



Skills Funding
Agency

This Contract for Services will apply to all organisations awarded funding to deliver Apprenticeships from May 2017.

DRAFT CONTRACT FOR SERVICES - APPRENTICESHIPS

1 May 2017

Terms and Conditions

- 1 Definitions
- 2 Commencement and Continuation
- 3 Contract Management
- 4 Service Delivery
- 5 Assignment and Sub-Contracting
- 6 Freedom of Information and Confidentiality
- 7 Equality of Opportunity
- 8 Apprentice Health, Safety & Welfare
- 9 Liability
- 10 Insurance
- 11 Limitation of Liability
- 12 Access and Monitoring
- 13 Funding and Payment
- 14 Review of Contractual Performance and Reconciliation of Contracts
- 15 Prohibited Activities
- 16 Data Protection and Protection of Personal Data
- 17 Submission of Apprentice Data
- 18 Quality Assurance and Raising Standards
- 19 Fraud and Irregularity
- 20 Other Sources of Funding
- 21 Breach
- 22 Termination
- 23 Transfer of Responsibility on Expiry or Termination
- 24 Force Majeure
- 25 Public Reputations of the Parties/Press Releases
- 26 Branding and Logos
- 27 Retention of Documents
- 28 Status of Contract

29	Waiver
30	Third Party Rights
31	Notice
32	Governing/Jurisdiction
33	Dispute Resolution
34	Feedback and Complaints
35	State Aid
36	Intellectual Property Rights
37	Disposal of Assets and Change of Use
38	Headings
39	Entire Contract/Amendments

Appendix 1 – Summary of Programme Funding

Appendix 2 – Funding Agreement(s)



Skills Funding Agency

Terms and Conditions

This Contract is made this xx Day of xx 2017 between:

CONTRACTOR REGISTERED NAME
AND ADDRESS

AND

THE SECRETARY OF STATE
FOR EDUCATION ACTING
THROUGH THE SKILLS
FUNDING AGENCY
CHEYLESMORE HOUSE
QUINTON ROAD
COVENTRY
CV1 2WT

Company House No.

Hereinafter called
The Contractor

Hereinafter called
The SFA

GENERAL TERMS AND CONDITIONS

It is agreed as follows.

1 Definitions

- 1.1 **“Apprenticeship”** means the training (and where applicable) end point assessment for an employee as part of a job with an accompanying skills development programme.
- 1.2 **“Contract”** means the Contract between the above named parties consisting of these Terms and Conditions, the specification and any other documents (or parts thereof) specified in the Contract and any variations to the Contract agreed in writing and signed by both Parties.

- 1.3 **“Apprenticeship Funding Rules for Training Providers May 2017 to March 2018”** means the documents which set out the detailed requirements with which The Contractor must comply in delivering the Services and which form part of this Contract.
- 1.4 **“Apprentice”** means any apprentice to whom The Contractor is required to deliver any of the Services.
- 1.5 **“Evidence Packs”** means any information relating to an Apprentice generated by The Contractor, the Apprentice or a third party for the purpose of the delivery of the Apprenticeship.
- 1.6 **“OFSTED”** means the Office for Standards in Education.
- 1.7 **“Parties”** means The SFA acting on behalf of the Secretary of State for Education and The Contractor.
- 1.8 **“Premises”** means the location where the Services are to be performed, as detailed in the Contract.
- 1.9 **“Register of Apprenticeship Training Providers”** means the register maintained by The SFA of organisations qualified to receive funding from The SFA to deliver Apprenticeships.
- 1.10 **“Services”** means the delivery of Apprenticeships as specified in the Contract.
- 1.11 **“Specification”** means the documents setting out The SFA’s requirements for the Services to be provided under this Contract.

2 Commencement and Continuation

- 2.1 The Contract shall commence on 1 May 2017 and terminate on 31 July 2018.
- 2.2 The SFA may, by giving written notice to the Contractor extend the Contract for a further period of up to 2 years.

3 Contract Management

- 3.1 The SFA and The Contractor will each nominate a contact for the purpose of dealing with queries and issues under this Contract and advise the other of the contact details.
- 3.2 The Contractor must ensure appropriate members of staff register as users on the user role management system at https://secure2.imservices.org.uk/self_registration/ 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

Draft Contract for Services – Apprenticeships 2017 to 2018

4 Service Delivery

- 4.1 The Services to be delivered under this Contract are the delivery of the Apprenticeships as set out in Appendix, 1 the Summary of Programme Funding and at Appendix 2. The detailed requirements for delivering Apprenticeships are set out in the **Apprenticeship Funding Rules for Training Providers May 2017 to March 2018** as amended from time to time by The SFA 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 SFA and any tender document submitted by The Contractor, which all form part of the terms and conditions of the Contract.

5 Assignment and Sub-Contracting

- 5.1 The SFA reserves the right to require The Contractor not to enter into, or to terminate, any sub-contract to deliver the Services under this Contract.
- 5.2 Subcontracting any part of the Contract shall not relieve The Contractor of any obligation or duty attributable to him under the Contract or these conditions
- 5.3 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 SFA 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 Apprenticeship Funding Rules for Training Providers May 2017 to March 2018.
- 5.4 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 SFA has the right to enforce the terms of the sub-contract.
- 5.5 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.
- 5.6 The Contractor may not assign any rights, duties or obligations under this Contract without the consent of The SFA.
- 5.7 The Contractor must notify The SFA in writing if there is a change in its name and/or ownership. The SFA reserves the right to terminate the Contract if it considers in its absolute discretion that the change in ownership would prejudice The Contractor's ability to deliver the Services.

- 5.8 The Contractor must consider the criteria set out in the Funding higher-risk organisations and subcontractors document which is published on The SFA's website
<https://www.gov.uk/government/publications/sfa-financial-assurance-higher-risk-providers-and-subcontractors#history>.

6 Freedom of Information and Confidentiality

6.1 Definitions

“Confidential Information”	means any information, including Personal Data as defined by the Data Protection Act 1998, and any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel, and suppliers of the Parties including all IPRs, together with all information derived from any of the above, and any other information clearly designated as being confidential or which ought reasonably be considered to be confidential (whether or not it is marked "confidential")
“Exempt Information”	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)
“FOIA”	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 this Clause 6; and
“FOIA notice”	means a decision notice, enforcement notice and/or an information notice.

6.2 Freedom of Information

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

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

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

6.2.4 Notwithstanding anything in this Contract to the contrary (including without limitation any obligations of confidentiality), The SFA 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 SFA 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 SFA;

or

b) disclose information requested

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

6.2.5 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 SFA for any and all costs (including legal fees) incurred by The SFA 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 SFA to withhold Exempt Information.

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

6.2.7 The Contractor shall assist The SFA as reasonably necessary to enable The SFA to comply with its obligations under FOIA.

6.3 Confidentiality

The Contractor hereby warrants that:

- 6.3.1 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 SFA as confidential, safeguard it accordingly and only use such Confidential Information for the purposes of this Contract; and
- 6.3.2 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 SFA, except where disclosure is otherwise expressly permitted by the provisions of this Contract.
- 6.4 The Contractor shall take all necessary precautions to ensure that all Confidential Information obtained from The SFA 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.
- 6.5 The provisions of Clauses 6.3 and 6.4 shall not apply to any information:
 - 6.5.1 which is or becomes public knowledge (other than by breach of this Clause 6.5);
 - 6.5.2 which was in the possession of the receiving party, without restriction as to its disclosure, before the date of receipt from the disclosing party;
 - 6.5.3 which must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the party making the disclosure, including any requirements for disclosure under the Freedom of Information Act or the Environmental Information Regulations.
- 6.6 Nothing in this Clause 6 shall be deemed or construed to prevent The SFA from disclosing any Confidential Information obtained from The Contractor:
 - 6.6.1 to any other Central Government Body, Non-Departmental or Quasi Government Body or agency, central or local;
 - 6.6.2 to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
 - 6.6.3 to any professional adviser, consultant, contractor or other person engaged by The SFA directly in connection with this Contract, provided that such information is treated as confidential by the receiving consultant, contractor or any other person;
 - 6.6.4 on a confidential basis to any proposed successor body in connection with any assignment disposal of its rights, obligations or liabilities under

Draft Contract for Services – Apprenticeships 2017 to 2018

this Contract.

- 6.7 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.
- 6.8 The Contractor will immediately notify The SFA 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 SFA in any investigation that The SFA considers necessary to undertake as a result of any breach of security in relation to Confidential Information or data.
- 6.9 The Contractor shall, at its own expense, alter any security systems at any time during the Contract Period at The SFA's request if The SFA reasonably believes The Contractor has failed to comply with Clause 6.7.
- 6.10 The SFA reserves the right to publish details of this Contract and the payments made under it to comply with the Government's transparency requirements.
- 6.11 The provisions of this Clause 6 will apply for the duration of the Contract and 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 re-enactment thereof or any other statutory provision relating to discrimination in employment or the provision of services. The Contractor shall take all reasonable steps to ensure the observance of these provisions by all servants, employees or agents of The Contractor and all sub-contractors employed in the execution of the Contract. The Contractor will comply with the detailed requirements in relation to equality of opportunity set out in Clause 7.2.
- 7.2 The Contractor will, in delivering the Services under this Contract, demonstrate that it has had regard to the duties placed on The SFA and The Contractor by the Equality Act 2010. The Contractor will take all reasonable steps to ensure the observance of these provisions by all servants, employees or agents of The Contractor and all sub-contractors employed to deliver the Services.

8 Apprentice 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 Apprentices. The Contractor shall provide information to The SFA, as and when specifically requested, to give assurance that adequate arrangements exist for Apprentice 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 Apprentices.
- 8.3 The Contractor shall adopt recruitment processes that comply with the law and will ensure that children and vulnerable adult Apprentices are protected. The Contractor will take all necessary actions to comply with current legal safeguarding requirements. The Contractor must make the necessary checks to ensure that employment that involves regular contact with young people under the age of 18 or other vulnerable Apprentices is not offered to or held by anyone who has been convicted of certain specified offences, or whose name is included on lists of people considered unsuitable for such work held by the Department for Education and the Department of Health. Information should also be sought from the Disclosure and Barring Service. The Contractor must undertake an adequate risk assessment to establish what action is required where their employees have regular contact with Apprentices under 18 or other vulnerable Apprentices.
- 8.4 The Contractor will carry out disclosure and barring service checks on all overseas applicants for employment and seek additional information about an applicant's conduct. The Contractor must review its records and be able to demonstrate it has robust record-keeping procedures in relation to the checks it has undertaken and the staff it employs.
- 8.5 The Contractor shall, in circumstances where it sub-contracts the management and/or delivery of the Services under this Contract, ensure that all the Clauses in respect of Apprentice Health, Safety and Welfare are included in its contract with sub-contractors.
- 8.6 The Contractor shall inform The SFA of the death of any Apprentice which is a result of work undertaken whilst in employment and who is undertaking a related Learning Programme.

This shall be done by:

- 8.6.1 informing The SFA's representative by telephone or email immediately upon The Contractor becoming aware of the event.
- 8.7 The Contractor shall ensure that it complies with its duty to have due regard to the need to prevent Apprentices from being drawn into terrorism in accordance with the Government PREVENT agenda, s26 of the Counter-Terrorism and Security Act 2015 and the guidance published by the Secretary of State.

9 Liability

- 9.1 The Contractor shall indemnify and keep indemnified The SFA, 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 SFA, 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 wilful default of The Contractor, their servants or agents in the delivery of the Services except to the extent (if any) that it was also caused or contributed to by the negligent act or omission or wilful default of The SFA or their servants or agents.
- 9.2 The Contractor warrants to The SFA 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 SFA 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.
- 9.3 The liability of The Contractor under this clause shall not exceed twice the value of the Contract or £1,000,000 whichever is the greater save that this limit shall not apply to claims in respect of death or personal injury.
- 9.4 The SFA 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 SFA under this Contract. The SFA 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 SFA including professional indemnity, employers' liability and public liability insurance following a written request from The SFA.

11 Limitation of Liability

- 11.1 The SFA shall not be liable to The Contractor for any indirect or consequential loss, damage, injury or costs whatsoever.

12 Access and Monitoring

- 12.1 The SFA shall give The Contractor reasonable advance notice in writing of proposed visits to The Contractor or its sub-contractors, to observe the delivery of the Services, by any person who has taken or will take no direct part in the conduct or content of the Services.
- 12.2 For monitoring and evaluation purposes, The SFA or their representatives, the Secretary of State or their representatives, the National Audit Office, the Inspectorates and HM Treasury shall have the right to visit all or any site(s) and view operations relating to the provision and to inspect relevant documents and interview Apprentices and The Contractor's staff during these visits in order to:
- 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 Apprentices, during these visits at any reasonable time;
 - c) carry out examinations into the economy, efficiency and effectiveness with which The Contractor has used The SFA's resources in the performance of the Contract.
- 12.3 The Contractor shall, if required by any of the representatives stated at Clause 12.2 provide appropriate oral or written explanations.
- 12.4 The SFA reserves the right, at any reasonable time, and as it may deem necessary to require The Contractor at its own cost to:
- 12.4.1 provide evidence of financial resources and the level of turnover sufficient to enable it to continue to perform the Contract;
 - 12.4.2 provide such assurance as The SFA may require that the delivery of the Services complies with the requirements of the Contract;
 - 12.4.3 obtain a report by an independent accountant of The SFA's choice on;
 - 12.4.3.1 the financial systems and controls operated by The Contractor or its subcontractors;
 - 12.4.3.2 the accuracy and regularity of funding claims in respect of payments claimed or received under the Contract;

- 12.4.3.3 the evidence held by The Contractor or its subcontractors 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 SFA. The report and the work required in order to produce the report shall be carried out to the satisfaction of The SFA, and The SFA must be able to place reliance on it. The Contractor shall provide a copy of the interim and final report to The SFA as soon as they are available. The SFA reserves the right to require The Contractor to publish the report.

- 12.4.4 provide a copy of The Contractor's latest audited Accounts and submit further copies of the audited Accounts as they become available;
- 12.4.5 submit any claim for payment or management information provided to support a claim for payment to be audited by an independent auditor chosen by The SFA;
- 12.4.6 provide any additional evidence to support payments made under this Contract, as The SFA shall reasonably require.
- 12.5 The Contractor shall in performing the Services comply fully with all relevant rules and regulations of The SFA in force from time to time especially when on The SFA's premises.

13 Funding and Payment

- 13.1 In consideration of the Services to be provided by The Contractor, The SFA agrees to pay The Contractor the amounts set out in Appendix 1 (and as broken down on 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 SFA following any review of the quality of the Services.
- 13.2 The Maximum Value of each Learning Programme as shown in Appendix 1 of this Contract may not be exceeded for any reason. The SFA 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.
- 13.3 Where The SFA 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.
- 13.4 The SFA will restrict delivery of this Contract against the funding available up to the 31 July 2018 as detailed in Appendix 1. Appendix 1 confirms the maximum value available up to 31 March 2018. Where the delivery within this financial year fails to meet the minimum levels of performance or where the

delivery in this period would result in the overall maximum value being exceeded, The SFA reserves the right at its absolute discretion to vary the Contract accordingly.

- 13.5 The SFA reserves the right to give at least 8 weeks' notice in writing of its intention to cease funding for any new Apprentices recruited on an Apprenticeship from the date specified in the notice. The SFA will not be liable to make payments in respect of any Apprentices recruited after the date specified in the notice.
- 13.6 The SFA reserves the right to give three months' notice to reduce the overall maximum value of the Contract without the need to give a reason.
- 13.7 Payment by The SFA shall be without prejudice to any claims or rights, which The SFA may have against The Contractor and shall not constitute any admission by The SFA as to the performance by The Contractor of its obligations hereunder. Prior to any such payment, The SFA 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 SFA.
- 13.8 Where The SFA carries out a review, investigation or audit of a sample of the evidence which The Contractor is required to provide under the Contract to support the payments made by The SFA and identifies errors in that evidence which it deems are material, The SFA 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 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 21 of the Contract. The decision of The SFA as to the amount of recovery under this Clause is final.
- 13.9 All payments by The SFA will be made via BACS.
- 13.10 The SFA is generally unable to recover any Value Added Tax charged. The maximum sum payable under this Contract, as set out in Appendix 1 includes the cost of the service and any other VAT or taxes to be charged, where they apply.
- 13.11 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 SFA and the supply by the person providing that education or vocational training, of any goods or services essential to that provision, is considered to be an exempt supply for VAT purposes.

14 Review of Contractual Performance and Reconciliation of Contracts

- 14.1 Where The Contractor's actual delivery will result or has already resulted in an overpayment to The Contractor by The SFA, The SFA will withhold from, or deduct the amount owed from, payments due to The Contractor under the Contract for current or subsequent months or years accordingly.
- 14.2 Where The Contractor's actual delivery has resulted in an underpayment to The Contractor by The SFA, The SFA 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.
- 14.3 Should there be an under or over payment to The Contractor, The SFA may at their absolute discretion require a Contract variation.
- 14.4 The evidence required in respect of Apprenticeships is set out in the Apprenticeship Funding Rules for Training Providers May 2017 to March 2018 and The Contractor must retain such evidence for inspection on demand.

15 Prohibited Activities

- 15.1 The Contractor shall not offer or give, or agree to give, to any member, employee or representative of The SFA 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 SFA 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 SFA or Her Majesty's Government shall entitle The SFA to terminate the Contract and recover from The Contractor the amount of any loss resulting from such termination and/or to recover from The Contractor the amount of value of any gift, consideration or commission.
- 15.2 The Contractor shall not enter into any Contract with any political or religious organisation using any funding provided by The SFA under this Contract if the effect of that Contract would be to promote a particular political or religious point of view.
- 15.3 The Contractor shall not hold itself out as acting on behalf of The SFA without The SFA's permission.

16 Data Protection and Protection of Personal Data

- 16.1 The Parties shall ensure that information acquired by the Parties and sub-contractors in the delivery of this Contract will at all times comply with the provisions and obligations imposed by the Data Protection Act 1998 and the Data Protection Principles together with any subsequent re-enactment or

amendment thereof in storing and processing personal data, and all personal data acquired by either party from the other shall be returned to the disclosing party on request. Both Parties hereby acknowledge that performance of a duty imposed by the Act shall not constitute a breach of any obligation in respect of confidentiality which may be owed to the other party. The clause shall not affect The SFA's ability to make a search with a credit reference agency.

16.2 With respect to the Parties' rights and obligations under this Contract the Parties agree that The SFA is the Data Controller and The Contractor is the Data Processor within the meaning of the Data Protection Act.

16.3 The Contractor shall:

16.3.1 process Personal Data only in accordance with the instructions from The SFA (which may be specific instructions or instructions of a general nature as set out in the Contract or otherwise notified by The SFA to The Contractor during the term of the Contract);

16.3.2 process the Personal Data only to the extent and in such manner as is necessary for the provision of the Services or as is required by Law or any Regulatory Body;

16.3.3 implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;

16.3.4 take reasonable steps to ensure the reliability of any Contractor Personnel who have access to the Personal Data;

16.3.5 obtain prior written consent from The SFA in order to transfer the Personal Data to any sub-contractor or other third parties for the provision of the Services;

16.3.6 ensure that all Contractor Personnel do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by The SFA;

16.3.7 notify The SFA within 5 working days if it receives:

16.3.7.1 a request from a Data Subject to have access to that person's Personal Data; or

- 16.3.7.2 a complaint or request relating to The SFA obligations under the Data Protection Legislation;
- 16.3.8 provide The SFA with full co-operation and assistance in relation to any complaint or request made, including by:
 - 16.3.8.1 providing The SFA with full details of the complaint or request;
 - 16.3.8.2 complying with a data access request within the relevant timescales set out in the Data Protection Legislation and in accordance with The SFA's instructions;
 - 16.3.8.3 providing The SFA with any Personal Data it holds in relation to a Data Subject (within the timescales required by The SFA); and
 - 16.3.8.4 providing The SFA with any information requested by them or their representatives.
- 16.3.9 permit The SFA or The SFA's representative (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit The Contractor's Data Processing activities (and/or those of its agents, subsidiaries, and sub-contractors) and comply with all reasonable requests or directions by The SFA to enable The SFA to verify and or procure that The Contractor is in full compliance with its obligations under this Contract;
- 16.3.10 provide a written description of the technical and organisational methods employed by The Contractor for processing Personal Data (within the timescales required by The SFA); and
- 16.3.11 provide The SFA with information about how the Evidence Packs are stored including details of the location where the Evidence Packs are kept and the arrangements for their security. The Contractor is required to notify The SFA of any changes to this information
- 16.3.12 not Process Personal Data outside the European Economic Area without the prior written consent of The SFA and, where The SFA consents to a transfer, to comply with:
 - 16.3.12.1 the obligations of a Data Controller under the Eighth Data Protection Principle set out in Schedule 1 of the Data Protection Act 1998 by providing an adequate level of protection to any Personal Data is transferred; and
 - 16.3.12.2 any reasonable instructions notified to it by The SFA.

17 Submission of Apprenticeship Data

- 17.1 The Contractor must supply The SFA data on each individual learner, in accordance with the data collections framework set out in the 'ILR specification validation rules and appendices 2016 to 2017' as amended and updated, which is published on The SFA's website (<https://www.gov.uk/government/publications/ilr-specification-validation-rules-and-appendices-2016-to-2017>) in accordance with the *Provider Support Manual* as amended and updated.
- 17.2 The Contractor must supply The SFA with data in accordance with the following:
- 17.2.1 in line with agreed audit arrangements;
 - 17.2.2 in adherence with the Data Protection Act;
 - 17.2.3 to support payments to be made; and
 - 17.2.4 to support the contract management and allocation processes.
- 17.3 Data collected must be transmitted to The SFA through The SFA's web portal <https://www.gov.uk/government/publications/sfa-the-hub>. Access to The SFA's web portal is restricted and The Contractor agrees to comply with the conditions of use regarding the supply of data to The SFA set out in this Clause 17 and in 'Individualised Learner Record Specification 2016 to 2017' and relevant Provider Support Manual as amended and updated available on The SFA's web site (<https://www.gov.uk/government/publications/ilr-specification-validation-rules-and-appendices-2016-to-2017>)
- 17.4 Where The SFA is concerned about the quality of the data, including the completeness or accuracy of the data, provided by The Contractor, The SFA may require The Contractor to supply data more frequently for such a period as The SFA shall require.
- 17.5 The SFA reserves the right to require The Contractor, at its own cost, to carry out such work as The SFA deems necessary to improve the quality of data.
- 17.6 The SFA reserves the right to suspend payments to The Contractor under the Contract where data quality gives rise to concern about the accuracy of the data provided by The Contractor.
- 17.7 Failure to transmit complete and accurate data to The SFA in accordance with this Clause 17 will constitute a Serious Breach of Contract in accordance with Clause 21 of the Terms and Conditions of the Contract.

- 17.8 The Contractor must update their Apprenticeship offer funded by The SFA at www.coursedirectoryproviderportal.org.uk in accordance with the course directory data requirements which can be found at [https://coursedirectoryproviderportal.org.uk/Help under the section “Digital Apprenticeship Service Help Documents”](https://coursedirectoryproviderportal.org.uk/Help%20under%20the%20section%20%E2%80%9CDigital%20Apprenticeship%20Service%20Help%20Documents%E2%80%9D)
- 17.9 The Contractor shall register with UKRLP and maintain contact details on an on-going basis. (<http://www.ukrlp.co.uk/>).
- 17.10 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 SFA.

18 Quality Assurance and Raising Standards

- 18.1 The Contractor undertakes to The SFA that it has the resources and skills necessary to carry out The Contractor’s obligations pursuant to this Contract.
- 18.2 The Contractor shall comply with the Performance Management Rules published by the SFA as amended from time to time and any other requirements, which may from time to time be issued by The SFA, OFSTED, the awarding organisations and other regulatory bodies and of which The Contractor is made aware.
- 18.3 The Contractor shall ensure that all activities carried out pursuant to this Contract shall be documented in accordance with the requirements of The SFA and shall provide such documentation to them as The SFA shall request from time to time.
- 18.4 The Contractor shall continuously seek to improve the Services and raise standards to benefit the Apprentice. The Contractor shall have the primary responsibility for improving standards and will need to demonstrate to The SFA satisfaction that it has an effective quality assurance system based on the implementation of its own quality improvement process. The SFA reserves the right to require The Contractor to provide The SFA or OFSTED evidence to support the quality improvement processes.
- 18.5 The Contractor shall use all reasonable endeavours to:
- 18.5.1 minimise drop out rates and deliver high completion and achievement rates and appropriate progression;
 - 18.5.2 at least meet the minimum quality standards that apply to the appropriate Services purchased. These minimum quality standards will be set out by The SFA;
 - 18.5.3 ensure competent and appropriately qualified staff deliver and assess learning. The Contractor shall be responsible for the professional development and training of its staff;

- 18.5.4 offer equality of access to learning opportunities and close equality gaps in learning and outcomes;
 - 18.5.5 provide a safe, healthy and supportive environment, which meets the needs of Apprentices;
 - 18.5.6 provide good management and leadership of the learning process;
 - 18.5.7 deliver value for money and financial probity; and
 - 18.5.8 ensure all sub-contractors delivering Services under the Contract on behalf of The Contractor comply with the requirements set out in 18.5.1 to 18.5.7 above.
- 18.6 Failure to meet the requirements set out in clauses 18.5.1 to 18.5.8 may result in The SFA assessing The Contractor to be in Serious Breach of the Contract under Clause 21 of the Contract.
- 18.7 The SFA may assess the quality and delivery of the Services and The Contractor's compliance with the requirements in clause 18.5.1 to 18.5.8 during the term of the Contract. The Contractor will be informed of the outcome of that process. Where The SFA assesses The Contractor to be in Serious Breach of Contract following such assessment The SFA may terminate the Contract with immediate effect.
- 18.8 When The Contractor receives notification from OFSTED that the Services are to be inspected, The Contractor shall provide The SFA 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 SFA of the date of the meeting at which OFSTED give feedback on the inspection and allow The SFA's nominated representative to attend the meeting if requested. The Contractor must confirm to The SFA in writing the outcome of the inspection within 5 working days of receiving the feedback from OFSTED.
- 18.9 Where all or any part of the Services delivered under the Contract are assessed by OFSTED as inadequate, The SFA may terminate the Contract by giving The Contractor no less than three months' notice.
- 18.10 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 SFA or identified through an inspection by OFSTED. The SFA may request evidence from The Contractor that the Services delivered by the sub-contractor meet the requirements of the Contract.
- 18.11 Where appropriate, The Contractor shall confirm in writing to The SFA that their awarding organisation 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 organisation name(s).

- 18.12 The Contractor must notify The SFA immediately in writing if it receives any sanction from an awarding organisation.
- 18.13 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.
- 18.14 As part of the delivery of the Services, The Contractor must provide high quality and easily accessible information and advice to help Apprentices to understand the opportunities and support available to them about education, training or connected matters.
- 18.15 The Contractor must take all reasonable steps to meet the relevant requirements for data gathering for the FE Choices Performance Indicators as outlined currently at <https://www.gov.uk/government/collections/fe-choices-information-for-providers> and in any subsequent updates to these web pages.

19 Fraud and Irregularity

- 19.1 The Contractor shall notify The SFA 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:
 - 19.1.1 collusion with members of the staff of The SFA or employees of the Department for Education;
 - 19.1.2 computer fraud;
 - 19.1.3 the submission to The SFA of inaccurate, incomplete, misleading or falsified information for the purpose of a claim for funding;
 - 19.1.4 fraud involving awarding organisation's;
 - 19.1.5 fraud involving sub-contractors;
 - 19.1.6 fraud involving employers and end-point assessment organisations:
- provided that nothing in this Clause 19 shall require The Contractor to do anything, which may cause it to infringe any law.
- 19.2 Where The SFA has reasonable cause to suspect that fraud or irregularity has occurred in relation to the delivery of the Contract and payments made hereunder, The SFA 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.

- 19.3 Where The SFA 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 SFA and The Contractor and payments made there under it shall have the right to suspend payments and/or require The Contractor to suspend recruitment of Apprentices under this Contract and any other Contract between the Parties.
- 19.4 The Parties shall co-operate in the identification of Apprentices who may be unlawfully claiming benefits. The SFA may from time to time brief The Contractor as to the co-operation and assistance it reasonably requires including the provision of information regarding fraud by Apprentices. The SFA shall provide a named contact or telephone answering machine for receiving such information.

20 Other Sources of Funding

- 20.1 Where The Contractor or any of its sub-contractors has access to other funding streams, The Contractor or any of its sub-contractors will be required to demonstrate through accounting, management information systems and any other relevant evidence (in the sole discretion of The SFA or any other body undertaking the audit or monitoring), to The SFA and anybody set out in clause 12.2 that no double funding has occurred in respect of the Services delivered under the Contract.

- 20.2 Where The SFA identifies double funding in respect of the Services, or any part thereof, The Contractor will be liable to repay to The SFA any sums paid, or part thereof, by The SFA in respect of the Services for which The Contractor has received funding from another source and The SFA reserves the right to deduct such sums from any monies owed to The Contractor under the Contract or any subsequent Contract..

21 Breach

- 21.1 For the purpose of this Clause, the following definitions shall have the meanings set out below:
- 21.2 "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;
- 21.3 "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 Apprentices would constitute a Serious Breach.
- 21.4 For the avoidance of doubt:
- a) neither Party shall be liable for any Minor Breach or Serious Breach under this Clause, which occurs as a direct result of any act or omission by the other Party, its staff or agents;
 - b) in the event of a breach the Party not in breach may enforce the Clauses in the Contract relating to breach even if it has not done so in the event of earlier breaches.

Minor Breach

- 21.5 Without prejudice to any other remedy, in the event of a Minor Breach, the Parties will adopt the following procedure:
- 21.6 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.
- 21.7 If the Party in breach fails to remedy the Minor Breach within the time specified in notice served under Clause 21.6 or such other period as may be agreed between the Parties it shall constitute a Serious Breach by the Party in breach.

Serious Breach

- 21.8 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:
- 21.9 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.
- 21.10 Where The SFA has served a notice under clause 21.9 The SFA has the right to require The Contractor to suspend the recruitment of Apprentices until The SFA has confirmed that the breach has been remedied.
- 21.11 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 21.9 or such other period as may be agreed between the Parties The SFA may cease funding The Contractor in respect of that part of the Service to which the Serious Breach relates.
- 21.12 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 21.9 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.

22 Termination

- 22.1 The Contractor shall notify The SFA in writing immediately upon the occurrence of any of the following events:
- 22.1.1 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
- 22.1.2 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 22.1.1 or 22.1.3 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
- 22.1.3 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.

- 22.2 On the occurrence of any of the events described in this Clause 22 The SFA shall be entitled to terminate this Contract by notice to The Contractor with immediate effect.
- 22.3 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 clause The SFA shall be entitled to terminate this Contract by notice to The Contractor or its representatives with immediate effect.
- 22.4 Either Party may terminate this Contract with immediate effect in the event that in the reasonable opinion of the Party wishing to terminate this Contract, the conduct of the other in performing its obligations under this Contract amounts to a fundamental breach of the Contract, which is incapable of remedy.
- 22.5 The SFA reserves the right to terminate this Contract with immediate effect by giving notice in writing if The Contractor ceases to be on the Register of Apprenticeship Training Providers maintained by The SFA.
- 22.6 In addition to the rights of termination under any other clauses of this Contract, either party 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.
- 22.7 Termination under Clauses 22 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.
- 22.8 Where The Contractor goes into administration or liquidation, The SFA must be assumed to be a creditor of The Contractor. The Contractor must take steps to ensure that The SFA is provided with details of the administrator or liquidator and receives notification of any creditors meetings. The SFA will confirm whether in fact it is a creditor within 8 weeks of being notified that The Contractor is in administration or liquidation.
- 22.9 The Contractor shall upon termination of the Contract immediately deliver up to The SFA all correspondence, documents, specification papers and other property belonging to The SFA, which may be in its possession or under its control.
- 22.10 Notice of termination of the Contract under Clauses 18.10, 21 or this Clause 22 shall result in The Contractor being removed from the Register of Apprenticeship Training Providers.

- 22.11 The Contractor must not recruit new Apprentices after notice of termination of the Contract has been given under Clauses 18.10, 21 or this Clause 22. The SFA will not be liable to make payments in respect of any Apprentices recruited in breach of this Clause.

23 Transfer of Responsibility on Expiry or Termination

- 23.1 The Parties agree that if upon termination of this Contract or any part of the Service being provided under the Contract, circumstances arise in which the Transfer of Undertakings (Protection of Employment) Regulations 2006 are applicable, the Parties shall in good faith co-operate with each other in the disclosure of information and the provision of other assistance of the Contract so as to facilitate such outcome in relation to the relevant employees as may be acceptable to the Parties.
- 23.2 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 Apprentices and to assist the implementation of any contingency plan proposed by The SFA 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.
- 23.3 On termination or expiry of this Contract for any reason the Evidence Packs will become the property of The SFA. The Contractor shall allow The SFA his servants or agent to have access to its premises to remove Evidence Packs or otherwise comply with a request by The SFA to transfer Evidence Packs to any third party nominated by The SFA.
- 23.4 The Contractor shall, at no cost to The SFA, promptly provide such assistance and comply with such timetable as The SFA may reasonably require for the purpose of ensuring an orderly transfer of responsibility for provision of the Services (or its equivalent) upon the expiry or other termination of this Contract. The Contractor shall use all reasonable endeavors to ensure that its employees and its sub-contractors are under a similar obligation. The SFA shall be entitled to require the provision of such assistance both prior to and after the expiry or other termination of this Contract.
- 23.5 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.
- 23.6 The Contractor undertakes that it shall not knowingly do or omit to do anything which may adversely affect the ability of The SFA to ensure an orderly transfer of responsibility for provision of the Services.

24 Force Majeure

- 24.1 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.

25 Public Reputations of the Parties/Press Releases

- 25.1 Both Parties recognise their respective public reputations and legal responsibilities. Each Party shall use all reasonable endeavours not to harm or compromise these.
- 25.2 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.

26 Branding and logos

- 26.1 The Contractor shall comply with the requirements of the endorsement identity, available on the Skills Funding Agency identity guidelines website at <https://brand.skillsfundingagency.bis.gov.uk/>; on all and any promotional materials or activities in relation to the Services. This shall include but not be limited to prospectuses, direct mail advertising, TV and radio advertising, merchandising or any other literature or products.
- 26.2 The Contractor shall be given access to any logos and statements, which it is required to use. The Contractor will be required to use logos and statements in accordance with the terms of use and should not alter or amend such logos or statements. Logos and statements are only to be used in relation to the Services under this Contract. Any breach of this clause 26 or the requirements or terms of use of which The Contractor is made aware shall constitute a serious breach under Clause 21 of the General Terms and Conditions of this Contract.
- 26.3 The Contractor may also be required to use logos from other co-branding or co-funding participants and must comply with any terms which apply to the use of such logos.
- 26.4 The Contractor must ensure that the terms of this Clause 26 are contained in any sub-contract of the Services.

27 Retention of Documents

- 27.1 The Contractor and its sub-contractors shall maintain original invoices; management information returns and all other documents necessary to verify the Services in relation to this Contract for 6 years from the end of the financial year in which the last payment is made.
- 27.2 The provisions of this Clause shall apply during the continuance of this Contract and after its termination howsoever arising.

28 Status of Contract

- 28.1 Nothing in this Contract shall have the effect of making The Contractor, the servant or agent of The SFA, 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 SFA against tax, national insurance contributions or similar imposed for which The SFA may be liable in respect of The Contractor by reason of this Contract.

29 Waiver

- 29.1 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.

30 Third Party Rights

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

31 Notice

- 31.1 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
- 31.2 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.

32 Governing / Jurisdiction

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

33 Dispute Resolution

- 33.1 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 SFA and The Contractor for discussion and review in order to try to resolve the same.
- 33.2 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 SFA'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.
- 33.3 The Dispute Resolution Panel will meet within 28 days of receiving a request for referral made in accordance with clause 33.2 above.

34 Feedback and Complaints

- 34.1 The primary responsibility for receiving feedback and investigating complaints promptly and thoroughly in respect of the Services shall rest with The Contractor. The Contractor shall have procedures in place, which are acceptable to The SFA, to gather and act upon feedback and complaints from Apprentices and/or their representatives and employers and the wider community.
- 34.2 The Contractor must ensure that Apprentices are made aware of its procedure for dealing with complaints and that the procedure is clear and accessible to Apprentices who wish to complain.
- 34.3 The Contractor shall be responsible for resolving complaints in accordance with its own procedures and any guidance issued by The SFA.
- 34.4 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 SFA and co-operate with any investigation carried out by The SFA and act on any recommendations made by The SFA following the investigation.

35 State Aid

- 35.1 The Contractor should satisfy itself, if the European rules on State Aid apply to the Services delivered under this Contract.
- 35.2 Where the rules on State Aid apply, The SFA will supply to The Contractor details of the records that The Contractor will need to collect and retain.
- 35.3 The SFA 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 SFA will confirm to The Contractor in writing the exact percentage of the contribution.
- 35.4 Where SFA requires The Contractor to obtain a contribution towards the cost of the Services under clause 35.3 above, The Contractor must provide evidence that the contribution has been received.
- 35.5 In the event that any funding paid under this Contract is deemed to constitute unlawful state aid The SFA reserves the right to require immediate repayment of any such funding.

36 Intellectual Property Rights

36.1 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 Evidence Packs;

“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.

36.2 In consideration of The SFA making the payments to The Contractor in connection with the Services The Contractor hereby grants (and, where relevant, shall procure from any necessary third parties the grant) to The SFA 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 SFA may reasonably require to be able fully to exploit, develop and commercialise the results of the Services, including, without limitation, the Work.

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

37 Disposal of Assets and Change of Use

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

37.2 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 SFA if it has been acquired wholly or partly with funds provided by The SFA;
- 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 SFA 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.

- 37.3 The Contractor shall ensure that any Asset financed by The SFA is adequately insured.
- 37.4 The Contractor shall inform The SFA if it proposes to dispose of, or change the use of, any Asset that has been financed by The SFA.
- 37.5 The Contractor shall not dispose of any Asset financed by monies provided by The SFA unless it has first obtained the written consent of The SFA to such a disposal.
- 37.6 Where The Contractor disposes of the Asset it shall pay to The SFA whichever is the greater either the amount of funding provided by The SFA in respect of the Asset or the net proceeds of any disposal of an Asset, or the appropriate proportion thereof, to The SFA unless otherwise agreed with The SFA.
- 37.7 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 SFA in accordance with clause 37.6 above.
- 37.8 In the event of The Contractor being taken over, merging or going into liquidation, all Assets financed by The SFA, or the equivalent portion of their market value, will become the property of The SFA.
- 37.9 The provisions of this clause shall apply during the continuance of this Contract and after its termination howsoever arising. The SFA shall reserve the right to decide when its interest in Assets financed by The SFA under the terms of the Contract shall cease.

38 Headings

- 38.1 The headings to conditions shall not affect their interpretation.

39 Entire Contract / Amendments

- 39.1 The Contract shall comprise the following:

Terms and Conditions in this document

Appendices 1 and 2

Apprenticeship Funding Rules for Training Providers May 2017 to March 2018

ILR specification validation rules and appendices

Performance Management Rules

Any tender specification

Any response to an Invitation to Tender

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

DRAFT