to secure destruction.</p> |



Education & Skills  
Funding Agency



European Union  
European  
Social Fund

# **SPECIFICATION**

**INVITATION TO TENDER: 30424**

**COMMUNITY GRANTS**

**DATE: September 2018**

|  |
|--|
| <b>SPECIFICATION: Community Grants</b> |
| <b>DEFINITION OF TERMS</b>             |

**Community Grant:** Means a grant funded by the European Social Fund.

**Community Grants Award Process:** means the process used by the Managing Agent to award grants.

**Community Grants Programme:** means Managing Agent's programme for delivery of Community Grants over the course of the Contract.

**Contract:** has the meaning given in the terms and conditions of contract.

**Defrayed:** the organisation has paid the grants and the monies have left their bank account before claiming from the ESFA.

**Development Area:** any of a Less Developed Area, a Transition Area and a More Developed Area.

**Disadvantaged:** individuals who are deprived of the basic necessities of life such as adequate housing, medical care or educational facilities.

**Disability:** The main national definition is as defined in section 6 of the Equality Act 2010. See link. <https://www.gov.uk/definition-of-disability-under-equalityact-2010>. It refers to a person who: (i) has a physical or mental impairment; and (ii) the impairment has a substantial and long term negative effect on a person's ability to carry out normal day to day activities.

**Disabled:** means a person with a Disability.

**Eligibility Criteria:** means the [ESF National Eligibility criteria set out here: Rules](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/626878/ESF_national_eligibility_rules.pdf)[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/626878/ESF\\_national\\_eligibility\\_rules.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/626878/ESF_national_eligibility_rules.pdf) .

**Employed:** People are employed if they perform work for pay, profit or family gain. People are self-employed if they work in his/her own business for the purpose of earning a profit, even if they are not making a profit or are just setting up. This also includes individuals on zero hour contracts.

**ESF Funding:** Funding from the European Social Fund.

**ESF Managing Authority:** means The Department for Work and Pensions.

**Evidence Requirements:** means the requirements set out in Funding Rules 2014-2020 ESF Programme ESF Specifications Deliverables Evidence requirements

**Funding Rules:** The document that sets out the funding and performance management rules for the European Social Fund (ESF) 2014 to 2020 Programme for contracts operating from 1 April 2019.

**Grant Agreement:** means the agreement between the Managing Agent and the Recipient Organisation setting out the terms and conditions on which the Community Grant is awarded.

**Inactive:** Not in employment and not registered as unemployed. Full time students are considered as inactive but not eligible for this provision as they are not available for work.

**Individualised Learner Record (ILR):** The primary data collection return required from learning providers by the ESFA about further education and work-based learning in England.

**Job Seeking:** refers to an Unemployed person actively seeking work.

**LEP:** means the Local Enterprise Partnership for the relevant Lot Area.

**Less Developed Area:** means a region where GDP per capita is less than 75% of the average of EU-27 countries ([http://ec.europa.eu/eurostat/statisticsexplained/index.php?title=National accounts and GDP](http://ec.europa.eu/eurostat/statisticsexplained/index.php?title=National_accounts_and_GDP) )

**Lot Area:** the geographical area in which the Services are required to be delivered.

**Management Charges:** The money paid to the Managing Agent to administer the Community Grants Programme in a particular Lot Area as per the Funding and Deliverables section of the Specification.

**Managing Agent:** The contractor that delivers the Services defined in this Specification.

**More Developed Area:** means a region where GDP per capita is above 90% of the average of EU-27 countries ( [http://ec.europa.eu/eurostat/statisticsexplained/index.php?title=National accounts and GDP](http://ec.europa.eu/eurostat/statisticsexplained/index.php?title=National_accounts_and_GDP) )

**Non-Regulated Activity:** those activities that are listed as non-regulated in the Learning Aims Reference Service (LARS) on the Hub:  
<https://hub.fasst.org.uk/Learning%20Aims/Pages/default.aspx>

**Operational Programme:** means the ESF 2014-2020 Operational Programme  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/461596/ESF Operational Programme 2014 2020 V.01.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/461596/ESF_Operational_Programme_2014_2020_V.01.pdf)

**Participant:** means an eligible individual to whom the Recipient Organisation provides support funded by a Community Grant.

**Priority Axis:** means Investment **Priority** Each **Priority Axis** of the Operational Programme for **ESF** brings together one or more Investment **Priorities**. The Investment **Priorities** are set out in the European Union Regulations governing **ESF** and set out more specific areas of activity.

**Priority Groups:** means those groups described in Table A.

**Programme Targets:** has the meaning given in section 3 of this Specification

**RARPA:** Recognising and Recording Progress and Achievement for soft outcomes <http://www.learningandwork.org.uk/resource/updated-rarpa-guidance-andcase-studies/>

**Recipient Organisation:** means an organisation that is awarded a Community Grant.

**Regulated Learning:** are those activities that are listed as regulated in the Learning Aims Reference Service (LARS) on the Hub:  
<https://hub.fasst.org.uk/Learning%20Aims/Pages/default.aspx>.

**Service Commencement Date:** has the meaning given in the terms and conditions of the Contract .

**Services:** The design, implementation and administration of the Community Grants Programme in the Lot Area in accordance with this Specification.

**Small Organisation:** Organisations that employ fewer than 49 full time equivalent staff and have an annual turnover equal to or under EUR 10 million or balance sheet equal to or below EUR 10 million.

**Survey:** Where applicable, long term sustained outcomes, over 6 months will be monitored separately. Some ESF indicators will be collected by survey by the ESF Managing Authority directly from the participants.

**Supplementary Data Return:** means the return to claim funding based on information not collected through the Individualised Learner Record (ILR). <https://www.gov.uk/government/publications/sfa-supplementary-datacollection>

**Third Sector:** The part of an economy or society comprising non-governmental and non-profit making organisations or associations including charities, voluntary and community groups.

**Third Sector Organisation:** an organisation which operates within the Third Sector.



**Total Community Grant Funding:** means the total amount of ESF Funding inclusive of the Management Charge available for a particular Lot Area for the

lifetime of the Contract.

**Transition Area:** means a region in which GDP per capita is between 75% and 90% of the average of EU-27 countries ( [http://ec.europa.eu/eurostat/statisticsexplained/index.php?title=National\\_accounts\\_and\\_GDP](http://ec.europa.eu/eurostat/statisticsexplained/index.php?title=National_accounts_and_GDP) . )

**Unemployed:** refers to persons who are without work, available for work and actively seeking work. Persons considered registered unemployed would be included. Where the period of unemployment is greater than 6 months for a person under 25 years old and greater than 12 months for who is 25 years old or older then the persons are classed as long-term Unemployed.

## **PART 1: SERVICE REQUIREMENTS**

1. The Managing Agent shall commence delivery of the Services immediately with effect from the Service Commencement Date

### ***The Community Grants Programme***

2. The Managing Agent is required to design, implement and administer a Community Grants Programme which:
  - a) Complies with the Eligibility Criteria in Part 2.
  - b) Supports delivery of the Programme Targets in Part 3.
  - c) Is flexible and responsive to the changing economic and political landscape and takes into consideration that the approach and associated processes may change during the life of this Contract.
  - d) Reflects conditions prevailing in the Lot Area as described in Part 5 with respect to: the current employment market, current and future social and economic indicators including labour market intelligence and local stakeholder needs.
  - e) Is targeted to ensure the active engagement of key stakeholders including Third Sector Organisations.

### ***Management and quality assurance***

3. The Managing Agent shall put in place and maintain effective management arrangements throughout the Contract Period. The management arrangements shall include (without limitation) arrangements to ensure that:
  - a. the Services are delivered in accordance with this Contract;
  - b. the Services are delivered to a high quality throughout the Contract Period; and
  - c. effective quality assurance and improvement processes are in place.
4. The Managing Agent shall ensure that the Services are flexible and responsive to the changing economic and political landscape and take into consideration that the approach and associated processes may change

during the life of the Contract. The Managing Agent shall make such changes to the Services as may be required by ESFA from time to time to reflect such changes.

5. The Managing Agent shall ensure that Services complement and avoid duplication with similar existing provision, including (but not limited to) services offered to Participants by CFO Co-financing, Department for Work and Pensions, Big Lottery, Mayoral Combined Authority, Education and Skills Funding Agency, local authorities, National Careers Service and the Careers Enterprise Company funded provision.
6. The Managing Agent shall ensure that the Community Grants Programme is designed to reflect local needs and opportunities and is updated from time to time to respond to changes to local needs and opportunities as well as policy changes.
7. The Managing Agent shall put in place and implement a robust policy for managing conflicts of interest. The policy shall (without limitation) include processes:
  - a. for ensuring that any person making a decision in connection with the award of a Community Grant does not have an interest in the Recipient Organisation.
  - b. Carrying out checks you will perform on persons involved in making such decisions.
  - c. for making declarations of interest;

#### ***Market intelligence and local knowledge***

8. The Managing Agent shall ensure that Community Grants:
  - a. take into account conditions prevailing in the Lot Area as described in Part 5 with respect to the current and future social and economic indicators including labour market intelligence;
  - b. target local skills shortages and gaps within the Lot Area;
  - c. work alongside any existing skills support structures the Lot Area.

#### ***Financial management***

9. The Managing Agent will manage the funding available to ensure that it only awards Community Grants for projects which meet the Local Service Requirements set out in Part 5 below. Where a Lot Area covers more than one Development Area, Part 5 will contain different requirements for each Development Area within the Lot Area. The Managing Agent must manage the funding for each Grant in accordance with the requirements for the Development Area to which each Grant applies.
10. The Managing Agent shall provide monthly financial reports to the ESFA detailing grants awarded within the Lot Area.

11. The Managing Agent will design and implement a grant payment system which:
- a. Includes an internal audit and reporting arrangements which will protect public funding and prevent the misuse or loss of public funds.
  - b. Complies with ESF requirements including internal audit and reporting functions.
12. The Managing Agent shall operate a robust process for managing its cash flow in connection with the payment of Community Grants having regard to the fact that it will be paid in arrears following the achievement of deliverables in accordance with the Funding Rules.

***Management information and reporting***

13. The Managing Agent will develop and operate a management information system which enables the submission of data to the ESFA via the Individual Learner Record (ILR) and Supplementary Data Returns.
14. The Managing Agent will ensure that all evidence required to support payments is collected and retained in accordance with the Evidence Requirements before it makes a claim for payment from the ESFA. The Managing Agent will provide supporting evidence to ESFA on request.
15. The collection of data and management information will generate eligible payments from the ESFA, support the performance management process, assist Lot Area performance information, and provide further economic intelligence of skills to support future devolution of adult skills provision within the Lot Area.
16. The Managing Agent shall provide ESFA with a monthly report by the 4th working day in each month setting out such performance data as the ESFA may reasonably require including (but not limited to):
- a. pipeline activity; and
  - b. progress made against the Community Grants Programme
  - c. actions the Managing Agent proposes to undertake if performance has not met the anticipated Community Grant Programme and
  - d. current and future employer and partner engagement.
17. The Managing Agent shall provide ESFA with a quarterly report setting out the following information:
- a. Number of applications for Community Grants received
  - b. Number and value of Community Grants awarded
  - c. Average value of Community Grants awarded
  - d. Number of Participants supported through Community Grants

- e. Number of Participants helped into Employment
- f. Number of Participants who have progressed into further

learning/education

- g. Qualification levels or modules achieved by Participants as a result further learning/education
- h. Outcomes achieved by the Participants including soft outcomes using RARPA principles
- i. Preparation of case studies of how Community Grants have supported specific priority groups (as shown in Part B of this Specification (Programme Targets) and achieved a positive outcome.

18. The Managing Agent shall, if required by the LEP, but at no additional cost to the ESFA:

- a. work in partnership with the LEP to maximise the impact of the Community Grants Programme.
- b. participate in a local steering group, including by attending regular steering group meetings and provide relevant management information upon request;

19. The Managing Agent must:

- a. Ensure that each Recipient Organisation provides it with return ILR data for each Participant for the activity that is funded through the Grant. This will include all details of regulated and non-regulated learning as well as their destination; and
- b. Provide such data to the ESFA where required in accordance with clause [19].

### ***Performance Management***

20. The Managing Agent will have in place performance management arrangements as set out in the Funding Rules.

### ***Community Grant publicity and call for applications***

21. The Managing Agent shall:

- a. Develop and deliver an engagement and marketing strategy which:
  - i. reflects the Lot Area specific requirements to encourage applications from appropriate organisations to apply for Community Grants;
  - ii. Utilises partnership working with organisations engaged in similar provision in the Lot Area.
- b. Publicise the availability of Community Grants and make calls for grant applications in line with agreed priorities in the Lot Area.
- c. Develop, implement and administer a grant application process and timetable for Community Grant applications throughout the lifetime of the Contract. Note that this may be a rolling programme or through specific competitions during the Contract lifetime including:
  - i. Specifying what activities will be supported
  - ii. Specifying eligibility and priority groups
  - iii. Setting selection criteria



- iv. Establishing the grant application scoring criteria
- v. Setting the timescales
- vi. Publicising the application process to be followed.
- d. Receive and assess applications for Community Grants using a common set of open and transparent criteria, which meet the specific requirements for the Lot Area set out in Part 5 below.
- e. Manage volume of applications from the Lot Area.
- f. Select successful Recipient Organisations, agreeing levels of approved Grant and planned outcomes and issuing Grant Agreement.
- g. Enter in to a legally binding Grant Agreement with each Recipient Organisation, in accordance with Clause 4.4 of the Contract, which sets out the conditions on which the Community Grants are provided and contains as a minimum:
  - i. Payment mechanism
  - ii. Participant Eligibility requirements
  - iii. Evidence Requirements and access for audit
  - iv. Reporting and Monitoring arrangements
  - v. Mechanisms to terminate the Grant Agreement if it is breached or if delivery is unacceptable or at risk;

And which includes such further elements of the Contract as are necessary to ensure that the terms and conditions of the Contract that are applicable to the Recipient Organisation are passed down to it on a binding basis, taking into account the Recipient Organisation's organisational status and the specific purpose of the Community Grant.

- vi. Publicity Requirements
- vii. Equality of Opportunity
- viii. Learner Health, Safety and Welfare
- ix. Compliance with Data Protection Legislation
- x. Management of Fraud and Irregularity
- h. Provide support to Recipient Organisations to help them manage ESF funds especially in maintaining records of actual grant expenditure to ensure a full audit trail.
- i. Ensure the Recipient Organisation keeps financial records such as invoices to support expenditure, bank statements, staff time sheets, job descriptions, expenses payments and is able to fully evidence any claims made in accordance with the Grant Agreement, Funding Rules and Evidence Requirements.
- j. Monitor performance and delivery by each Recipient Organisation in accordance with their Grant Agreement and report on performance to the ESFA including the impact of delivery in supporting employment outcomes for Participants.
- k. Ensure that Participants are eligible to access ESF funds as described in Part 2 Eligibility Criteria.
- l. submit completed ILRs and report the deliverable ST01 Learner Assessment and Plan via the ILR for the academic year in which the activity was delivered as set out in the Specification.
- m. Claim funding monthly in arrears via Supplementary Data Return. Claims for Management Charges are based on a percentage of the defrayed grant payment and must be supported by evidence as

detailed in the ESF Funding Rules and the Evidence Requirements.

### ***Community Grants Award Process***

22. The Managing Agent shall design, implement and administer a Community Grants Award Process which shall:

- a. Achieve a proportionate balance between fairness and transparency and administrative efficiency in the use of public monies
- b. Includes a structured series of application rounds which is designed to optimise the benefits to be derived from ESF Funding.
- c. be sufficiently flexible to allow for the making of grant awards in circumstances where there is high demand for funding but low available budget.
- d. Ensure that grants are only awarded to applications, which meet the Eligibility Criteria in Part 2.
- e. Be designed to support delivery of the Programme Targets in Part 3 over the course of the Contract.
- f. Ensure that any successful applications meet the specific requirements for the Lot Area set out in Part 5. Note that whilst the Managing Agent shall have the responsibility for this process, the ESFA expects that representatives of the LEP would sit on any award panel where appropriate.
- g. Take into account the guidance outlined in Annex A (Guidance for Managing Agents in their assessment of bids for Community Grants),
- h. Provide support to unsuccessful Community Grant applicants to enable them to submit a future bid.

23. The Managing Agent shall:

- a. Agree the level of approved Community Grant funding for each Community Grant with the Recipient Organisation.
- b. Issue a Grant Agreement to the Recipient Organisation which sets out the terms and conditions of the Community Grant award.

### ***Support to Recipient Organisations***

24. The Managing Agent shall:

- a. Provide support to Recipient Organisations to help them manage ESF Funding especially in maintaining records of actual grant expenditure to ensure a full audit trail.
- b. Ensure that Recipient Organisations keep financial records such as invoices to support expenditure, bank statements, staff time sheets, job descriptions, expense payments in accordance with the Grant Agreement.

### ***Monitoring and reporting***

25. The Managing Agent shall

- a. Monitor performance and delivery by Recipient Organisations in accordance with Grant Agreement and report on performance to the

ESFA including the impact of delivery in supporting employment outcomes for Participants.

- b. Ensure Participants are eligible to access ESF funds as described in the Operational Programme and to submit completed ILRs.

***Programme development***

- 26. The Managing Agent may be required to facilitate on-going programme development activities as directed by the LEP. This may include analysis of current provision, future requirements of a sector, development of delivery network. Further details will be confirmed with the Managing Agent at a tripartite meeting with the ESFA and the LEP to confirm parameters.

**PART 2 ELIGIBILITY CRITERIA**

- 27. The Managing Agent shall only award Community Grants to applicants that:
  - a. Are Third Sector Organisations or Small Organisations; and
  - b. meet the Eligibility Criteria

- 28. The Managing Agent shall ensure that Recipient Organisations use Community Grants solely to provide services to Participants. A Participant is a person:
  - a. aged 16 years and over who is Unemployed or Inactive; and
  - b. who meets the Eligibility Criteria.

**PART 3 PROGRAMME TARGETS**

29. In delivering the Services, the Managing Agent shall ensure that over the life of the Contract, the Community Grants Programme will support delivery of the programme targets set out below.

**Priority Groups**

30. The Managing Agent shall design, implement and administer the Community Grants Programme to ensure that over the life of the Contract it is targeted to benefit Participants within the Priority Groups in the percentages set out in Table A below.

| Table A                             | Less Developed Lot Areas | Transition Lot Areas | More Developed Lot Areas |
|-------------------------------------|--------------------------|----------------------|--------------------------|
| Participants over 50 years of age   | 20%                      | 14%                  | 14%                      |
| Participants with disabilities      | 29%                      | 22%                  | 22%                      |
| Participants from ethnic minorities | 2%                       | 12%                  | 25%                      |
| Participants who are Women          | 49%                      | 36%                  | 36%                      |

**Average Unit Cost per Participant**

31. The Managing Agent shall design, implement and administer the Community Grants Programme to ensure that over the life of the Contract the Average Unit Cost per Participant is delivered (see the tables in Part 4 (Funding Model) below). **Conversion Rate Targets**

32. The Managing Agent shall use reasonable endeavours to ensure that the design, implementation and administration of the Community Grants Programme over the life of the Contract achieves the Conversion Rates (set out in the tables in Part 4 (Funding Model) for:
- Progression to Employment including Self-Employment (PG01); and
  - Progression to Education or Training on Leaving (PG03)

**Part 4. FUNDING MODEL**

33. These deliverables will be included in the contract. These deliverables and rates will be paid against this activity subject to the volumes identified in the Lot specific section.

For investment of £500,000 or less with admin at 20%

| <b>Description</b>                                       | <b>Unit Cost</b> | <b>Conversion Rate</b> |
|--|------------------|------------------------|
| ST01 Learner Assessment and Plan                         | 0                |                        |
| CG01 Community Grant Payment                             | 1175.55          |                        |
| CG02 Community Grant Management Cost 20% of Grant        | 235.11           |                        |
| PG01 Progression to Employment including Self Employment | 0                | 17%                    |
| PG03 Progression to Education or Training on leaving     | 0                | 14%                    |
|  |                  |                        |
| Average Unit cost per learner                            | 1410.66          |                        |

For investment of £500,000 - £1,000,000 with admin at 15%

| <b>Description</b>                                       | <b>Unit Cost</b> | <b>Conversion Rate</b> |
|--|------------------|------------------------|
| ST01 Learner Assessment and Plan                         | 0                |                        |
| CG01 Community Grant Payment                             | 1226.661         |                        |
| CG02 Community Grant Management Cost 15% of Grant        | 183.9991         |                        |
| PG01 Progression to Employment including Self Employment | 0                | 17%                    |
| PG03 Progression to Education or Training on leaving     | 0                | 14%                    |
|  |                  |                        |
| Average Unit cost per learner                            | 1410.66          |                        |

For investment of over £1,000,000 with admin at 10%

| <b>Description</b>  | <b>Unit Cost</b> | <b>Conversion Rate</b> |
|---|------------------|------------------------|
| ST01 Learner Assessment and Plan                            | 0                |                        |
| CG01 Community Grant Payment                                | 1282.418         |                        |
| CG02 Community Grant Management Cost<br>10% of Grant        | 128.2418         |                        |
| PG01 Progression to Employment including<br>Self Employment | 0                | 17%                    |
| PG03 Progression to Education or Training<br>on leaving     | 0                | 14%                    |
|   |                  |                        |
| Average Unit cost per learner                               | 1410.66          |                        |

### **Management Charge**

34. The Managing Agent will be a paid a Management Charge which is calculated as a percentage of the Total Community Grant Funding available per Lot Area over the lifetime of the Contract As set out in Table C.

Table C

| <b>Investment Level</b> | <b>Total Community Grant Funding per Lot Area over Contract lifetime</b> | <b>Maximum Management Charge available</b>                                   |
|-------------------------|--|--|
| High                    | £1,000,000 or more   | 10% of Total Community Grant Funding per Lot Area over the Contract lifetime |
| Medium                  | More than £500,000 but less than £1,000,000                              | 15% of Total Community Grant Funding per Lot Area over the Contract lifetime |
| Low                     | £500,000 or less   | 20% of Total Community Grant Funding per Lot Area over the Contract lifetime |

The investment level per Lot Area will depend on the level of development of the Lot Area as set out above.

## **PART 5: LOCAL SERVICE REQUIREMENTS**

### **LONDON WEST – MORE DEVELOPED**

## GEOGRAPHY / AREA OF DELIVERY

### LEP background

ESF in London is managed by the Greater London Authority who act as the Intermediate Body for ESF under the strategic direction of the Mayor and the London Economic Action Partnership (LEAP).

The LEAP produced a detailed European Structural and Investment Fund (ESIF) Strategy in 2014 (refreshed in 2016) detailing how ESF should support the capital's Jobs and Growth aims. The LEAP has been allocated approx. £529m for the delivery of the ESIF Strategy for London 2014-20.

<https://lep.london/publication/european-funding-strategy-2014-20>.

ESF in London is also underpinned by the strategic priorities outlined in the Skills for Londoners Strategy as well as the Mayor's other strategies, including the Economic Development Strategy and the Equality, Diversity and Inclusion Strategy.

Many Londoners do not have access to the opportunities that this global capital city provides. London still has above average unemployment rates; the highest proportion of people in poverty of any UK region exacerbated by the high costs of living; high numbers of Londoners are in low pay, with little chance to progress to better-paid, more secure work; there is continued and persistent gender, race and disability pay gaps; and a high number of Londoners without basic skills in literacy, English language, numeracy and digital skills.

The Mayor set out his ambitions to improve social integration<sup>1</sup> as well as equality, diversity and inclusion<sup>2</sup> in London. His Skills for Londoners Strategy<sup>3</sup> aims to empower all Londoners to access the education and skills to participate in society and progress in education and in work. For communities, equipping Londoners with essential skills makes it possible for people from all backgrounds to contribute and live interconnected lives. Not only is adult education and training fundamental to ensuring all members of society are able to secure and progress in work, but it also has an impact on social and wellbeing outcomes that can be felt across the city. The LEAP, through the GLA's European Programmes Management Unit, is working with the ESF Co-Financing Organisations to ensure a comprehensive package of ESF provision is in place for the second half of the ESF 2014-20 programme to tackle London's challenges. More information about the London ESF 2014-20 programme can be found at [https://lep.london/content\\_page/europeansocial-fund](https://lep.london/content_page/europeansocial-fund)

Some groups – including mothers and carers, disabled people, care leavers, older Londoners, homeless people and some black, Asian and minority ethnic (BAME) groups – remain under-represented in the workforce and are often more likely to be

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<sup>1</sup> All of Us, the Mayor's Social Integration Strategy, Greater London Authority, 2018

<sup>2</sup> Inclusive London, Greater London Authority, 2017,

<https://www.london.gov.uk/sites/default/files/mayors-equality-diversity-inclusionstrategy.pdf>

<sup>3</sup> Skills for Londoners, Greater London Authority, 2018

worse-off than other Londoners.<sup>4</sup> Frontline community groups and voluntary organisations can often be best placed to engage with these groups. They play a vital role in building the trust of the most vulnerable and in need in local communities, working with them to improve resilience, reduce social isolation, develop skills, and bring them closer to the labour market.

The LEAP will invest £6m of ESF to deliver a London-wide Community Grants programme. Working with the voluntary and community sector, the programme will support people with multiple and complex barriers to participation to address these underlying issues and to move closer to or into the labour market.

Four contracts will be awarded across London and the Managing Agent will be expected to work closely with the Sub-Regional Partnership, local authorities, local community organisations and other ESF providers in the area to deliver the Services.

ESF funded small grants programmes are already established in the boroughs of Tower Hamlets, Lambeth and Enfield. The Managing Agent will need to work closely with the key strategic partners in these boroughs to ensure that this programme complements existing or planned provision in those areas.

#### **Local Authorities:**

Four lots will be procured across the London LEP area, one per Borough SubRegional Partnership area as illustrated in the map below

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<sup>4</sup> Inclusive London, Greater London Authority, 2017



West London Lot:

Barnet

Brent

Ealing

Hammersmith & Fulham

Harrow

Hillingdon

Hounslow

The successful candidate must cover **all** boroughs within a Lot area.

**Key Priorities:**

The programme aims to support those furthest from the labour market, targeting economically inactive.

Priority groups for the programme include:

1. Parents/mothers,
2. Carers,
3. Disabled people,
4. Older people 50+,
5. BAME groups, particularly those groups with low labour market participation,
6. Migrants and refugees,
7. Homeless,
8. Ex-offenders,

Reflecting London's demographics, the LEAP want the Managing Agent to target Participants from an ethnic minority.

Activities should be tailored to Participants' needs but may include:

- Outreach and engagement activities
- Motivational activities
- Skills and training support (including referral to externally funded formal skills training)
- Information, Advice and Guidance
- Support to remove barriers to labour market participation or engagement in learning e.g. provision of childcare
- Support to address poor basic digital skills (managing information, communicating, transacting, creating and problem solving),
- Signposting and referral to specialist advice and support services
- Employability support
- Volunteering and Work placements
- Action research
- Job Brokerage

The Managing Agent should also provide capacity-building support to the organisations delivering the grants. This could include developing their expertise in

providing progression routes for their Participants, and measuring success to build evidence of good practice. It should also include support to broker and build

relationships between the grant recipients and statutory/strategic bodies at a local level.

## Part 6: Funding and Deliverables

35. The Managing Agent will be paid based on the achievement of deliverables in accordance with Part 4 provided that total payments made to the Contractor under this Contract shall not exceed the Maximum Contract Value.

36. The contract will be for the value of £1,348,129.00 based on delivery of outcomes. The contract start date is 1 April 2019 and delivery will commence immediately. The final date for participant starts is 31 December 2020 and all activity must be completed by 31 July 2021.

Table B

| Description                            | Volumes | Unit Cost | £                     |
|--|---------|-----------|-----------------------|
| ST01 Learner Assessment and Plan       | 956     | 0         | £ -                   |
| CG01 Community Grant Payment           |         |           | £ 1,225,571.82        |
| CG02 Community Grant Management Cost   |         |           | £ 122,557.18          |
| PG01 Progression Paid Employment (EMP) | 163     | 0         | £ -                   |
| PG03 Progression Education (EDU)       | 134     | 0         | £ -                   |
|  |         |           |                       |
|  |         |           |                       |
|  |         |           |                       |
| <b>Total of ESF Specification</b>      |         |           | <b>£ 1,348,129.00</b> |

## **NEW ANGLIA – MORE DEVELOPED**

### **GEOGRAPHY / AREA OF DELIVERY**

#### **LEP background**

New Anglia LEP and our partners recognise that a strong skills base is a prerequisite to a growing and performing economy where local people are at the heart of economic sustainability. The Norfolk and Suffolk Economic Strategy sets out our ambition to develop a locally responsive skills and employment system that transforms skills from being an economic barrier to being a growth enabler. Our people are central to all our ambitions and goals and while some good progress has been made we want to go further and faster in supporting everyone to access opportunities in the local economy and understand the exciting local careers available to them.

We are keen to support new approaches and remove barriers to getting back into work, especially for those furthest from the labour market, and provide support for all into sustained employment. It is imperative that ESF investment assists us to move our ambitions forward.

Information on our key sectors and local opportunities can be found at [https://newanglia.co.uk/our\\_sectors/](https://newanglia.co.uk/our_sectors/). New Anglia also commissioned a suite of skills plans for our priority sectors. These have highlighted the key concerns of employers including hard to fill vacancies as well as key recommendations for overcoming skills shortages.

These can be found at <https://newanglia.co.uk/sector-skills-plans/> or by contacting the Skills Manager at the LEP

The skills agenda is directed with support and influence from the New Anglia Skills Board. It is a Sub Board of the main LEP Board with representation from higher and further education, local authorities, training providers, private sector businesses and government departments.

We would expect the Community Grants to support us to drive forward our Economic Strategy including our aspirations for communities and harder to reach individuals within our New Anglia LEP area. A number of programmes already exist to support social inclusion including the [Norwich](#) and Ipswich Opportunity Areas. In addition, programmes such as [LIFT](#) also support community groups and VCSE organisations to deliver local, place based interventions. The Skills Board and local officers will work with the Managing Agent to align the deliver to activity already taking place locally.

Further information on the Norfolk and Suffolk Opportunity areas can be found at:

<https://www.gov.uk/government/publications/social-mobility-and-opportunity-areas>

**Local Authorities:**

Norfolk County Council

Suffolk County Council District

Councils:

- 1 NORTH NORFOLK
- 2 BROADLAND 3 KING'S LYNN AND WEST NORFOLK
- 4 BRECKLAND
- 5 NORWICH
- 6 GREAT YARMOUTH
- 7 SOUTH NORFOLK
- 8 WAVENEY
- 9 FOREST HEATH
- 10 ST EDMUNDSBURY
- 11 MID SUFFOLK
- 12 SUFFOLK COASTAL
- 13 BABERGH
- 14 IPSWICH

**Key Priorities:**

The Managing Agent must ensure that the Grant Awards panel membership includes the LEP and/or relevant Local Authority representative. The Managing Agent will be required to take part in the local Steering Group as directed by the LEP.

Clear alignment should be made with the Opportunity Areas in Norwich and Ipswich as well as with other local activity seeking to encourage social inclusion and the LEP's inclusive growth agenda.

**Part 6: Funding and Deliverables**

1. The Managing Agent will be paid based on the achievement of deliverables in accordance with Part 4 provided that total payments made to the Contractor under this Contract shall not exceed the Maximum Contract Value.
2. The contract will be for the value of £927,264.00 based on delivery of outcomes. The contract start date is 1 April 2019 and delivery will commence immediately. The final date for participant starts is 31 December 2020 and all activity must be completed by 31 July 2021.

Table B

| Description                            | Volumes | Unit Cost | £                   |
|--|---------|-----------|---------------------|
| ST01 Learner Assessment and Plan       | 658     | 0         | £ -                 |
| CG01 Community Grant Payment           |         |           | £ 806,316.52        |
| CG02 Community Grant Management Cost   |         |           | £ 120,947.48        |
| PG01 Progression Paid Employment (EMP) | 112     | 0         | £ -                 |
| PG03 Progression Education (EDU)       | 92      | 0         | £ -                 |
|  |         |           |                     |
| <b>Total of ESF Specification</b>      |         |           | <b>£ 927,264.00</b> |



**European Union**

European  
Social Fund

## QUESTIONNAIRE FOR SPECIFICATION FOR IP 1.4

### Questions

Please ensure you complete all of the following questions and then upload your response to the appropriate space in the Invitation to Tender Technical Envelope before the deadline

Please note all questions have a set amount of characters locked into each answer space which you will not be able to exceed Please note that in this instance a character is a :

letter;

number;

punctuation

mark; space or a

return.

Please also note that the maximum score and weighting allowed for each question is clearly marked

|  |                              |
|--|------------------------------|
| Organisation name submitting this response | Paddington Development Trust |
|--|------------------------------|



## 1. Delivery Model

Describe the processes you propose to use to:

- promote and market the availability of Community Grants;
- call for grant applications,
- assess grant applications and
- award grants

Your response to the above question will need to address the points below as a minimum:

- Describe how you will ensure that Community Grants will be used to provide services to Participants that complements and avoid duplication with similar existing provision that is available in the LOT Area?

- How the proposed activities will enhance the engagement of Small Organisations and Third Sector Organisations in the delivery of the Community Grants programme.
- How you will ensure that organisations bidding for funding have the adequate resources, systems and processes in place to deliver the activity they are bidding for and that they meet the Eligibility Criteria for the receipt of ESF Funding.
- Describe how you will develop a Community Grants Award Process which:
  - o balance the need for fairness and transparency with administrative efficiency in the use of public monies;
  - o allows for the making of awards where there is high demand for grant funding but low budget available; and
  - o Includes a structured series of grant application rounds which is designed to optimise the benefits to be derived from ESF Funding.
- Describe how you will ensure that Recipient Organisations will utilise Community Grants to support Participants to progress into further learning or employment in accordance with the Specification.
- Describe the marketing and engagement strategy you will use to promote Community Grants funding in the Lot Area. Your answer should describe how you will use or develop any relevant local relationships and partnerships to promote the availability of Community Grants.
- Describe how you will manage:
  - o the payment process to Recipient Organisations and
  - o how you will manage your cash flow considering you can only claim grants from the ESFA once a Community Grant has been paid and you have provided the required evidence to the ESFA.

WEIGHTING FOR QUESTION 1: x4    Maximum characters 5000

- We will ensure wide awareness of the exciting new opportunities across the LOT area and stimulate maximum applications from groups able to use the money well. Publicity will be directed both to known 3rd sector organisations and via intermediaries like NCVO, GLV; ethnic support groups; faith leaders; ERSA, council regeneration teams; employment networking groups. PDT already works with some of these boroughs (via ESF Poverty Programme), is aware of the continuing needs of participants and we have current voluntary delivery partners with deep roots in the third sector across Central London. This will help identify organisations to help progress the Mayor's and the LEAP strategies for the Region.
- We will create an email leaflet directing those interested to relevant section of PDT's website which will carry a detailed section on the programme. Our experience is that funding news spreads like wild fire but we will continuously assess the pattern of applications for ethnicity, gender, disability, age of potential participants etc and redress the

balance if necessary by direct approaches to 'missing' constituents.

- The messaging will be clear about the purpose of the funding, application process; good use of money; target groups that represent Central London priorities; any help PDT can give; monitoring and payments arrangements. We will avoid duplication through mapping local provision via information from JCPs, Colleges, ESF listings, relevant council officers, overarching voluntary organisations and helpful websites like <http://grantnav.threesixtygiving.org/> which list local projects and their funding source. While it is not always inappropriate for an individual to get support from more than one source, there needs to be checks for double funding. We are clear the programme should add value.
- This phase also sees the establishment of four Theme Groups (TG) which judge applications and the Oversight Board (OB) which approves projects and monitors progress towards programme targets.

- From Q2 - Q7 applicants contact PDT having seen guidance, template forms, etc on our website. A Grant Support Officer walks them through the application in a phone call or, if requested, a meeting. The purpose of this initial contact is to encourage applications and help make them satisfactory. b. applicants submit forms and supporting documents which go to the relevant theme group. Documents required include evidence of processes; available resources: accounts; required policies; evidence of successful work with the target group(s); a clear statement of the intended content and level (as per Rarpa) of the intervention. The TG assesses (including an interview with the organisation if necessary) against strict criteria including the organisation's eligibility; 'adding value'; adequacy of staffing; ability to add to measurable outcomes (soft and hard); participants' likely progress towards work or further learning; value for money; understanding of ESF requirements. c. The TG makes a recommendation to the OB in the same month and explains why it supports or rejects the proposal. The OB interrogates for rigour and fairness. If a proposal is rejected, PDT managers offer to meet to support a better application in the next round. If accepted, both parties sign an SLA. d. funding decisions are made on a quarterly basis. e. Recipient staff are trained on monitoring and using programme databases. f. ongoing (into Quarter 10) monitoring assesses the impact of the activities. Organisations evidence monthly spend and achievement. There is monthly contact with the monitoring officer and corrective action taken if necessary. Audited claims are submitted to Funders.
- Initial funding allocations are made in this pattern: Q1 0; Q2 10; Q3 11; Q4 27; Q5: 27 Q6: 16; Q7: 16; Q8 – Q10 additional funding round if required and finalising activities.
- This delivery pattern has been tried and tested by PDT more than once. It minimises bureaucracy; allows quarterly decisions leading to flow of funds; maximises PDT support and ensures two levels of checking for fairness. Each judging panel includes a representative from PDT; a

relevant Council, an employer where possible; an overarching voluntary body. We are alert to partiality stemming from organisational or family links; passion for a particular client group; bias about boroughs and these understandings will underpin the written guidelines for TGs and the constitution of the OB. PDT's website will publish the appeals procedure. PDT's Finance Manager and Board will have oversight of all monies allocated. (PDT recently passed an Art 125 audit).

- Payment will be monthly on receipt with evidence of spend. PDT has understood its cashflow obligations and has modelled the sums entailed, noting that in some months 60 organisations might be operating elements of community projects. PDT has sufficient reserves but we will also manage cashflow through the timing of allocations. We understand ESFA payments are monthly.

## 2. Contract Management

How will you ensure that Community Grants are used in line with the requirements set out in the specification and in accordance with the applications made?

Your response to the above question will need to address the points below as a minimum:

- Describe how you will monitor and report on the making of grant applications and awards to Recipient Organisations in accordance with the Specification.
- Describe how you will monitor financial spend including internal audit arrangements to prevent mis-use or loss of public funds

WEIGHTING FOR QUESTION 2: x1    Maximum characters 3000

- Recruiting beneficiary organisations: pre-award checks: When proposals go to a theme group panel there will be a rigorous check to ensure plans accord with the spirit and rules in this Specification and that they are practical and achievable. Theme Group members will be fully briefed on the requirements of the Specification. The bidder will have been asked to lay out milestones for achievements and spend against which their work can be measured.
- Approval process, grant agreement: Once a grant has been approved, the PDT Programme Team will collate the project proposal, appraisal forms and recommendations stemming from the Theme and Oversight groups. This will lead to the construction of the Grant Agreement which will be in five parts. Part One contains contact details etc, part two the recommendation form that went to the Board with any conditions set for the grant recipient, part three is a schedule of agreed delivery, expenditure and milestones; part four sets out monitoring deadlines and part five sets out terms and conditions of grant. These will be in line with the terms and conditions in the ESF contract for services. The signed grant agreement then forms the basis for monitoring the project.
- Briefing recipient organisations: The PDT team will then set a date for the

next quarterly workshop for new projects to meet each other and hear the grant agreement explained along with monitoring requirements; systems; payment process; evidence gathering and verification of evidence; definitions of eligible and ineligible expenditure and client eligibility criteria. Each organisation will receive a project handbook listing this guidance. PDT has already designed standard Enrolment, Individual Learner Record (ILR), Needs Assessment and Activity Log templates. Recipients will be informed that there is no allowance for overspend on this project.

- **Monitoring:** At the beginning of the third week each month, projects will be required to send in information and evidence for the month's achievement via a secure IT link. This will record activity, spend, milestones and outputs and will be monitored against agreed targets in the Grant Agreement. PDT will verify each claim and collate the returns for each organisation recording also data on achievement and expenditure across the whole programme to submit to funders and to the Oversight Board. (This will involve additional checks for geographical coverage and progress towards overall demographic targets: carers/parents etc). The monitoring will also confirm that grants are used for the purpose they were allocated. At this stage the PDT Programme Manager will authorise PDT finance department to pay grant recipients for their verified work.
- **Ineligible activity:** Ineligible clients or spend will be flagged up at monthly monitoring, the grant recipient notified and an explanation provided about why the item is ineligible. Underperformance during the project may be reprofiled within reason.

### 3. Quality Assurance

How will you ensure the quality of provision?

Your response to the above question will need to address the points below as a minimum:

- How will you ensure the activities offered through Community Grants have been designed to ensure they will lead to engagement of the Participants within the Priority Groups.
- Describe your quality assurance arrangements and how you will monitor programme activity of Recipient Organisations that have been awarded a grant
- Describe how you will undertake the management of records/data across any subcontractors or other organisations involved in your delivery model in order to meet ESF reporting requirements

WEIGHTING FOR QUESTION 3: x1    Maximum characters 3000

☐ Good Quality Assurance is very important given that much of the delivery



will take place at arm's length from the Managing Agent.

- On first contact, applicants will be reminded of the target groups for this area. As well as parents/refugees/over50s etc there is a heavy emphasis on BAME where there is significant under-representation e.g. in better jobs in the West End. Central London Sub Region is marked by extremes in wealth and health, adding motivation to this work and placing emphasis on the need to collect good quality demographic information about participants.
- During the assessment phase we will look to see if the applicant has a convincing strategy for enrolling target participants, focussing particularly on their past history and achievements with these groups and numbers available to recruit in their area. We will want to discuss publicity plans and assess the degree that applicants are likely to penetrate these hard to reach communities. Previous evaluations teach us that word of mouth from a trusted source (e.g. an Imam) works better than printed material, even if the latter is in other languages. We also know it is important to have staff who speak community languages. We will look too for other imaginative strategies to engage – for example using previous clients as ambassadors.
- The most important question is: does the proposal have something to offer the potential participants? Engagement for its own sake we see as beneficial, but participants are more attracted to solid offers like English learning; IT skills; employer links.
- The phased nature of the programme, and monthly reporting of achievement, allows for monitoring en route of what works and what does not. Each organisation will have a named PDT Grant Support Officer who will act as both monitor and account manager, a role involving first level capacity building e.g. to help establish good reporting practices. Learner records will be transferred via PDT's secure IT system. PDT will monitor monthly submissions according to agreed parameters (in the grant agreement): numbers enrolled and their demographic profiles (linked to the overall targets for the programme but reflected differently in each project); numbers who have made an action plan (which we will ask to see to assess quality); hours of training or IAG experienced; progress against action plan ambitions; final outcomes. These achievements will be related to spend to see if the ratio is reasonable and checked for compliance with contract definitions of 'job entry' and 'referral to learning'. Finally, achievements and spend will be collated for the whole programme to comply with ESF reporting requirements.
- We will also provide an overall framework for the recording of soft skills development via an adapted Outcome Star for participants and ask organisations to use standard satisfaction surveys after elements of training above six hours.

We are not planning to involve other sub-contractors in managing delivery.

#### 4. Resourcing

How you will ensure that the Community Grants Programme is adequately managed and resourced?

Your response to the above question will need to address the points below as a minimum:

- How you will ensure you provide adequate resource to the Community Grants Programme to deliver the Services set out in the specification. If you are applying to deliver in more than one area how are you going to ensure that you can resource the service.
- Detail the steps you will take to ensure delivery can commence on 1 April 2019 without impinging on any other service delivery you may be committed to or commit to in future whether in connection with the ESF Transition Programme or otherwise. This should include any recruitment plans you have if you are successful and when this recruitment activity would take place and how it will be paid for.
- Describe the management arrangements you will put in place to manage delivery of the Services identifying roles and responsibilities and (where applicable) other resource from outside the organisation that may be involved
- Describe how you will manage conflicts of interest in connection with the award of Community Grants. Your answer should describe
  - o how you will ensure that no person involved in a decision to award a Community Grant shall have an interest in the Recipient Organisation;
  - o describe the checks you will perform on persons involved in making such decisions; and
  - o how you will manage declarations of interest.

WEIGHTING FOR QUESTION 4: x2 Maximum characters 4500

- PDT has wide experience of managing grant awarding schemes to third sector organisations, including a £13 million SRB programme. There are three aspects here: good allocation of staff time; sufficient staff skills and timely administrative and monitoring procedures, particularly those relating to finance. To make sure recipients are adequately resourced, we need to ensure their plans are realistic and achievable within budget. This is a task for the Theme Groups. We also need to manage PDT's cashflow as we understand the need to 'forward fund' much of the work. Sometimes, we have learned, how quickly small organisations are paid is almost as vital as how much. The programme has an iterative quality and so, while time-hungry initially, should start to run smoothly on its quarterly rotations. This is reflected in our staff time planning. We are applying in both Central and West London as these are our natural

'stamping grounds' and we currently run £3 million projects in these areas. We are well used to managing the expansion and contracting implied by time-based project funding.

- Readiness: We can start on April 1st since key staff are already in post and we have well established relationships with community leads in Central London. Our planning includes a three-month start-up period to allow PDT to finalise its staffing and systems. If the contract is awarded, the Project Co-ordinator will immediately mobilise stakeholders for the theme groups and the Oversight Board, drawing up terms of reference for both. Publicity material will be circulated and a timetable of project callins, appraisals and Board meetings drawn up. The Programme Manager will ensure template forms for applicants and for participants are agreed based on successful ESF models already used. Electronic systems for recording recipient and participant achievement, and spend, are already in place with only some tweaks needed. April to May we will set up the client and financial Management Information System, produce a Programme Manual for successful applicants and training material for Theme Group members.
- Recruitment: We have projects ending in this period which releases staff but, were we awarded both programmes, we would need to appoint extra roles. This can be done quickly using PDT resources.
- Management: PDT is fortunate in the experience of the staff we would allocate. The PDT Project Co-ordinator has 30 years' experience of coordinating projects with stakeholder and community involvement, winning awards for ESF projects. She will be responsible for marketing, setting up the theme and Oversight groups and creating a schedule of application and appraisal rounds. She will have overall responsibility for capacity building grant recipients to ensure a coherent strategic focus.

- The Project Manager has 18 years' experience of managing projects including both grant awarding programmes mentioned above. She will be responsible for overall delivery. She will manage the staff and be responsible for reports to ESFA as well as overall compliance with ESF and ESFA rules on eligibility. She will draw up grant agreements, authorise payments and review recipients' targets against performance. (Under her leadership, PDT recently passed an Article 125 Audit).
- The Finance Manager has over 25 years of financial management and was responsible for maintaining PDT cashflow and all financial procedures during previous grant awards programmes. She will be responsible for the project cost centre and payment of grants to recipients.
- Grant Support Officers will act as account managers to specific organisations to monitor and verify outputs, milestones and spend. They will help capacity build recipients to set up effective processes and systems.
- Conflict of interest: Conflict of interest can arise even with well meaning individuals. Awareness of this will help shape theme group training and members will be asked to list their potential areas of conflict re organisational memberships, borough of residence etc. One PDT manager will be responsible for scrutinising potential conflicts including checking background details with Companies House or the Charities Commission. This information will be used in accordance with PDT's GDPR policy. At group meetings, members will be asked to 'declare any conflictful interests' in relation to the specific agenda and these declarations will be recorded. Those so declaring will be barred from participating in relevant decision making.

Paddington Development Trust  
Organisational Chart

REDACTED UNDER FOIA SECTION 40