

# CONTRACT FOR SERVICES AND CONSULTANCY

## TITLE –

This contract is made this                      day of                      between:

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

Hereinafter called  
THE CONTRACTOR

Hereinafter called  
THE SFA

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## IT IS AGREED AS FOLLOWS

### 1 DEFINITIONS

- 1.1 “Contract” means the contract between the above named parties consisting of this contract document, the specification and any other documents (or parts thereof) specified in the Contract
- 1.2 “Individualised Learner Record” is the primary data collection return required from learning providers by the Skills Funding Agency about further education and work-based learning in England.
- 1.3 “Earnings Adjustment Statement” means the monthly statement to be submitted by THE CONTRACTOR setting out eligible costs for Services Payments from ESF Funding, this is an online process that is used to claim funding that is not reported in the “Individualised Learner Record”
- 1.4 “ESF Funding” means European Social Funding
- 1.5 “ESF Funding Rules” means the document which sets out the detailed conditions applicable to ESF Funding which form part of the terms and conditions of this Contract.
- 1.6 “Funding Payments” means payments from ESF Funding to be paid to Recipients
- 1.7 “Grant” means community grant funded by ESF Funding

- 1.8 “Recipients” means organisations in receipt of a Grant
- 1.9 “Services” means the provision of services as specified in the Specification
- 1.10 “Services Payments” means payments made or to be made by the SFA out of ESF Funding to THE CONTRACTOR in consideration of THE CONTRACTOR providing the Services
- 1.11 “Specification” means the document setting out THE SFA’s requirements for the Services issued with the invitation to tender.

## **2 COMMENCEMENT AND CONTINUATION**

- 2.1 The Contract shall commence on \*\*\* enter start date\*\*\* and, shall finish on or before 31 March 2018.

## **3 THE CONTRACTOR’S OBLIGATIONS**

- 3.1 THE CONTRACTOR shall carry out the Services with reasonable skill, care and diligence in accordance with the Contract
- 3.2 THE CONTRACTOR shall make available for the purposes of the Services any individuals named in the Specification as key personnel. THE CONTRACTOR shall provide THE SFA, with a list of names and addresses of all others regarded by THE CONTRACTOR as key personnel and, if and when instructed by THE SFA, all other persons who may be at any time concerned with the Services or any part of it, specifying in each case the capacities in which they are so concerned and giving such other particulars and evidence of identity and other supporting evidence as THE SFA may reasonably require. THE SFA may at any time by notice to THE CONTRACTOR designate any person concerned with the project or any part of it as a key person. THE CONTRACTOR shall not without the prior written approval of THE SFA make any changes in the key personnel referred to in this paragraph. THE CONTRACTOR shall be solely responsible in every way for its employees, agents, associates and sub-contractors
- 3.3 Where THE CONTRACTOR sub-contracts or intends to sub-contract the delivery of any part of the Services under this Contract it must ensure that it has robust sub-contracts in place and effective arrangements for managing its sub-contracts. Sub-contracting any part of the Services shall not relieve THE CONTRACTOR of any obligation or duty attributable to him under the Contract or these conditions
- 3.4 Where THE CONTRACTOR enters a sub-contract with a supplier or contractor for the purpose of performing the Services,

he shall cause a term to be included in such sub-contract which requires payment to be made to the supplier or contractor within a specified period not exceeding 30 days from receipt of a valid invoice as defined by the sub-contract requirements

3.5 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 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

3.6 THE CONTRACTOR shall indemnify and keep indemnified THE SFA, its 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, its servants, employees, or agents in respect of any loss or damage or personal injury (including death) which arises from any advice given or anything done or omitted to be done under this Contract to the extent that such loss, damage or injury is caused by any act neglect or default or the other wrongful act of THE CONTRACTOR, his servants or agents

3.7 THE CONTRACTOR shall maintain at its own cost a comprehensive policy of insurance to cover the liability of THE CONTRACTOR in respect of any actual default for which it may become liable to indemnify THE SFA under this Contract. Where appropriate THE CONTRACTOR will hold Professional Indemnity Insurance in the sum of £1,000,000 at least in respect of any one incident, unless this is otherwise agreed in writing by THE SFA. THE CONTRACTOR should provide copies of any insurance certificates to THE SFA including professional indemnity, employers liability and public liability insurance

3.8 THE CONTRACTOR shall ensure that all relevant Employee National Insurance contributions and Income Tax contributions are fully compliant with current UK Government policy and Legislation

3.9 THE CONTRACTOR shall ensure that all employees within their organisation and its subsidiaries are employed in conditions deemed to be reasonable, and that all current minimum wage legislation in the UK is applicable to all of THE CONTRACTORS workforce, whether this workforce is employed on a temporary basis or on a full time permanent basis

3.10 Prevention of Bribery

3.10.1 In this clause

3.10.2 "Bribery Act" means the Bribery Act 2010;

3.10.3 "Prohibited Act" means any of the following:

3.10.3.1 to directly or indirectly offer, promise or give any person working for or engaged by THE SFA a financial or other advantage to (i) induce that person to perform improperly a relevant function or activity or (ii) reward that person for improper performance of a relevant function or activity; or

3.10.3.2 to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement; or

3.10.3.3 committing any offence (i) under the Bribery Act; (ii) under legislation creating offences concerning fraudulent acts; (iii) at common law concerning fraudulent acts relating to this Agreement or any other contract with THE SFA; or (iv) defrauding, attempting to defraud or conspiring to defraud THE SFA.

3.10.4 THE CONTRACTOR shall not and shall procure that any of its employees, consultants, agents, or sub-contractors shall not commit a Prohibited Act in connection with the Contract.

3.10.5 THE CONTRACTOR warrants, represents and undertakes to THE SFA that it is not aware of any financial or other advantage being given to any person working for or engaged by THE SFA, or that an agreement has been reached to that effect, in connection with the execution of this Contract, excluding any arrangement of which full details have been disclosed in writing to THE SFA before execution of this Contract.

3.10.6 THE CONTRACTOR shall:

3.10.6.1 if requested, provide THE SFA with any reasonable assistance to enable THE SFA to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act;

3.10.6.2 if so required by THE SFA within 20 Working Days of the Commencement Date, and annually thereafter, certify to THE SFA in writing compliance with this clause 3.10 by THE CONTRACTOR and all persons associated with it or other persons who are supplying goods or services in connection with this Contract. THE

CONTRACTOR shall provide such supporting evidence of compliance as THE SFA may reasonably request.

- 3.10.7 THE CONTRACTOR shall have and maintain an anti-bribery policy (which shall be disclosed to THE SFA on request) to prevent it and any of its employees, consultants, agents or sub-contractors from committing a Prohibited Act and shall enforce it where appropriate.
  - 3.10.8 if any breach of clause 3.10.4 is suspected or known, THE CONTRACTOR must notify THE SFA immediately.
  - 3.10.9 if THE CONTRACTOR notifies THE SFA that it suspects or knows that there may be a breach of clause 3.10.4, THE CONTRACTOR must respond promptly to THE SFA's enquiries, co-operate with any investigation, and allow THE SFA to audit books, records and any other relevant documentation. This obligation shall continue for three years following the expiry or termination of this Contract.
  - 3.10.10 A breach of clause 3.10.4 shall be a fundamental breach for the purposes of this Contract.
- 3.11 Conflict Of Interest :-
- 3.11.1 In carrying out its obligations under the Contract THE CONTRACTOR shall ensure that no conflict of interest arises which will or will be likely to prejudice its independence and objectivity or otherwise detrimentally affect THE CONTRACTOR'S ability to perform the Contract or cause embarrassment to THE SFA.
  - 3.11.2 Upon becoming aware of any such conflict of interest during the performance of the Contract (whether the conflict existed before the award of the Contract or arises during its performance) THE CONTRACTOR shall immediately notify THE SFA in writing of the same, giving particulars of its nature and the circumstances in which it exists or arises and shall furnish such further information as THE SFA may reasonably require.
  - 3.11.3 Where THE SFA is of the reasonable opinion that a conflict of interest notified to it under clause 3.11 is capable of being ameliorated by THE CONTRACTOR THE SFA may require THE CONTRACTOR to take such reasonable steps as will, in THE SFA's opinion, avoid or remove the conflict.
  - 3.11.4 THE SFA may terminate the Contract immediately by notice in writing to THE CONTRACTOR and recover

from THE CONTRACTOR the amount of any losses incurred by THE SFA arising from such termination if:

3.11.5 THE CONTRACTOR fails to comply with the requirements notified to THE CONTRACTOR by THE SFA in accordance with clause 3.11 or in the reasonable opinion of THE SFA, it is not possible to avoid or remove the conflict of interest.

3.12 Where the Services are funded by ESF Funding THE CONTRACTOR will comply with the ESF programme publicity requirements and cross cutting themes covering gender equality and equal opportunities and sustainability set out in the ESF Funding Rules. If a failure by THE CONTRACTOR results in recovery of ESF Funding from THE SFA this sum will be recovered from THE CONTRACTOR.

## **4 QUALITY ASSURANCE**

4.1 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.

4.2 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 THE SFA as THE SFA shall request from time to time.

4.3 THE CONTRACTOR shall regularly evaluate the activities carried out pursuant to this Contract and inform THE SFA of the results of such evaluation on a regular basis, as agreed from time to time with THE SFA.

4.4 THE CONTRACTOR shall keep in place a system for dealing with any failure to provide the Services at the level and to the standard required by THE SFA and shall carry out a review of such system and report the results to THE SFA at such times as THE SFA shall reasonably require.

## **5 PAYMENT**

5.1 THE SFA will make the Funding and Services Payments in accordance with Schedule 2.

5.2 Services Payments and Funding Payments 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.

5.3 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 Funding Payments or Services Payments made by THE SFA and identifies errors in that evidence which it deems are material, THE SFA reserves the right to recover from THE CONTRACTOR an amount based on the error rate identified and the total value of the Contract. Such amounts may be raised by raising an invoice for payment by THE CONTRACTOR, or making deductions from future Services Payments and or Funding Payments due to THE CONTRACTOR under the Contract. Failure to settle such amounts by THE CONTRACTOR will constitute a Serious Breach under Clause 9 of the Contract. The decision of THE SFA as to the amount of recovery under this Clause is final.

5.4 All sums payable under this Contract unless otherwise stated are inclusive of VAT and other duties or taxes.

## **6 LIMITATION OF LIABILITY**

6.1 THE SFA shall not be liable to THE CONTRACTOR for any indirect or consequent loss, damage, injury or costs whatsoever which arise out of or are connected with THE SFA's adherence or non-adherence to the terms and conditions of this Contract.

## **7 PROHIBITED ACTIVITIES**

7.1 THE CONTRACTOR shall not enter into any Contract with any political or religious organisation if the effect of that Contract would be to promote a particular political or religious point of view.

7.2 THE CONTRACTOR shall not hold itself out as acting on behalf of THE SFA without THE SFA'S permission.

## **8 INTELLECTUAL PROPERTY RIGHTS**

- 8.1 THE CONTRACTOR agrees to assign to THE SFA all right, title and interest in and to Confidential Information made, originated or developed during the course of or otherwise related to the Services, together with any other intellectual property rights arising out of the provision of the services and to do everything necessary to effect such an assignment. 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.
- 8.2 Copyright and right in the nature of copyrights, in the material produced in the performance, and during the currency of this Contract, and in all materials submitted under the terms of this Contract, shall vest in THE SFA. Such material shall not be reproduced, or disseminated for any other purpose, by THE CONTRACTOR without the written permission of THE SFA.
- 8.3 Both parties agree that all materials, works, software, documentation and manuals that are developed as a result of this agreement will remain the property of THE SFA and THE CONTRACTOR will not change, adjust, distribute, sell or sublicense this to another 3<sup>rd</sup> party without THE SFA'S prior written consent.
- 8.4 The provisions of this condition 8 shall apply during the continuance of this contract and after its termination howsoever arising.

## **9 BREACH**

- 9.1 For the purpose of this Clause, the following definitions shall have the meanings set out below:
- 9.2 "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;
- 9.3 "Serious Breach" shall mean any breach defined as a Serious Breach in the Contract or any breach or breaches which adversely, materially and substantially affects the performance or delivery of the Service or compliance with the terms and conditions of the Contract.
- 9.4 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*

- 9.5 Without prejudice to any other remedy, in the event of a Minor Breach, the Parties will adopt the following procedure:
- 9.6 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.
- 9.7 If the Party in breach fails to remedy the Minor Breach within the time specified in notice served under Clause 9.6 or such other period as may be agreed between the Parties it shall constitute a Serious Breach by the Party in breach.

#### *Serious Breach*

- 9.8 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:
- 9.9 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.
- 9.10 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 9.9 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.

### **10 TERMINATION**

- 10.1 THE CONTRACTOR shall notify THE SFA in writing immediately upon the occurrence of any of the following events:
  - a. 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 his affairs; or

- b. 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 (a) or (c) of this condition occurs in respect of any partner in the firm or any of those persons or a petition is presented for CONTRACTOR to be wound up as an unregistered company; or
- c. 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 administrative receiver, receiver or manager is appointed by a creditor or by the court, or possession is taken of any of its property under the terms of a floating charge.

10.2 On the occurrence of any of the events described in paragraph 10.1, or if THE CONTRACTOR shall have committed a material breach of this contract and (if such breach is capable of remedy) shall have failed to remedy such breach within thirty days of being required by THE SFA in writing to do so, 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 THE SFA shall be entitled to terminate this contract by notice to THE CONTRACTOR with immediate effect.

10.3 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

10.4 In addition to the rights of termination under paragraph 10.2 and 10.3, either party shall be entitled to terminate this contract by giving to the other not less than 3 months' notice to that effect without the need to give a reason for termination.

10.5 Termination under paragraphs 10.2, 10.3 or 10.4 shall not prejudice or affect any right of action or remedy, which shall have accrued or shall thereupon accrue to THE SFA and shall not affect the continued operation of clause 3. and 8 of this Contract.

10.6 THE CONTRACTOR shall upon termination of the Contract immediately deliver up to THE SFA all correspondence, documents, specification papers and property belonging to THE SFA which may be in its possession or under control.

10.7 THE CONTRACTOR shall upon termination of the Contract comply with all reasonable requests by THE SFA to facilitate the handover of services.

## 11 FORCE MAJEURE

- 11.1 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.

## 12 DATA PROTECTION

- 12.1 The parties shall ensure that they 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.
- 12.2 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.
- 12.3 THE CONTRACTOR shall:
- 12.3.1 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);
  - 12.3.2 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;
  - 12.3.3 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;

- 12.3.4 take reasonable steps to ensure the reliability of any Contractor Personnel who have access to the Personal Data;
- 12.3.5 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;
- 12.3.6 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;
- 12.3.7 notify THE SFA within 5 working days if it receives:
  - 12.3.7.1 a request from a Data Subject to have access to that person's Personal Data; or
  - 12.3.7.2 a complaint or request relating to THE SFA obligations under the Data Protection Legislation;
- 12.3.8 provide THE SFA with full co-operation and assistance in relation to any complaint or request made, including by:
  - 12.3.8.1 providing THE SFA with full details of the complaint or request;
  - 12.3.8.2 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;
  - 12.3.8.3 providing THE SFA with any Personal Data it holds in relation to a Data Subject (within the timescales required by THE SFA); and
  - 12.3.8.4 providing THE SFA with any information requested by them or their representatives.
- 12.3.9 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;

12.3.10 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

12.3.11 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:

12.3.11.1 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

12.3.11.2 any reasonable instructions notified to it by THE SFA.

## 13 FREEDOM OF INFORMATION CONFIDENTIALITY AND TRANSPARENCY

### 13.1 Definitions

**“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 thereunder 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 13 ; and

**“FOIA notice”** means a decision notice, enforcement notice and/or an information notice.

## 13.2. Freedom of Information

13.2.1 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.

13.2.2 THE CONTRACTOR acknowledges and agrees that THE SFA is required by law to consider each and every request made under FOIA for information.

13.2.3 THE CONTRACTOR acknowledges and agrees that all decisions made by THE SFA pursuant to a request under FOIA is solely a matter for and at the discretion of THE SFA.

13.2.4 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 CHIEF EXECUTIVE; 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.

13.2.5 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.

13.2.6 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.

13.2.7 THE CONTRACTOR shall assist THE SFA as reasonably necessary to enable THE SFA to comply with its obligations under FOIA.

13.3 THE CONTRACTOR shall treat as confidential all documents and information provided by THE SFA during or in connection with the performance of this Contract which contain Exempt Information. Such documents and information shall not be used by THE CONTRACTOR except for the purposes for which they were made available and shall not be disclosed by THE CONTRACTOR to any other person without the prior written consent THE SFA. THE CONTRACTOR shall use all reasonable endeavours to ensure that its employees and its sub-contractors are under a similar obligation of confidentiality in respect of the relevant documents and information. The above restriction shall not apply to information which:

13.3.1 is or has become part of the public domain other than as a result of a breach of the obligations of confidentiality under this Contract; or

13.3.2 is disclosed to sub-contractors contracted to deliver all or part of the Services.

13.4 THE SFA reserves the right to share information about THE CONTRACTOR'S performance under this Contract with the Department for Business Innovation and Skills and any other government department or government agency or other public body.

## 13.5 Transparency :-

13.5.1 In order to comply with the Government's policy on transparency in the areas of procurement and contracts THE CONTRACTOR agrees that the Contract and the tender documents issued by THE SFA which led to its creation will be published by THE SFA on a designated web site.

13.5.2 The entire Contract and all the tender documents issued by the Authority will be published on the designated web site save where to do so would disclose information the disclosure of which would:

13.5.2.1 contravene a binding confidentiality undertaking;

13.5.2.2 be contrary to regulation 43 of the Public Contracts Regulations 2006; or

13.5.2.3 In the reasonable opinion of THE SFA be prevented by virtue of one or more of the exemptions in the FOIA or one or more of the exceptions in the EIR.

13.5.3 If any of the situations in 13.5.2.1 to 13.5.2.3 apply THE CONTRACTOR consents to the Contract or tender documents being redacted by THE SFA to the extent necessary to remove or obscure the relevant material and being published on the designated website subject to those redactions.

13.5.4 In clause 13.2.1 the expression "tender documents" means the advertisement issued by the Authority seeking expressions of interest, the pre qualification questionnaire and the invitation to tender.

## 13.6 Information Sharing

13.6.1 THE SFA may disclose the Confidential Information of the Supplier:

- (a) on a confidential basis to any Central Government Body for any proper purpose of the Authority or of the relevant Central Government Body;
- (b) to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;

- (c) to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
- (d) on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in Clause 13.6.1 (a), (b) (including any benchmarking organisation) for any purpose relating to or connected with this Agreement;
- (e) on a confidential basis for the purpose of the exercise of its rights under this Agreement, including the Audit Rights, and Exit Management rights; or
- (f) on a confidential basis to a proposed Successor Body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Agreement,

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on THE SFA under this Clause 13.6.

13.7 The provisions of this Clause 13 will apply for the duration of the Contract and after its termination.

## **14 PUBLIC REPUTATION OF THE PARTIES/ PRESS RELEASES**

14.1 Both parties recognise their respective public reputations and legal responsibilities. Each party shall use all reasonable endeavours not to harm or compromise these.

14.2 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.

## **15 ACCESS AND MONITORING**

15.1 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.

15.2 For monitoring and evaluation purposes, THE SFA 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 Audit

Commission and the Sheffield Combined Authority or their representatives 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 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) 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.

15.3 THE CONTRACTOR shall, if required by any of the representatives stated at Clause 15.2 provide appropriate oral or written explanations.

15.4 THE SFA reserves the right, at any reasonable time, and as it may deem necessary to require THE CONTRACTOR at its own cost to:

15.4.1 provide evidence of financial resources and the level of turnover sufficient to enable it to continue to perform the Contract;

15.4.2 provide such assurance as THE SFA may require that the delivery of the Services complies with the requirements of the Contract;

15.4.3 obtain a report by an independent accountant of THE SFA's choice on;

15.4.3.1 the financial systems and controls operated by THE CONTRACTOR or its subcontractors;

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

15.4.3.3 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.

15.4.4 provide a copy of THE CONTRACTOR'S latest audited Accounts and submit further copies of the audited Accounts as they become available;

15.4.5 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;

15.4.6 provide any additional evidence to support payments made under this Contract, as THE SFA shall reasonably require.

15.5 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.

## **16 Fraud and Irregularity**

16.1 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:

16.1.1 collusion with members of the staff of THE SFA or employees of the Department for Business Innovation and Skills;

16.1.2 computer fraud;

16.1.3 the submission to THE SFA or THE CONTRACTOR of inaccurate, incomplete, misleading or falsified information for the purpose of a claim for funding;

16.1.4 fraud involving sub-contractors;

provided that nothing in this Clause 16 shall require THE CONTRACTOR to do anything, which may cause it to infringe any law.

16.2 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.

- 16.3 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 Learners under this Contract and any other Contract between the Parties.
- 16.4 The Parties shall co-operate in the identification of Learners 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 Learners. THE SFA shall provide a named contact or telephone answering machine for receiving such information.

## 17 Submission of Data

- 17.1 Where THE CONTRACTOR is required to 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 2015 to 2016' as amended and updated, which is published on THE SFA's website (<https://www.gov.uk/government/publications/ilr-specification-validation-rules-and-appendices-2015-to-2016>) 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;
  - 17.2.4 to enable reconciliation to take place; and
  - 17.2.5 to support the contract management and allocation processes.
- 17.3 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 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 18 and in 'Individualised Learner Record Specification 2015/16 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-2015-to-2016>)

- 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 9.

## **18 Retention of Documents**

- 18.1 THE CONTRACTOR, its sub-contractors and Providers shall maintain original invoices; management information returns and all other documents necessary to verify the Services and the delivery of education and training funded under this Contract for 6 years from the end of the financial year in which the last payment is made.
- 18.2 The CONTRACTOR must retain the documentation to verify the delivery of the Services education and training delivered by Providers funded by ESF Funding as set out in the ESF Funding Rules. Without prejudice to any of the other rights under the Contract to recover funds, THE SFA 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.
- 18.3 The provisions of this Clause shall apply during the continuance of this Contract and after its termination howsoever arising.

## **19 Dispute Resolution**

- 19.1 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.
- 19.2 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.
- 19.3 The Dispute Resolution Panel will meet within 28 days of receiving a request for referral made in accordance with clause 19.2 above.

## **20 STATUS OF CONTRACT**

- 20.1 Nothing in this Contract shall have the effect of making THE CONTRACTOR the servant of THE SFA. THE CONTRACTOR (if an individual) represents that he is regarded by both the Inland Revenue and the Department of Social Security as self employed and accordingly shall indemnify THE SFA against tax, national insurance contributions or similar impost for which THE SFA may be liable in respect of THE CONTRACTOR by reason of this Contract.

## **21 WAIVER**

- 21.1 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.

## **22 NOTICE**

- 22.1 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 or express or air mail or other fast postal service; or registered post; or 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[s].

- 22.2 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 is given by facsimile or other electronic media, simultaneously with the delivery or transmission. To prove the giving of a notice or other document it shall be sufficient to show that it was despatched.

## **23 GOVERNING/JURISDICTION**

- 23.1 This Contract shall be governed by and construed in accordance with English Law and the parties hereby submit to the exclusive jurisdiction of the English Courts.

## **24 THIRD PARTY RIGHTS**

- 24.1 None of the terms of this Contract are intended to be enforceable by any third party.

## **25 HEADINGS**

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

## **26 ENTIRE CONTRACT/AMENDMENTS**

- 26.1 The Contract shall comprise of the following:
- 26.2 This Contract constitutes the entire Contract between the parties and shall not be varied except by an instrument in writing signed by the parties.

**AS WITNESS WHEREOF** this Contract has been signed the day and year first above written.

Authorised Signatory for and on behalf of the SFA

.....  
Name Position  
Name (Print).....  
Date: .....

Authorised Signatory for and on behalf of the Contractor

.....  
Name Position  
Name (Print).....  
Date: .....

## Schedule 1

### SERVICE REQUIREMENTS

1. The Services to be delivered is the development and management of Grants.
2. The Services must be delivered in accordance with the Specification issued with the invitation to tender and THE CONTRACTOR'S response to the invitation to tender which form part of the terms and conditions of the Contract.
3. THE CONTRACTOR must comply with the ESF Funding Rules in respect of Services Payments and Funding Payments claimed from ESF Funding and ensure that Providers delivering education and training funded from ESF Funding comply with the ESF Funding Rules.
4. THE CONTRACTOR will carry out the following activities:
  - Develop and Implement a marketing strategy
  - Develop and manage the Grant application process
  - Monitor the delivery of activity funded by Grants.
5. THE CONTRACTOR will develop an open, competitive and transparent application process for Grants, including:
  - specifying what activities will be supported
  - specifying eligibility and priority groups
  - setting selection criteria;
  - establishing the grant application scoring criteria;
  - Setting the timescales.
6. THE CONTRACTOR must publicise the application process and timetable and ensure that there are at least three opportunities for grant applications to be made during the Term. THE CONTRACTOR may implement a rolling programme of applications.
7. THE CONTRACTOR will apply the published application process to select Recipients to receive Grants in accordance with the Specification.
8. THE CONTRACTOR must develop and deliver an engagement and marketing strategy which reflects the specific requirements set out in the Specification to encourage relevant applications from appropriate organisations for Grants and ensure that applications for Grants do not duplicate provision that is already available through existing mainstream provision or ESF co-financing.

9. THE CONTRACTOR will work with other ESF community Grant Coordinating Bodies delivering in the same geographical location to ensure that there is collaborative working, no duplication of activity and processes are in place to ensure that there is no double funding of recipients. .
10. THE CONTRACTOR will enter in an agreement with Recipients which sets out the conditions on which the Grants are provided and contain as a minimum:
  - Payment mechanism
  - Participant Eligibility requirements
  - Evidence requirements
  - Monitoring arrangements.
11. THE CONTRACTOR will ensure that Recipients keep financial records such as invoices to support expenditure, bank statements, staff time sheets, job descriptions, expense payments and are able to fully evidence any claims made.
12. THE CONTRACTOR must monitor performance and delivery by Recipients in accordance with Grant agreement and report on performance to THE SFA including the impact of delivery in supporting employment outcomes for individual beneficiaries.

## Schedule 2

### FINANCIAL DETAILS

1. The provisions of this Schedule shall apply to Services Payments to be made by THE SFA to THE CONTRACTOR and to the Funding Payments to be made by THE CONTRACTOR to Providers. THE CONTRACTOR is not permitted to retain any Funding Payments itself.
2. The total maximum value of ESF Funding available for Services Payments over the lifetime of the contract is £xxx. This amount cannot be exceeded unless this has been agreed in writing with THE SFA.
3. THE CONTRACTOR will claim Services Payments and Grant Payments monthly in arrears via the Supplementary Data Collection. Claims for Services Payments are based a percentage of the defrayed grant payment and must be supported by evidence as detailed in the ESF Funding Rules. Claims for Grants Payments are based on grant funding defrayed by THE CONTRACTOR and must be supported by evidence as detailed in the ESF Funding Rules.
4. The total maximum value of ESF Funding for Funding Payments during the lifetime of the Contract is £xxxx. This amount cannot be exceeded unless this has been agreed in writing with THE CHIEF EXECUTIVE.
5. THE CONTRACTOR will claim Funding Payments by reporting the deliverables set out in the Specification via the Individual Learner Record for the academic year that the activity was delivered.
6. The SFA will review THE CONTRACTOR's performance and reconcile the ESF Funding paid against the Service delivered in accordance with the ESF Funding Rules.