



Education & Skills Funding Agency

Signed contract document

This contract has been signed by the authorised signatory for the Education and Skills Funding Agency, acting on behalf of the Secretary of State, and has been digitally signed by all parties.

Document reference: 10037289_ESIF-5503_v1

Signed by REDACTED (Section 40 FOIA refers) on 03 November 2021 as the
provider's authorised signatory User ID: ISP-WrightA



Education & Skills
Funding Agency



European Union
European
Social Fund

Contract Type	Contract for Services
Funding Period	8 November 2021 – 31 March 2023
Between	the Secretary of State for Education (acting through the Education and Skills Funding Agency)
And	WORKPAYS LIMITED
Funding for	European Social Fund
Contract Number	ESFA-21601

ACCEPTANCE BY THE CONTRACTOR

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

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

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

acting through the Education and Skills Funding Agency
by REDACTED (Section 40 FOIA refers) Interim Chief Executive of the Education & Skills Funding Agency

REDACTED (Section 40 FOIA refers)

ESF Contract for Services – Education and Training

Education and Skills Funding Agency Contract Reference ESFA-21601

www.gov.uk/ESFA

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Terms and Conditions

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

WORKPAYS LIMITED
Newbold Road
Chesterfield
S41 7PS

Company House No:
07387325

Hereinafter called
the Contractor

THE SECRETARY OF STATE
FOR EDUCATION ACTING
THROUGH THE EDUCATION
AND SKILLS FUNDING AGENCY,
AN EXECUTIVE AGENCY OF
THE DEPARTMENT FOR
EDUCATION

AND

CHEYLESMORE HOUSE
QUINTON ROAD
COVENTRY
CV1 2WT

Hereinafter called
the ESFA

GENERAL TERMS AND CONDITIONS

It is agreed as follows.

DEFINITIONS

“Basic Skills”	means one or more of the following: literacy (English); numeracy (maths); or ESOL (where English is not the Participant’s ‘mother tongue’) at entry level or above.
“Brokerage”	means the provision by a third party of services, for a fee, to source Sub-Contractors to provide the Services on behalf of the Contractor.
“Children”	means persons under the age of 18.
“Combined Authority”	means a legal structure comprising two or more local authorities to undertake certain statutory or delegated functions.
“Confidential Information”	means any information, including Personal Data as defined by Data Protection Laws, and any information, however it is conveyed, that relates to the business, affairs, developments,

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	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").
“Contract”	means the Contract between the above named parties consisting of these Terms and Conditions, the Specification, the Contractor’s response to the Specification including the Delivery Plan, the Funding Rules, the 2014 to 2020 ESF Programme ESF Specifications Deliverables Evidence Requirements, the European Social Fund Operational Programme 2014-2020 and any other documents (or parts thereof) specified in the Contract and any variations to the Contract agreed in writing and signed by both Parties.
“Contracts Finder”	means the Government’s publishing portal for public sector procurement opportunities.
“Contract Period”	means the period between the Commencement Date and the Expiry Date, unless terminated earlier on the Termination Date.
“Contractor Personnel”	means all persons employed or engaged by the Contractor together with the Contractor’s servants, agents, consultants and Sub-Contractors (and all persons employed by any Sub-Contractor together with the Sub-Contractor’s servants, consultants, agents, contractors and sub-contractors) used in the performance of its obligations under this Contract.
“Contractor Related Party”	means any officer, agent, employee of the Contractor acting in the course of his office or employment including any Sub-Contractors supplied by the Contractor in relation to the Services.
“Contract Value”	means the cumulative total of Funding payable under this Agreement as set out in Appendices 1 and 2.
“Conversion Rates”	means the rates at which the ESFA expects Participants should be able to achieve the Progression Outcomes as described in Table B of the Specification.
“Crown”	means the government of the United Kingdom (including the Northern Ireland Executive Committee and Northern Ireland Departments, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers, government departments, government offices and government agencies and “Crown Body” is an emanation of the foregoing.
“Data Controller”	takes the meaning given in the GDPR.

“Data Event”	Loss	means any event that results, or may result, in unauthorised access to Personal Data held by the Processor under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach.
“DPA 2018”		means the Data Protection Act 2018.
“Data Protection Impact Assessment”		means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.
“Data Protection Laws”		means the DPA 2018 and Privacy and Electronic Communications (EC Directive) Regulations 2003 and any other data protection laws and regulations applicable in the UK (or in any relevant part thereof), including the GDPR or similar and any codes of practice, guidelines and recommendations issued by the Information Commissioner, any replacement body or other relevant supervisory authority, all of which are current at the time of any Data processing by the Contractor (and in the event of any conflict between the Data Protection Laws and Law, Data Protection Laws shall take precedence).
“Data Protection Officer”		takes the meaning given in the GDPR.
“Data Subject”		takes the meaning given in the GDPR.
“Data Subject Access Request”		a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Laws to access their Personal Data; often referred to as SAR or DSAR.
“Devolution Agreement”		means the agreement between the Government and the Combined Authority devolving certain function to the Combined Authority.
“Disability”		the main national definition is as defined in section 6 of the Equality Act 2010 available at this link: https://www.gov.uk/definition-of-disability-under-equality-act-2010 . It refers to a person who: (i) has a physical or mental impairment; and (ii) the impairment has a substantial and long term negative effect on a person’s ability to carry out normal day to day activities.
“EIR”		means the Environmental Information Regulations 2004.
“Effective Date”		means the date on which this Contract entered into by the Contractor digitally signing the Contract on the Manage your education and skills funding service.

“Eligibility Criteria”	means the eligibility criteria set out in European Social Fund Programme for England 2014-2020 National Eligibility Rules, linked here: https://www.gov.uk/government/publications/european-social-fund-eligibility-documents/esf-national-eligibility-rules-and-programme-guidance which describe the criteria for assessing whether an individual is entitled to receive the benefit of the Services.
“Employed”	means persons who perform work for pay profit or family gain. People are self-employed if they work in their own business for the purpose of earning a profit, even if they are not making a profit or are just setting it up. Individuals who are Employed on Zero Hours Contracts may be described as employed, providing they meet the criteria described by the European Social Fund Programme. For individuals on Zero Hours Contracts please refer to: https://www.gov.uk/government/publications/european-social-fund-eligibility-documents/esf-national-eligibility-rules-and-programme-guidance .
“Evidence Requirements”	means the requirements set out in Funding Rules 2014-2020 ESF Programme ESF Specification Deliverables Requirements: ESF Specifications Deliverables Evidence Requirements (publishing.service.gov.uk).
“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).
“Expiry Date”	means 31 March 2023.
“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 Clause 6.
“FOIA Notice”	means a decision notice, enforcement notice and/or an information notice.
“Funding”	means sums paid by the ESFA to the Contractor in accordance with this Contract as set out in Appendices 1 and 2 (as varied).
“Funding Rules”	means the document which sets out the detailed requirements with which the Contractor must comply in respect of each Learning Programme delivered under this Contract as may be amended by the ESFA from time to time; as follows.

	Funding and performance management rules 2014 to 2020 European Social Fund (ESF) programme: https://www.gov.uk/government/publications/esf-funding-rules .
“GDPR”	means General Data Protection Regulation (Regulation (EU) 2016/679).
“GLA”	means the Greater London Authority consisting of the Mayor of London and members of the London Assembly.
“High Needs Learner”	means a Learner aged 16 to 18 with high levels of Special Educational Needs and Disability (SEND), supported with top-up funding from the high needs budget, or any young person aged 19 to 25 subject to an Education Health and Care Plan, who requires additional support costing over £6,000.
“IAG”	means the information, advice and guidance service offered to Participants by the Contractor as part of the Services.
“ILP”	means an individual learning plan as set out in the Funding Rules.
“ILR”	means the individual learner record as set out at: https://www.gov.uk/government/publications/esfa-european-social-fund-esf-round-2-supplementary-data-collection .
“Indirect Losses”	means loss of profits, loss of production, loss of business, loss of business opportunity, or any claim for consequential loss or for indirect loss of any nature.
“Inspectorates”	means one, any or all of the inspectorates: Office for Standards in Education, Children’s Services and Skills (Ofsted), Her Majesty’s Inspectorate for Education and Training in Wales (Estyn), the Quality Assurance Agency for Higher Education, the Office for Students, and the Care Quality Commission (CQC).
“LARS”	means the Learning Aims Reference Service as described here: https://hub.fasst.org.uk/Learning%20Aims/Pages/default.aspx .
“Law”	means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-laws, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgement of a relevant court, or directives or requirements by which the Contractor is bound.

“Learner”	means any third party including any student, apprentice, trainee or similar to whom the Contractor is required to deliver any of the Services, as termed Participant in the Specification.
“Learner Data”	means data about the learner, learning or contract deliverables submitted via the Individualised Learner Record, the Supplementary Data Collection or any other format, for the purposes of processing payments or reporting.
“Learner Files”	means any information relating to a Learner generated by the Contractor, the Learner or a third party for the purpose of the delivery of the Learning Programme.
“Learning Programme”	means a programme of education and/or training delivered by the Contractor under this Contract
“LED”	means the Law Enforcement Directive (Directive (EU) 2016/680).
“Less Developed Area”	a region where GDP (gross domestic product) per capita is less than 75% of the average of EU-27 countries (http://ec.europa.eu/eurostat/statistics-explained/index.php?title=National_accounts_and_GDP), as referenced in Table A of the Specification.
“Level 3”	means a qualification which is equivalent to an A Level.
“Local Enterprise Partnership (LEP)”	means a formalised partnership between local authorities to determine local economic priorities and lead economic growth and job creation within its area.
“Lot Area”	means the geographical area in which the Services are required to be delivered, as detailed in Part 4 of the Specification.
“Minor Breach”	shall have the meaning given in Clause 20.2.
“More Developed Area”	means a region where GDP (gross domestic product) per capita is above 90% of the average of EU-27 countries (http://ec.europa.eu/eurostat/statistics-explained/index.php?title=National_accounts_and_GDP), as referenced in Table A of the Specification.
“Non-Regulated Activity”	means those activities listed as not being regulated in the LARS on the Hub: https://hub.fasst.org.uk/Learning%20Aims/Pages/default.aspx .
“Offender Manager”	means an officer from the National Offender Management Service who is working directly with an offender serving their sentence in the community.

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“Ofsted”	means the Office for Standards in Education.
“Outcome”	means: i. a Participant Assessment and ILP Outcome (ST01); ii. a Regulated Learning Outcome (RQ01); iii. a Non-Regulated Activity Outcome (NR01); iv. a Progression Paid Employment Outcome (PG01); v. a Progression Education Outcome (PG03); vi. a Progression Apprenticeship Outcome (PG04); or vii. a Progression Traineeship Outcome (PG05), each as more particularly described in the Evidence Requirements.
“Outcome Payment”	means the payment to be made by the ESFA to the Contractor per Outcome achieved by the Participant (subject to the Contractor achieving the Evidence Requirements) in accordance with the Contract.
“Participant”	has the meaning given in the Specification.
“Parties”	means the ESFA acting on behalf of the Crown and the Contractor.
“Personal Data”	has the meaning given to it in the GDPR.
“Personal Data Breach”	has the meaning given to it in the GDPR.
“Premises”	means the location where the Services are to be performed, as detailed in the Contract.
“Processor”	has the meaning given in the GDPR.
“Processor Personnel”	means all directors, officers, employees, agents, consultants and contractors of the Contractor and Sub-Contractor engaged in the performance of its obligations under this Contract.
“Progression Outcome”	means any one of: i. a Progression Paid Employment Outcome (PG01); ii. a Progression Education Outcome (PG03); iii. a Progression Apprenticeship Outcome (PG04); or iv. a Progression Traineeship Outcome (PG05), each as more particularly described in the Evidence Requirements.
“Protective Measures”	means appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely

	manner after an incident, and regularly assessing and evaluating the effectiveness of such measures.
“Qualifications”	means a formal outcome assessment and validation process which is obtained when a competent body determines that an individual has achieved learning outcomes to given standards.
“Regulated Learning”	means those aims listed as regulated in the LARS on the Hub: https://hub.fasst.org.uk/Learning%20Aims/Pages/default.aspx .
“Regulatory Body”	means those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate or investigate the matters dealt with in this Contract or any other affairs of the Contractor or the ESFA, including, without limitation Ofsted.
“RIDDOR”	means the reporting of Injuries, Diseases, and Dangerous Occurrences Regulations 2013.
“Serious Breach”	shall have the meaning given to it in Clause 20.3.
“Services”	means the services to be provided as specified under the Contract, as set out in the Specification.
“Service Commencement Date”	means 8 November 2021 or such later date as is advised by the ESFA to the Contractor, in writing.
“Specification”	means the document setting out the ESFA’s requirements for the Services to be provided under this Contract.
“Sub-Contractor”	means a person or organisation engaged by the Contractor to deliver on its behalf the Services or some of the Services under this Contract.
“Sub-Processor”	means any third Party appointed to process Personal Data on behalf of that Processor related to this Contract.
“Supplementary Data Returns”	means the return to claim Funding based on information not collected through the ILR.
“Termination Date”	means any date on which this Contract terminates in accordance with Clause 21.
“Transition Area”	means a region where GDP (gross domestic product) per capita is between 75% and 90% of the average of EU-27 countries (http://ec.europa.eu/eurostat/statistics-explained/index.php?title=National_accounts_and_GDP), as referenced in Table A of the Specification.

“Working Day”	means a day (other than a Saturday or Sunday) on which banks are open for domestic business in the City of London.
“Zero Hours Contract”	means a contract in which the employer does not guarantee the individual any hours of work. The employer offers the individual work when it arises, and the individual can either accept the work offered, or decide not to take up the offer of work on that occasion.

COMMENCEMENT AND CONTINUATION

- 2.1 The Contract shall commence on the Effective Date and terminate on the Expiry Date unless terminated earlier in accordance with Clause 21 (Termination).
- 2.2 The Contractor shall deliver the Services in full from the Service Commencement Date.

CONTRACT MANAGEMENT

- 3.1 The ESFA and the Contractor will each nominate a contact for the purpose of dealing with queries and issues under this Contract and advise the other party in writing of the contact details.
- 3.2 The Contractor must ensure appropriate members of staff register as users on the user role management system at [Skills Funding Agency: Login \(fasst.org.uk\)](https://fasst.org.uk) to enable the Contractor to digitally sign and agree the Contract online. It is the Contractor's responsibility to maintain appropriate user roles on an on-going basis.

SERVICE DELIVERY

- 4.1 The Services to be delivered under this Contract are the delivery of the Learning Programmes as set out in Appendix 1, (Summary of Programme Funding), and at Appendix 2 (Funding Agreement). The detailed requirements in respect of each Learning Programme are set out in the Funding Rules as amended from time to time by the ESFA and which form part of the terms and conditions of this Contract.
- 4.2 The Services are to be delivered in accordance with the specific requirements of the ESFA, the Specification, the Contractor's response to the Specification including the Delivery Plan, the Funding Rules, the 2014 to 2020 ESF Programme ESF Specifications Deliverables Evidence Requirements, the European Social Fund Operational Programme 2014-2020 and the Supporting Documentation as attached at Appendix 2 (Funding Agreement) which sets out the scheduled payment profiles for the Services agreed by the Parties, which all form part of the Terms and Conditions of the Contract.
- 4.3 The Contractor must work in partnership with the LEP and, where the Contractor is working in an area covered by a Devolution Agreement and/or the ESF Contract for Services – Education and Training

GLA, the Contractor must work with the Combined Authority and/or the GLA to ensure delivery of the Services takes account of the local economic and skills and education priorities.

ASSIGNMENT AND SUB-CONTRACTING

- 5.1 Where the Contractor has not previously sub-contracted any part of Services under this Contract or under any other agreement that that Contractor holds or has held with the ESFA then the Contractor must seek the approval of the ESFA, in writing, before awarding a sub-contract for the first time. Thereafter the Contractor must follow the Sub-Contractor reporting processes as set out in Clause 5.2 and the Funding Rules.
- 5.2 Where the Contractor sub-contracts or intends to sub-contract any duties or obligations arising out of this Contract, the Contractor must provide the ESFA with details of all Sub-Contractors at least bi-annually by fully and accurately making a declaration of Sub-Contractors in accordance with the deadline set out in the Funding Rules. If the Contractor is not sub-contracting then a nil return must be received by the deadline date. The Contractor must notify the ESFA of any within year changes to its Sub-Contractors that take place between the submission dates of their declaration of Sub-Contractors as set out in the guidance [Subcontracting: using funding to offer education and training - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/subcontracting-using-funding-to-offer-education-and-training) The ESFA reserves the right to require the Contractor not to enter into, or to terminate, any sub-contract to deliver the Services under this Contract.
- 5.3 The Contractor must comply with the requirements on sub-contracting delivery of the Services set out in the Funding Rules. Sub-contracting any part of the Contract shall not relieve the Contractor of any obligation or duty attributable to it under the Contract or these conditions. The Contractor is responsible for all the actions of its Sub-Contractors connected to or arising out of the delivery of the Services which it sub-contracts.
- 5.4 Services under this Contract may only be sub-contracted to one level unless the Contractor obtains the consent of the ESFA in writing.
- 5.5 Where the Contractor has sub-contracted any duties or obligations arising out of this Contract, the Contractor shall ensure that there is in place a legally binding sub-contract and send copies of the sub-contract to the ESFA if requested in writing to do so. Where the Contractor enters into a sub-contract for the purpose of performing the Contract, the Contractor shall ensure that the sub-contract includes any terms specified in the Funding Rules.
- 5.6 The Contractor shall ensure that all Sub-Contractors are selected fairly following a lawful, open and transparent tendering process, and have sufficient capacity, capability, quality and financial standing to deliver the Services.
- 5.7 The Contractor will not enter into any agreement for Brokerage in relation to the Services under this Contract.

- 5.8 In addition to the requirement set out at Clause 5.6 where the Contract Value, as set out in Appendix 1 and Appendix 2 (including where varied under Clause 38.3) exceeds £5,000,000 (five million pounds) per annum the Contractor shall:
- 5.8.1 subject to Clause 5.10, advertise on Contracts Finder all sub-contract opportunities arising from or in connection with the provisions of the Services above a minimum threshold of £25,000 that arise during the Contract Period;
 - 5.8.2 within 90 days of awarding a sub-contract to a Sub-Contractor, update the notice on Contracts Finder with the details of the successful Sub-Contractor;
 - 5.8.3 monitor the number, type and value of the sub-contract opportunities placed on Contracts Finder advertised and awarded during the Contract Period;
 - 5.8.4 notwithstanding the requirements in Clause 5.2 provide reports on the information at Clause 5.8.3 to the ESFA in the format and frequency as reasonably specified by the ESFA; and
 - 5.8.5 promote Contracts Finder to its suppliers and encourage those organisations to register on Contracts Finder.
- 5.9 Each advert referred to in Clause 5.8.1 above shall provide a full and detailed description of the sub-contract opportunity with each of the mandatory fields being completed on Contracts Finder by the Contractor;
- 5.10 The obligation in Clause 5.8.1 shall apply only in relation to sub-contract opportunities arising after the contract award date.
- 5.11 Notwithstanding Clause 5.8, the ESFA may, by giving its prior written approval, agree that a sub-contract opportunity is not required to be advertised on Contracts Finder.
- 5.12 The Contractor shall ensure that any sub-contract entered into for the purpose of delivering the Services under this Contract contains a term providing that the ESFA has the right to enforce the terms of the sub-contract.
- 5.13 The Contractor will review annually its sub-contracts, including the rationale for entering into those sub-contracts, and will publish within three (3) months of contract award a statement on its public facing website setting out a high level summary of its sub-contracts and the rationale.
- 5.14 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.
- 5.15 Failure to comply with any of the requirements under Clauses 5.1 to 5.14 may result in the ESFA taking such actions as it deems appropriate, which may include, but is not limited to, action under clause 20 (Breach).

- 5.16 The Contractor may not assign any rights, duties or obligations under this Contract without the consent of the ESFA.
- 5.17 The Contractor must notify the ESFA in writing if there is a change in its name at least one month prior to the change taking effect.
- 5.18 The Contractor must notify the ESFA in writing if there is a change in its ownership at least 12 weeks prior to the change taking effect.
- 5.19 The Contractor shall not without the prior written consent of the ESFA assign, novate or otherwise dispose of or deal in any other manner with (including by means of a change in ownership of the Contractor) any or all of its rights, obligations or liabilities under this Contract. The Contractor shall give the ESFA at least 12 weeks' notice of any such plans. The ESFA reserves the right to take whatever actions it deems necessary, including but not limited to terminating the Contract if it considers in its absolute discretion that any, or any proposed, assignment, novation, disposal or other dealing, including any change in ownership of the Contractor, may or would
- a. put public funds at risk,
 - b. put at risk the delivery of the Services to Learners, and/or
 - c. The ESFA has any other material concerns about the proposed assignment, novation, disposal or other dealing.
- 5.20 The Contractor must take full account of the Funding Higher-Risk Organisations and Sub-Contractors Policy which is published on the ESFA's website [ESFA policy on funding higher risk organisations and subcontractors - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/policies/funding-higher-risk-organisations-and-sub-contractors)

FREEDOM OF INFORMATION AND CONFIDENTIALITY

6.1 Freedom of Information

- 6.1.1 The Contractor acknowledges and agrees that the ESFA is subject to legal duties under FOIA, which may require the ESFA to disclose on request information relating to this Contract or otherwise relating to the Contractor.
- 6.1.2 The Contractor acknowledges and agrees that the ESFA is required by law to consider each and every request made under FOIA for information.
- 6.1.3 The Contractor acknowledges and agrees that all decisions made by the ESFA pursuant to a request under FOIA are solely a matter for and at the discretion of the ESFA.
- 6.1.4 Notwithstanding anything in this Contract to the contrary (including without limitation any obligations of confidentiality), the ESFA shall be entitled to disclose information in whatever form pursuant to a request made under FOIA, save that in relation to any information that is

Exempt Information the ESFA shall use reasonable endeavours (but shall not be obliged) to consult the Contractor and shall not:

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

or

b) disclose information requested

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

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

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

b) responding to any FOIA notice; and/or

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

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

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

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

6.2 Confidentiality

The Contractor hereby warrants that:

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

6.2.2 any person employed or engaged by it (in connection with this Contract in the course of such employment or engagement) shall not disclose any Confidential Information to any third party without prior

written consent of the ESFA, except where disclosure is otherwise expressly permitted by the provisions of this Contract.

- 6.3 The Contractor shall take all necessary precautions to ensure that all Confidential Information obtained from the ESFA is treated as confidential and not disclosed (without prior approval from the ESFA's Contract Manager) or used other than for the purposes of this Contract by any of its employees, servants, agents or Sub-Contractors.
- 6.4 The provisions of Clauses 6.2 and 6.3 shall not apply to any information:
- 6.4.1 which is or becomes public knowledge (other than by breach of Clauses 6.2 and 6.3);
 - 6.4.2 which was in the possession of the receiving party, without restriction as to its disclosure, before the date of receipt from the disclosing party;
 - 6.4.3 which must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the party making the disclosure, including any requirements for disclosure under the FOIA or the EIR.
- 6.5 Nothing in this Clause 6 shall be deemed or construed to prevent the ESFA from disclosing any Confidential Information obtained from the Contractor:
- 6.5.1 to any other Central Government Body, Non-Departmental or Quasi Government Body or agency, central or local;
 - 6.5.2 to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
 - 6.5.3 to any professional adviser, consultant, contractor or other person engaged by the ESFA directly in connection with this Contract, provided that such information is treated as confidential by the receiving consultant, contractor or any other person;
 - 6.5.4 to the European Union in conjunction with the European Social Fund requirements;
 - 6.5.5 on a confidential basis to any proposed successor body in connection with any assignment disposal of its rights, obligations or liabilities under this Contract.
- 6.6 In order to ensure that no unauthorised person gains access to any Confidential Information or any data obtained in the course of the Services, the Contractor undertakes to maintain adequate security arrangements that meet the requirements of professional standards and best practice.
- 6.7 The Contractor will immediately notify the ESFA of any breach of security in relation to Confidential Information and all data obtained in the course of the Services and will keep a record of such breaches. The Contractor will use its best endeavours to recover such Confidential Information or data however it may be recorded. The Contractor will co-operate with the ESFA in any

investigation that the ESFA considers necessary to undertake as a result of any breach of security in relation to Confidential Information or data.

- 6.8 The Contractor shall, at its own expense, alter any security systems at any time during the Contract Period at the ESFA's request if the ESFA reasonably believes the Contractor has failed to comply with Clause 6.7.
- 6.9 The ESFA reserves the right to publish details of this Contract and the payments made under it to comply with the Government's transparency requirements.
- 6.10 The provisions of this Clause 6 will apply for the duration of the Contract Period after its termination.

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 Clauses 7.2 to 7.4.
- 7.2 The Contractor must, in delivering the Services under this Contract, demonstrate that it has had regard to the duties placed on the ESFA and the Contractor by the Equality Act 2010. The Contractor must take all reasonable steps to ensure the observance of these provisions by all servants, employees or agents of the Contractor and all Sub-Contractors engaged in the delivery the Services.
- 7.3 The Contractor shall ensure that equality of opportunity is built into all aspects of Services; the business planning process; and the self-assessment process. The Contractor shall use analysis of data to inform future planning to improve the representation, participation and success of underrepresented and underachieving groups and challenge stereotyping. The Contractor shall use appropriate, specific and measurable objectives. These must be proportionate, relevant and aligned to the Services the Contractor is funded to deliver.
- 7.4 The ESFA may use a variety of equality information and data to support judgements about quality and eligibility for Funding. These may include but are not limited to: inspection judgements for equality and diversity, judgements from the Equality and Human Rights Commission, and the success and participation rates of different groups of Learners.

LEARNER HEALTH, SAFETY & WELFARE

- 8.1 The Contractor shall ensure so far as reasonably practicable that learning takes place in safe, healthy and supportive environments, which meet the needs of Learners. The Contractor shall provide information to the ESFA, as and when

specifically requested, to give assurance that adequate arrangements exist for Learner health, safety and welfare.

- 8.2 Where part of the learning takes place in an environment outside the direct control of the Contractor, the Contractor shall take all reasonable steps to ensure that adequate arrangements are in place to ensure the health and safety of Learners.
- 8.3 The Contractor shall make arrangements for ensuring that the Provision is provided with a view to safeguarding and promoting the welfare of Children receiving education or training at the institution or under the auspices of the Contractor in an environment outside the direct control of the Contractor. In doing so, the Contractor shall have regard to any guidance published, from time to time, by the Secretary of State for Education which sets out the expectations in relation to safeguarding practice within further education institutions. References to 'must' in any such guidance shall be treated as 'should' for the purposes of this Agreement, save for any references to legal requirements arising from the Safeguarding Vulnerable Groups Act 2006 in respect of referrals to the Disclosure and Barring Service. Failure to do so may constitute a Serious Breach of this Contract.
- 8.4 The Contractor shall make arrangements for ensuring that the Provision is provided with a view to safeguarding and promoting the welfare of High Needs Learners aged 18 to 25 receiving education or training at their institution or under the auspices of the Contractor in an environment outside the direct control of the Contractor. This must include the adoption of safer recruitment procedures. In doing so, the Contractor shall make those arrangements as if such Learners were Children and will have regard to any guidance published, from time to time, by the Secretary of State for Education which sets out the expectations in relation to safeguarding practice within further education institutions as if it applied to those Learners as if they were Children. References to 'must' in any such guidance shall be treated as 'should' for the purposes of this Agreement, save for any references to legal requirements arising from the Safeguarding Vulnerable Groups Act 2006 in respect of referrals to the Disclosure and Barring Service. Failure to do so may constitute a Serious Breach of this Contract.
- 8.5 The Contractor must carry out appropriate disclosure and barring service checks on all overseas applicants for employment where such applicants would be employed to work in regulated activity relating to Children or vulnerable adults (as defined by the Safeguarding Vulnerable Groups Act 2006) if successful, and must seek additional information about an applicant's conduct
- 8.6 In working with other organisations/bodies, the Contractor shall make arrangements to co-ordinate and co-operate effectively for reasons of Learner health, safety and welfare. In particular, respective responsibilities shall be clearly identified and documented as appropriate, to ensure understanding.
- 8.7 In providing the Services, the Contractor must ensure it actively promotes the fundamental British values of democracy, the rule of law, individual liberty, and

mutual respect and tolerance of those with different faiths and beliefs, and promote principles that support equality of opportunity for all.

- 8.8 In providing the Services, the Contractor must comply with the general duty on specified authorities in section 26 of the Counter-Terrorism and Security Act 2015 (the Prevent duty) and must have regard to statutory guidance issued under section 29 of the Counter-Terrorism and Security Act 2015 [Prevent duty guidance: for further education institutions in England and Wales - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/494211/Prevent_duty_guidance_for_further_education_institutions_in_England_and_Wales.pdf). Failure to do so may constitute a Serious Breach of this Contract.
- 8.9 In providing the Services the Contractor must comply with the duty on partners of a panel in section 38 of the Counter-Terrorism and Security Act 2015 (the Channel co-operation duty). Failure to do so may constitute a Serious Breach of this Contract.
- 8.10 The Contractor shall not employ or engage, or continue to employ or engage, any person who is subject to a prohibition order made under section 141B of the Education Act 2002 to carry out teaching work (as defined in regulation 3 of the Teachers' Disciplinary (England) Regulations 2012), or an interim prohibition order made under regulation 14 of the Teachers' Disciplinary (England) Regulations 2012 in respect of any Learners under the age of 19 and High Needs Learners aged 19 to 25 (as if those Learners were pupils for the purposes of the definition of teaching work in regulation 3 of the Teachers' Disciplinary (England) Regulations 2012).
- 8.11 Before employing or engaging a person to carry out teaching work in respect of any Learners under the age of 19 and High Needs Learners aged 19 to 25 (as if those Learners were pupils for the purposes of the definition of teaching work in regulation 3 of the Teachers' Disciplinary (England) Regulations 2012), the Contractor shall take reasonable steps to ascertain whether that person is subject to a prohibition order made under section 141B of the Education Act 2002, or an interim prohibition order made under regulation 14 of the Teachers' Disciplinary (England) Regulations 2012.
- 8.12 The Contractor shall, in circumstances where it sub-contracts the management and/or delivery of the Services under this Contract, ensure that all the provisions in respect of Learner health, safety and welfare in this Clause 8 are included in its contract with each Sub-Contractor.
- 8.13 The Contractor shall inform the ESFA of the death of any Learner which is a result of work undertaken whilst in employment and who is undertaking a related Learning Programme. This shall be done by informing the ESFA's representative by telephone or email immediately upon the Contractor becoming aware of the death.
- 8.14 The Contractor shall report RIDDOR reportable incidents, and shall investigate or assess the circumstances of all Learner incidents within the scope of RIDDOR and follow HSE guidance 'Investigating accidents and incidents: A workbook for employers, unions, safety representatives and safety professionals' (HSG245) ISBN 0717628272. The Contractor shall only use

persons competent to investigate/assess Learner incidents with a view to identifying the causes of any incident and lessons to be learned.

- 8.15 The Contractor shall also monitor, and act on, any other harm to Learners to the extent that the Contractor could reasonably be expected to do so and/or where the harm could affect the quality of the learning experience. Harm includes (but is not limited to) incidents that cause absence from learning, any loss to the Learner of any physical or mental faculty or any disfigurement and incidents of bullying and harassment.
- 8.16 The Contractor shall co-operate with the ESFA and Department for Work and Pensions for the purposes of the Industrial Injuries Disablement Benefit (IIDB) in respect of those Learners to which it applies.
- 8.17 The Contractor and its Sub-Contractors must be able to demonstrate that they have robust record-keeping procedures in respect of health, safety and safeguarding through checks on record keeping undertaken. Failure to do so will constitute a Serious Breach.
- 8.18 The Contractor will ensure it notifies the ESFA via the Contact Form: General Enquiries at [Education and Skills Funding Agency - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/organisations/education-and-skills-funding-agency) where a referral has been made by the Contractor or one of the Contractor Related Parties in either of the following circumstances (such notification must include the name of the institution, a high level summary of the nature of the incident (without sharing personal information about victims or alleged perpetrators) and confirmation of whether it is, or is scheduled to be, investigated by the Local Authority and/or the police):
- 8.18.1 a safeguarding concern related to sexual violence to the Local Authority children's social care/adult care and/or the police; or
 - 8.18.2 an allegation of abuse made against a teacher or other member of staff to the designated officer(s) at the local authority.
- 8.19 The Contractor will ensure it notifies the ESFA via the Contact Form: General Enquiries at [Education and Skills Funding Agency - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/organisations/education-and-skills-funding-agency) of incident(s) and/or where a referral has been made, where the Contractor or one of the Contractor Related Parties:
- 8.19.1 is aware of an incident, or pattern of incidents, which undermines the promotion of British fundamental values as referred to in Clause 8.7 or the ability of the Contractor or the Contractor Related Parties to comply with the Prevent duty, or
 - 8.19.2 makes a referral of an individual member of Contractor Personnel for the purposes of determining whether that member of Contractor Personnel should be referred to a panel for the carrying out of an assessment under section 36 of the Counter Terrorism and Security Act 2015 of the extent to which that individual is vulnerable to being drawn into terrorism.
- 8.20 Where the Contractor has made a referral or provided information to the Disclosure and Barring Service in compliance with any duties of the Body under

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the Safeguarding Vulnerable Groups Act 2006, the Contractor shall ensure that it informs the ESFA that a referral has been made / information has been provided.

LIABILITY

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

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the contract term being the Contract Period, and any and all claims made within that period.

9.10 The ESFA shall not be liable to the Contractor for any Indirect Losses.

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

INSURANCE

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

ACCESS AND MONITORING

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

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

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

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

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

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

11.4.2 provide such assurance as the ESFA may require that the delivery of the Services complies with the requirements of the Contract;

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

11.4.3.1. the financial systems and controls operated by the Contractor or its Sub-Contractors;

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

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

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

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

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

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

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

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

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- 11.7 The Contractor shall provide the ESFA or agents acting on its behalf with the information it requires under Clause 11.4.6 at the times and in the formats specified. This information shall be of sufficient quality to meet the purposes for which it has been requested.
- 11.8 Failure to comply with any request for information under Clause 11.6, at all or in the required timescales, will constitute a Minor / Serious Breach of this Contract.
- 11.9 Where the ESFA has undertaken an investigation or received a report from an independent accountant or otherwise, in relation to the Contractor, it may as a consequence of that investigation or report, impose additional Contract obligations upon the Contractor.
- 11.10 The Contractor must comply with any additional Contract obligations imposed under Clause 11.9.
- 11.11 If the ESFA assesses that the Contractor has failed to comply with any additional Contract obligations imposed under Clause 11.9 within such time as the ESFA deems reasonable, the ESFA may take actions as it deems appropriate which may include but is not limited to action under Clauses 20.5 to 20.7 (Minor Breach) or Clauses 20.8 to 20.8.4 (Serious Breach).

FUNDING AND PAYMENT

- 12.1 In consideration of the Services to be provided by the Contractor, the ESFA agrees to pay the Contractor the amounts calculated as described in 'European Social Fund Funding Rates & Formulas April 2019 – August 2019' ([European Social Fund \(ESF\) funding rates and formula April 2019 to August 2019](#)) and set out in Appendix 2 of this Contract on condition that the Contractor delivers the Services in accordance with the terms and conditions of the Contract and provided that the Contractor is not assessed as being at serious risk of failure to deliver the Services under this Contract by the ESFA following any review of the quality of the Services.
- 12.2 The Maximum Value of each Learning Programme as shown in Appendix 2 of this Contract may not be exceeded for any reason. The ESFA will not be liable to make any payment in excess of the Maximum Value of each Learning Programme unless this has been agreed and evidenced by a variation in writing.
- 12.3 Where the ESFA identifies that the Contractor is failing to deliver the value of learning of this Contract it reserves the right in its absolute discretion to reduce the overall maximum value for that Learning Programme.
- 12.4 The Contractor shall comply with the Funding Rules published by the ESFA as amended from time to time.
- 12.5 The ESFA reserves the right to give three months' notice to reduce the overall maximum value for any Learning Programme.

- 12.6 Payment by the ESFA will be without prejudice to any claims or rights, which the ESFA may have against the Contractor and will not constitute any admission by the ESFA as to the performance by the Contractor of its obligations under the Contract. Prior to any such payment, the ESFA will be entitled to make deductions or deferments in respect of any disputes or claims whatsoever with or against the Contractor, arising from this Contract or any other Contract between the Contractor and the ESFA.
- 12.7 Where a review, investigation or audit of a sample of the evidence which the Contractor is required to provide under the Contract to support the payments made by the ESFA and identifies errors in that evidence which it deems are material, the ESFA reserves the right at its absolute discretion to require the Contractor to carry out 100% audit of all or part of the Services and/or to recover from the Contractor an amount based on the error rate identified and the total value of the Contract. Such amounts may be recovered by making adjustments to data submitted by the Contractor under the Contract, or by raising an invoice for payment by the Contractor, or making deductions from future payments due to the Contractor under the Contract. Failure to settle such amounts by the Contractor will constitute a Serious Breach under Clause 20 (Breach) of the Contract. The decision of the ESFA as to the amount of recovery under this Clause 12 is final.
- 12.8 All payments by the ESFA will be made via BACS.
- 12.9 The ESFA is generally unable to recover any Value Added Tax charged. The maximum sum payable under this Contract, as set out in Appendix 1 includes the cost of the service and any other VAT or taxes to be charged, where they apply.
- 12.10 Under the provision of Item 5A to Group 6 of Schedule 9 of the VAT Act 1994, the supply of education or vocational training funded by the ESFA and the supply by the person providing that education or vocational training, of any goods or services essential to that provision, is considered to be an exempt supply for VAT purposes.

REVIEW OF CONTRACTUAL PERFORMANCE AND RECONCILIATION OF CONTRACTS

- 13.1 Contractual performance and reconciliation will be carried out in accordance with the Funding Rules.
- 13.2 Where the Contractor's actual delivery will result or has already resulted in an overpayment to the Contractor by the ESFA, the ESFA will withhold from, or deduct the amount owed from, payments due to the Contractor under the Contract for current or subsequent months or years accordingly.
- 13.3 Where the Contractor's actual delivery has resulted in an underpayment to the Contractor by the ESFA, the ESFA will adjust the amount due to the Contractor accordingly. This adjustment shall not exceed the overall maximum value set out in Appendix 1 of this Contract.

- 13.4 Should there be an under or over payment to the Contractor, the ESFA may at their absolute discretion require a Contract variation.
- 13.5 A Contract review will take place at the end of the Contract Period in respect of the Services specified in Appendix 1 of this Contract. The ESFA will notify the Contractor of the actual amount of money, which has been earned against the Services delivered, and compare this to the total profile payments made and to the overall maximum value specified in Appendix 1. At this stage final cash reconciliation will take place. Any overpayment made to the Contractor by the ESFA will be repayable within 30 days of receiving an invoice. The ESFA reserves the right to reduce future payments to recover any overpayments. The ESFA will pay any outstanding monies owed, up to the overall maximum value specified in Appendix 1 of this Contract, within 30 days of final reconciliation being completed.
- 13.6 The evidence required in respect of each Learning Programme is set out in the Funding Rules and the Contractor must retain such evidence for inspection on demand.

PROHIBITED ACTIVITIES

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

DATA PROTECTION AND PROTECTION OF PERSONAL DATA

- 15.1 The Parties acknowledge that for the purposes of the Data Protection Laws, the Department on behalf of the Secretary of State for Education is the Controller and the Contractor is the Processor only for the processing set out in Schedule 2
- 15.2 Any other processing of Personal Data undertaken by the Contractor will be as a Data Controller and not on behalf of the Department. Clauses 15.2 to 15.14

below apply only in relation to the processing of Personal Data on behalf of the Department as set out in Schedule 2, and the only processing that the Processor is authorised to do on behalf of the Department is listed in Schedule 2 by the Department and may not be determined by the Processor.

- 15.3 The Processor must notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Laws.
- 15.4 The Processor must provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Controller, include:
 - 15.4.1 a systematic description of the envisaged processing operations and the purpose of the processing;
 - 15.4.2 an assessment of the necessity and proportionality of the processing operations in relation to the Services;
 - 15.4.3 an assessment of the risks to the rights and freedoms of Data Subjects; and
 - 15.4.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 15.5 If requested by the Department's Agreement Manager, the Processor must, in relation to any Personal Data processed in connection with its obligations under this Agreement:
 - 15.5.1 process that Personal Data only in accordance with Schedule 2, unless the Processor is required to do otherwise by Law. If it is so required the Processor will promptly notify the Controller before processing the Personal Data unless prohibited by Law;
 - 15.5.2 ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Controller may reasonably reject (but failure to reject will not amount to approval by the Controller of the adequacy of the Protective Measures), having taken account of the:
 - (a) nature of the data to be protected;
 - (b) harm that might result from a Data Loss Event;
 - (c) state of technological development; and
 - (d) cost of implementing any measures;
 - 15.5.3 ensure that:
 - (a) the Processor Personnel do not process Personal Data except in accordance with this Agreement (and in particular Schedule 6);
 - (b) it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
 - (c) are aware of and comply with the Processor's duties under this clause;

- (d) are subject to appropriate confidentiality undertakings with the Processor or any Sub-Processor;
 - (e) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Controller or as otherwise permitted by this Agreement; and
 - (f) have undergone adequate training in the use, care, protection and handling of Personal Data; and
- 15.5.4 not transfer Personal Data outside of the EU unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
 - (a) the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Controller;
 - (b) the Data Subject has enforceable rights and effective legal remedies;
 - (c) the Processor complies with its obligations under the Data Protection Laws by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and
 - (d) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data;
- 15.5.5 at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Agreement unless the Processor is required by Law to retain the Personal Data.
- 15.6 Subject to Clause 15.6, the Processor must notify the Controller immediately if it:
 - 15.6.1 receives a Data Subject Access Request (or purported Data Subject Access Request) in relation to processing their data under this Agreement only (submission of Learner Data);
 - 15.6.2 receives a request to rectify, block or erase any Personal Data processed through the submission of Learner Data. Notification in such cases should be given via the Agreement Manager;
 - 15.6.3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Laws;
 - 15.6.4 receives any communication from the Information Commissioner or any other Regulatory Body in connection with Personal Data processed under this Agreement;
 - 15.6.5 receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or

- 15.6.6 becomes aware of a Data Loss Event.
- 15.7 The Processor's obligation to notify under Clause 15.5 will include the provision of further information to the Controller in phases, as details become available.
- 15.8 Taking into account the nature of the processing, the Processor will provide the Controller with full assistance in relation to either Party's obligations under Data Protection Laws and any complaint, communication or request made under Clause 20.5 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:
- 15.8.1 the Controller with full details and copies of the complaint, communication or request;
 - 15.8.2 such assistance as is reasonably requested by the Controller to enable the Controller to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Laws;
 - 15.8.3 the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
 - 15.8.4 assistance as requested by the Controller following any Data Loss Event;
 - 15.8.5 assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.
- 15.9 The Processor must maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Processor employs fewer than 250 staff, unless:
- 15.9.1 the Controller determines that the processing is not occasional;
 - 15.9.2 the Controller determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; or
 - 15.9.3 the Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 15.10 The Processor will allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.
- 15.11 Each Party will designate its own Data Protection Officer if required by the Data Protection Laws.
- 15.12 Before allowing any Sub-Processor to process any Personal Data related to this Agreement (submission of Learner Data), the Processor must:
- 15.12.1 notify the Controller's Agreement Manager in writing of the intended Sub-Processor and processing;
 - 15.12.2 obtain the written consent of the Controller's Agreement Manager;
 - 15.12.3 enter into a written agreement with the Sub-Processor which give effect to the terms set out in this Clause 20 such that they apply to the Sub-Processor; and

- 15.12.4 provide the Controller with such information regarding the Sub-Processor as the Controller may reasonably require.
- 15.13 The Processor will remain fully liable for all acts or omissions of any of its Sub-Processors.
- 15.14 The Controller may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which will apply when incorporated by attachment to this Agreement).
- 15.15 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Controller may on not less than 30 Working Days' notice to the Processor amend this Agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- 15.16 Where the Contractor is providing the Services to Learners claiming out of work benefits, the Secretary of State for Work and Pensions (or their successor) is the Data Controller in relation to Personal Data which the Contractor is required to provide to the Secretary of State for Work and Pensions. This Clause 20 will be enforceable by the Secretary of State for Work and Pensions in relation to any Personal Data processed by the Contractor on its behalf.
- 15.17 Where the Contractor is providing the Service to Learners who are subject to active management by the Offender Manager in respect of an order or licence, the Secretary of State for Justice (or their successor) is the Data Controller in relation to Personal Data, which the Contractor is required to provide to the Secretary of State for Education.
- 15.18 Where the Contractor is providing the Services to Learners who are subject to claiming Industrial Injuries Disablement Benefit (IIDB), the Department for Work and Pensions (or their successor) is the Data Controller in relation to Personal Data, which the Contractor is required to provide to the Secretary of State for Education. This Clause 20 will be enforceable by the Secretary of State for Work and Pensions in relation to any Personal Data processed by the Contractor on its behalf.
- 15.19 The Processor will comply with any further written instructions or additional conditions from the Department's Controller in relation to the data processing.

SUBMISSION OF LEARNER DATA

- 16.1 Where required, the Contractor must supply the ESFA with Learner Data on each individual Learner, in accordance with the data collections framework set out in the 'ILR specification validation rules and appendices' as amended and updated, which is published on the Department's website <https://guidance.submitlearnerdatabeta.fasst.org.uk/> and in accordance with the 'Provider Support Manual' as amended and updated.
- 16.2 The Contractor must supply the ESFA with data in accordance with the following:
- 16.2.1 in line with agreed audit arrangements;
 - 16.2.2 in adherence with the Data Protection Act;

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- 16.2.3 to support payments to be made;
 - 16.2.4 to enable reconciliation to take place; and
 - 16.2.5 to support the contract management and allocation processes.
- 16.3 Data collected must be transmitted to the ESFA through the ESFA's web portal [Submit Learner Data \(fasst.org.uk\)](https://fasst.org.uk) /. Access to the ESFA's web portal is restricted and the Contractor agrees to comply with the conditions of use regarding the supply of data to the ESFA set out in this Clause 16 and in 'Individualised Learner Record Specification 2021 to 2022 and relevant Provider Support Manual as amended and updated available on the ESFA's web site.
 - 16.4 The Contractor will only submit data to claim payments under this Contract when the evidence defined in the Funding Rules is available to verify the delivery of the service claimed.
 - 16.5 The Contractor will endeavour to collect the full data set for each Learner and work with Learners to minimise the use of 'not knowns' or 'prefer not to say' options.
 - 16.6 Where the ESFA is concerned about the quality of the data, including the completeness or accuracy of the data, provided by the Contractor, the ESFA may require the Contractor to supply data more frequently for such a period as the ESFA shall require.
 - 16.7 The ESFA reserves the right to require the Contractor, at its own cost, to carry out such work as the ESFA deems necessary to improve the quality of data.
 - 16.8 The ESFA reserves the right to suspend payments to the Contractor under the Contract where data quality gives rise to concern about the accuracy of the data provided by the Contractor.
 - 16.9 Failure to transmit complete and accurate data to the ESFA in accordance with this Clause 16 will constitute a Serious Breach of Contract in accordance with Clause 20 of the Terms and Conditions of the Contract.
 - 16.10 Where the Contractor is providing the Services to Learners claiming out of work benefits, it must provide data to the Secretary of State with responsibility for unemployment or their nominated representative in accordance with the requirements notified to the Contractor. Failure to transmit complete and accurate data under this Clause 16 will constitute a Serious Breach of Contract in accordance with Clause 20 of the General Terms and Conditions of the Contract and may result in payments for this part of the Services to be delayed or withheld.
 - 16.11 The Contractor must update the course information funded by the ESFA at <https://coursedirectory.nationalcareersservice.org.uk>
 - 16.12 The Contractor shall register with UKRLP (<http://www.ukrlp.co.uk/>) and Get Information About Schools ([Get information about schools - GOV.UK \(get-](https://get-information-about-schools.gov.uk)

information-schools.service.gov.uk) where appropriate and maintain contact details on an on-going basis.

- 16.13 The Contractor must submit data about any member of its workforce delivering GCSE English and Maths in the format and to the timescales as required by the ESFA.
- 16.14 The Contractor shall complete the Supplementary Data submission to claim activity and costs not reportable through the ILR. The Supplementary Data must be transmitted to the ESFA through the ESFA's web portal: [Submit Learner Data \(fasst.org.uk\)](http://SubmitLearnerData(fasst.org.uk))

QUALITY ASSURANCE AND RAISING STANDARDS

- 17.1 The Contractor undertakes to the ESFA that it has the resources and skills necessary to carry out the Contractor's obligations pursuant to this Contract.
- 17.2 The Contractor shall comply with the Funding Rules published by the ESFA as amended from time to time and any other requirements, which may from time to time be issued by the ESFA, Ofsted, the awarding bodies and other regulatory bodies and of which the Contractor is made aware.
- 17.3 The Contractor shall ensure that all activities carried out pursuant to this Contract shall be documented in accordance with the requirements of the ESFA and shall provide such documentation to them as the ESFA shall request from time to time.
- 17.4 The Contractor shall continuously seek to improve the Services and raise standards to benefit the Learner. The Contractor shall have the primary responsibility for improving standards and will need to demonstrate to the ESFA's satisfaction that it has an effective quality assurance system based on the implementation of its own quality improvement process. The ESFA reserves the right to require the Contractor to provide the ESFA or an Inspectorate evidence to support the quality improvement processes.
- 17.5 The Contractor shall use all reasonable endeavours to:
- 17.5.1 minimise dropout rates and deliver high completion and achievement rates and appropriate progression;
 - 17.5.2 Not Used
 - 17.5.3 ensure competent and appropriately qualified staff deliver and assess learning. The Contractor shall be responsible for the professional development and training of its staff;
 - 17.5.4 offer equality of access to learning opportunities and close equality gaps in learning and outcomes;
 - 17.5.5 provide a safe, healthy and supportive environment, which meets the needs of Learners;

- 17.5.6 provide good management and leadership of the learning process;
 - 17.5.7 deliver value for money and financial probity; and
 - 17.5.8 ensure all Sub-Contractors delivering Services under the Contract on behalf the Contractor comply with the requirements set out in 17.5.1 to 17.5.7 above.
- 17.6 Failure to meet the requirements set out in clauses 17.5.1 to 17.5.8 may result in the ESFA assessing the Contractor to be in Serious Breach of the Contract under Clause 20 of the Contract.
- 17.7 Where appropriate, the Contractor shall confirm in writing to the ESFA that their Centre Approval Status is still current. The written statement will need to confirm approved centre status for the specific Regulated Qualification Framework (RQF) titles and levels, including awarding body name(s). The Contractor must notify the ESFA immediately in writing if it receives any sanction from an awarding body.
- 17.8 The ESFA may assess the quality and delivery of the Services and the Contractor's compliance with the requirements in clause 17.5.1 to 17.5.8 during the term of the Contract. The Contractor will be informed of the outcome of that process. Where the ESFA assesses the Contractor to be in Serious Breach of Contract following such assessment the ESFA will issue a notice in accordance with clause 20.8.1 of the Contract which may:
- 17.8.1 require the Contractor to meet improvement indicators to improve the quality of its Services. The ESFA will meet with the Contractor to discuss and reach agreement on implementation of these actions and improvement indicators and to agree arrangements for monitoring and reviewing progress. In such cases reviews will take place at the frequency specified by the ESFA and in agreement with the Contractor;
 - 17.8.2 agree detailed improvement plans and measures that set out clearly the expected timescale for improvement;
 - 17.8.3 agree arrangements for more frequent monitoring of quality improvement plans.
- 17.9 As part of the delivery of the Services, The Contractor must provide high quality and easily accessible information and advice to help Learners to understand the opportunities and support available to them about education, training or connected matters (including employment);
- 17.9.1 Where one of the main objectives of the Services to be provided under this Contract is to deliver information and advice, the Contractor will have to have or attain the matrix Standard accreditation within six months of the Contract being awarded; and

- 17.9.2 If the information and advice is embedded as part of the delivery of the Services the Contractor should work towards achieving the matrix Standard accreditation within 12 months of the start of the Contract.
- 17.9.3 Where the Services are delivered by a Sub-Contractor on behalf of the Contractor, the requirements set out in clauses 17.9.1 and 17.9.2 must be applied to the Sub-Contractor. This does not apply where the Contractor retains responsibility for the delivery of information and advice to the Learners.
- 17.9.4 Once achieved, matrix Standard accreditation is valid for three years. As part of their accreditation the Contractor must continue to demonstrate their continuous improvement via annual continuous improvement checks with the matrix Standard assessor.
- 17.10 The Contractor must take all reasonable steps to meet the relevant requirements for data gathering for the FE Choices Performance Indicators as outlined currently at [Learner and employer satisfaction data: information for providers - GOV.UK \(www.gov.uk\)](http://www.gov.uk/ESFA) and in any subsequent updates to these web pages.

Financial Health

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

Ofsted Inspection

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

- 17.14 When the Contractor receives notification from Ofsted that the Services are to be inspected, the Contractor shall on request provide the ESFA with details of its quality improvement activity, and any other relevant information in accordance with the required timescale of Ofsted. The Contractor must notify the ESFA of the date of the meeting at which Ofsted give feedback on the inspection and allow the ESFA's nominated representative to attend the meeting. The Contractor must confirm to the ESFA in writing the outcome of the inspection within 5 Working Days of receiving the feedback from Ofsted.
- 17.15 Ofsted may, at any time during the Term, undertake an inspection of the Contractor. The ESFA will consider the outcome of any such inspection as follows:

Inadequate in part

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

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

Inadequate overall

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

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

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

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

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

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

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

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

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

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

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

17.15.6 If an Inspectorate rating is given based on incorrect or fraudulent information or data from the Contractor this will constitute a Serious Breach and the ESFA may, at its sole discretion, terminate the Contract.

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17.16 Where the ESFA is made aware that Ofsted has assessed the Contractor as having made “insufficient progress” after a monitoring visit, the ESFA may, in its absolute discretion take one or more of the following actions:

17.16.1 require the Contractor to, and the Contractor shall, accept and comply with additional Contract obligations relating to the improvement of the overall Services. Such conditions will include complying with the published recommendations of Ofsted. These conditions will apply until a full Ofsted inspection of the Contractor has taken place; and/or

17.16.2 require the Contractor to temporarily suspend the recruitment of Learners; and/or

17.16.3 require the Contractor to stop working with new Learners via a sub-contracting arrangement with another main provider or employer-provider; and/or

17.16.4 require the Contractor to inform all of their existing main providers or employer-providers about the outcome of the Ofsted visit; and/or

17.16.5 terminate this Contract in accordance with Clause 21.2.13 where Learners may be at immediate risk on the grounds of safeguarding issues and/or the quality of leadership and/or training provision is such that one or more Learner has no reasonable prospect of achieving his or her training objective; and/or

17.16.6 terminate this Contract in accordance with Clause 21.2.12 (Termination) if the Contractor has two consecutive monitoring visits each resulting in one or more “insufficient progress” judgements in relation to one or more themes.

17A ADDITIONAL CONTRACT OBLIGATIONS

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

FRAUD AND IRREGULARITY

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

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

18.1.2 computer fraud;

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

18.1.4 fraud involving awarding bodies;

18.1.5 fraud involving Sub-Contractors;

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

- 18.2 Where the ESFA has reasonable cause to suspect that fraud or irregularity has occurred in relation to the delivery of the Contract and payments made hereunder, the ESFA shall have the right of access to the Contractor's premises at any reasonable time with or without notice to examine and remove or copy all relevant documents and records including electronic records and to interview the Contractor's servants or agents engaged with the delivery of the Contract.
- 18.3 Where the ESFA has reasonable cause to suspect that fraud or irregularity has occurred in relation to the delivery of the Contract or any other contract between the ESFA and the Contractor and payments made there under it shall have the right to suspend payments and/or require the Contractor to suspend recruitment of Learners under this Contract and any other Contract between the Parties.
- 18.4 The Parties shall co-operate in the identification of Learners who may be unlawfully claiming benefits. The ESFA may from time to time brief the Contractor as to the co-operation and assistance it reasonably requires including the provision of information regarding fraud by Learners. The ESFA shall provide a named contact or telephone answering machine for receiving such information.

PUBLICITY AND USE OF LOGOS

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

BREACH

- 20.1 For the purpose of this Clause 20, the following definitions shall have the meanings set out below:
- 20.2 "Minor Breach" shall mean a delay or non-performance by either Party of its obligations under the Contract which does not materially, adversely or substantially affect the performance or delivery of the Service or the provision of a safe, healthy and supportive learning environment;
- 20.3 "Serious Breach" shall mean any breach defined as a Serious Breach in the Contract or any breach or breaches which adversely, materially or substantially affect the performance or delivery of the Services or compliance with the terms and conditions of the Contract or the provision of a safe, healthy and supportive learning environment. Failure to comply with legislation, or actions or omissions by the Contractor that endanger the Health or Safety of Learners would constitute a Serious Breach.
- 20.4 For the avoidance of doubt:

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

Minor Breach

- 20.5 Without prejudice to any other remedy, in the event of a Minor Breach, the Parties will adopt the following procedure:
- 20.6 The Party not in breach shall be entitled to serve written notice on the Party in breach, giving full details of the breach and requiring the other Party to remedy the breach within a specified period.
- 20.7 If the Party in breach fails to remedy the Minor Breach within the time specified in notice served under Clause 20.6 or such other period as may be agreed between the Parties it shall constitute a Serious Breach by the Party in breach.

Serious Breach

- 20.8 Without prejudice to any other remedy, in the event of a Serious Breach, which is capable of remedy, the Parties shall adopt the following procedure:
 - 20.8.1 The Party not in breach shall be entitled to serve written notice on the other Party giving full details of the breach and requiring the Party in breach to remedy the breach within a specified time period.
 - 20.8.2 Where the ESFA has served a notice under clause 20.8.1 the ESFA has the right to require the Contractor to suspend the recruitment of Learners until the ESFA has confirmed that the breach has been remedied.
 - 20.8.3 In the event that a Serious Breach of the Contract by the Contractor cannot be remedied within the period specified in the notice served under Clause 20.8.1 or such other period as may be agreed between the Parties the ESFA may cease funding the Contractor in respect of that part of the Service to which the Serious Breach relates.
 - 20.8.4 In the event that any Serious Breach cannot be remedied at all or within the period specified in the notice served in accordance with Clause 20.8.1 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.

TERMINATION

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

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- 21.1.1 where the Contractor is an individual and if a petition is presented for the Contractor's bankruptcy or a criminal bankruptcy order is made against the Contractor, or it makes any composition or arrangements with or for the benefit of creditors, or makes any conveyance or assignment for the benefit of creditors, or if an administrator is appointed to manage their affairs; or
 - 21.1.2 where the Contractor is not an individual but is a firm; or a number of persons acting together in any capacity; if any event in clauses 21.1.1 or 21.1.3 of this condition occurs in respect of any partner in the firm or any of those persons or a petition is presented for the Contractor to be wound up as an unregistered company; or
 - 21.1.3 where the Contractor is a company, if the company passes a resolution for winding-up or the court makes an administration order or a winding-up order, or the company makes a composition or management with its creditors, or an administrator, receiver or manager is appointed by the company, a creditor or by the court, or possession is taken of any of its property under the terms of a floating charge.
- 21.2 The ESFA may terminate the Contract without liability to the Contractor by giving to the Contractor, or where relevant their representatives written notice, having effect immediately or after such periods as the ESFA may determine as follows;
- 21.2.1 Where any of the events in Clause 21.1 occur;
 - 21.2.2 In accordance with Clause 20.8 (Serious Breach);
 - 21.2.3 Where the Contractor is an individual, if he shall die or be adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Health Act 1983;
 - 21.2.4 In the event that the ESFA is of the reasonable opinion that the conduct of the Contractor amounts to a fundamental breach of the Contract which is incapable of remedy;
 - 21.2.5 ceases to be on the Register of Apprenticeship Training Providers maintained by the ESFA;
 - 21.2.6 The Contractor or any employee shall have committed any offence under the Bribery Act 2010;
 - 21.2.7 On the occurrence of the statutory provisions contained in regulation 73 (1) (a) to (c) of the Public Contracts Regulations 2015;
 - 21.2.8 The outcome of any financial health and/or control assessment undertaken in relation to the Contractor is inadequate;
 - 21.2.9 The Contractor fails to comply with requirements imposed under Clauses 17.11.1 and/or 17.11.2;

- 21.2.10 The Contractor fails to comply with requirements imposed under Clauses 17.15.3.1, and / or 17.15.3.2;
- 21.2.11 An Ofsted inspection results in the Services in part or overall thereof being assessed as inadequate;
- 21.2.12 In accordance with the Contractor has had two consecutive Ofsted Provider Monitoring Visits resulting in one or more “insufficient progress” judgements; and/or
- 21.2.13 In accordance with Clause 17.16.5 an Inspectorate monitoring visit results in the Services being assessed as having made “insufficient progress” and in the reasonable view of the ESFA Learners may be at immediate risk on safeguarding grounds, and/or the quality of leadership and/or training provision is such that one or more Learner has no reasonable prospect of achieving his or her training objective; and/or
- 21.2.14 where the ESFA is in receipt of a notice from the Contractor, pursuant to Clause 5.19. and at its absolute discretion the ESFA is satisfied that the change of control will prejudice the Contractor’s ability to deliver the Services.
- 21.3 In addition to the rights of termination under any this and any other clauses of this Contract, the ESFA shall be entitled to terminate this Contract in respect of all or part of the Service provided under the Contract by giving to the other not less than three months’ notice to that effect without the need to give a reason for termination.
- 21.4 Termination under Clause 21 shall not prejudice or affect any right of action or remedy, which shall have accrued or shall thereupon accrue to the Parties under this Contract.
- 21.5 Where the Contractor goes into administration or liquidation, the ESFA must be assumed to be a creditor of the Contractor. The Contractor must take steps to ensure that the ESFA is provided with details of the administrator or liquidator and receives notification of any creditors meetings. The ESFA will confirm whether in fact it is a creditor within 8 weeks of being notified that the Contractor is in administration or liquidation.
- 21.6 The Contractor shall upon termination of the Contract immediately deliver up to the ESFA all correspondence, documents, specification papers and other property belonging to the ESFA, which may be in its possession or under its control.
- 21.7 Notice of termination of the Contract under Clause 17, Clause 20 or this Clause 21 shall result in the Contractor being removed from the Register of Apprenticeship Training Providers maintained by the ESFA.
- 21.8 The Contractor must not recruit new Learners after notice of termination of the Contract has been given under Clause 17, Clause 20 or this Clause 21. The

ESFA will not be liable to make payments in respect of any Learners recruited in breach of this Clause.

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

- 22.1A Where there are Transferring Former Supplier Employees (as defined in Schedule 1) between the Former Supplier (as defined in Schedule 1) and the Contractor, the provisions set out in Schedule 1 to this Contract shall apply.
- 22.1 The Parties agree that if upon termination of this Contract or any part of the Service being provided under the Contract, circumstances arise in which the Transfer of Undertakings (Protection of Employment) Regulations 2006 are applicable, the provisions of Schedule 1 shall apply.
- 22.2 The Parties agree that on termination or expiry of this Contract for any reason, the continuity of the Services is of paramount importance. The Contractor shall do its utmost to minimise disruption caused to Learners and to assist the implementation of any contingency plan proposed by the ESFA either prior to or after the termination or expiry of this Contract, to deal with the effects of such termination or expiry in so far as it is practicable to do so.
- 22.3 On termination or expiry of this Contract for any reason the Learner Files will become the property of the ESFA. The Contractor shall allow the ESFA his servants or agent to have access to its premises to remove Learner Files or otherwise comply with a request by the ESFA to transfer Learner Files to any third party nominated by the ESFA.
- 22.4 The Contractor shall, at no cost to the ESFA, promptly provide such assistance and comply with such timetable as the ESFA may reasonably require for the purpose of ensuring an orderly transfer of responsibility for provision of the Services (or its equivalent) upon the expiry or other termination of this Contract. The Contractor shall use all reasonable endeavours to ensure that its employees and its Sub-Contractors are under a similar obligation. The ESFA shall be entitled to require the provision of such assistance both prior to and after the expiry or other termination of this Contract.
- 22.5 Such assistance may include, (without limitation) delivery of documents and data in the possession or control of the Contractor or its Sub-Contractors, which relate to performance, monitoring, management and reporting of the Programme, including the documents and data, if any, referred to in the Schedules.
- 22.6 The Contractor undertakes that it shall not knowingly do or omit to do anything which may adversely affect the ability of the ESFA to ensure an orderly transfer of responsibility for provision of the Services.

FORCE MAJEURE

- 23.1 Neither party shall be liable for any delay or failure to meet its obligations under this Contract due to any cause outside its reasonable control, including (without

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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.

PUBLIC REPUTATIONS OF THE PARTIES/PRESS RELEASES

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

NOT USED

RETENTION OF DOCUMENTS

- 26.1 The Contractor must retain the documentation to verify the delivery of the Services as set out in the Funding Rules.
- 26.2 Without prejudice to any of the other rights under the Contract to recover funds, the ESFA will be entitled to recover from the Contractor any sums which it is required to repay to the European Social Fund as a result of the Contractor's failure to comply with this Clause 26.
- 26.3 The provisions of this Clause 26 shall apply during the continuance of this Contract and after its termination howsoever arising.

STATUS OF CONTRACT

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

WAIVER

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

THIRD PARTY RIGHTS

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

NOTICE

- 30.1 Any notice or other document to be given under this Contract must be in writing and will 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 electronic media (including but not limited to the Manage Your Education & Skills Funding service) to a Party at the address or relevant telecommunications number for such Party or such other address as the Party may from time to time designate by written notice to the other.
- 30.2 All such notices and documents must be in the English language. Any notice or other document will 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 on the day of delivery or where notice is given by electronic media, on the Working Day following transmission. To prove the giving of a notice or other document it will be sufficient to show that it was despatched.

GOVERNING / JURISDICTION

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

DISPUTE RESOLUTION

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

FEEDBACK AND COMPLAINTS

- 33.1 The primary responsibility for receiving feedback and investigating complaints promptly and thoroughly in respect of the Services shall rest with the Contractor shall have procedures in place, which are acceptable to the ESFA, to gather and act upon feedback and complaints from Learners and/or their representatives and employers and the wider community.

- 33.2 The Contractor must ensure that Learners are made aware of its procedure for dealing with complaints and that the procedure is clear and accessible to Learners who wish to complain.
- 33.3 The Contractor shall be responsible for resolving complaints in accordance with its own procedures and any guidance issued by the ESFA.
- 33.4 Where a complaint has not been resolved to the satisfaction of the complainant the Contractor will advise the complainant of his or her right to complain to the ESFA and co-operate with any investigation carried out by the ESFA and act on any recommendations made by the ESFA following the investigation.

STATE AID

- 34.1 The Contractor should satisfy itself, if the European rules on State Aid apply to the Services delivered under this Contract and comply with the programme requirements set out in the Funding Rules.
- 34.2 Where the rules on State Aid apply, the ESFA will supply to the Contractor details of the records that the Contractor will need to collect and retain.
- 34.3 The ESFA reserves the right to require the Contractor to obtain a contribution towards the cost of the Services delivered under this Contract from the employer of any participant. Where a contribution is required, the ESFA will confirm to the Contractor in writing the exact percentage of the contribution.
- 34.4 Where ESFA requires the Contractor to obtain a contribution towards the cost of the Services under Clause 34.3 above, the Contractor must provide evidence that the contribution has been received.
- 34.5 In the event that any Funding paid under this Contract is deemed to constitute unlawful state aid the ESFA reserves the right to require immediate repayment of any such Funding.

INTELLECTUAL PROPERTY RIGHTS

35.1 Definitions

“Background Intellectual Property”

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

“Confidential Information”

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

“Foreground Intellectual Property”

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

“Intellectual Property”

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

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

“Work”

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

35.2 In consideration of the ESFA making the payments to the Contractor in connection with the Services the Contractor hereby grants (and, where relevant, shall procure from any necessary third parties the grant) to the ESFA a non-exclusive, irrevocable, worldwide, royalty-free licence (with the right to license others) of any of the Contractor's Foreground Intellectual Property that the ESFA may reasonably require to be able fully to exploit, develop and commercialise the results of the Services, including, without limitation, the Work.

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

DISPOSAL OF ASSETS AND CHANGE OF USE

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

36.2 For the purposes of this section:

- a) ‘Asset’ shall mean any property, real or personal, tangible or intangible;
- b) an Asset shall be considered to have been financed by the ESFA if it has been acquired wholly or partly with funds provided by the ESFA;

- c) the use of any Asset shall be considered to have changed if the Contractor uses it for any purpose other than for the provision or connected with the provision of Services under the Contract;
 - d) 'the appropriate proportion thereof' shall be the proportion represented by the amount of Funding provided by the ESFA to acquire, develop or improve an asset in relation to the entire price paid for its acquisition, or its market value when its development or improvement have been completed.
- 36.3 The Contractor shall ensure that any Asset financed by the ESFA is adequately insured.
- 36.4 The Contractor shall inform the ESFA if it proposes to dispose of, or change the use of, any Asset that has been financed by the ESFA.
- 36.5 The Contractor shall not dispose of any Asset financed by monies provided by the ESFA unless it has first obtained the written consent of the ESFA to such a disposal.
- 36.6 Where the Contractor disposes of the Asset it shall pay to the ESFA whichever is the greater either the amount of Funding provided by the ESFA in respect of the Asset or the net proceeds of any disposal of an Asset, or the appropriate proportion thereof, to the ESFA unless otherwise agreed with the ESFA.
- 36.7 If the Contractor changes the use of any such Asset it will be treated as a disposal and the Contractor shall make a payment to the ESFA in accordance with Clause 36.6 above.
- 36.8 In the event of the Contractor being taken over, merging or going into liquidation, all Assets financed by the ESFA, or the equivalent portion of their market value, will become the property of the ESFA.
- 36.9 The provisions of this Clause 36 shall apply during the continuance of this Contract and after its termination howsoever arising. The ESFA shall reserve the right to decide when its interest in Assets financed by the ESFA under the terms of the Contract shall cease.

HEADINGS

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

ENTIRE CONTRACT / AMENDMENTS

- 38.1 The Contract shall comprise the following:

Terms and Conditions

Appendix 1 & Appendix 2

Schedule 1 Staff Transfer

Schedule 2 Processing, Personal Data and Data Subjects

The Specification

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

Funding Rules

The 2014 to 2020 ESF Programme ESF Specifications Deliverables Evidence Requirements

The European Social Fund Operational Programme 2014-2020

- 38.2 This Contract constitutes the entire Contract between the Parties and shall not be varied except by an instrument in writing signed by the Parties.
- 38.3 Subject to the availability of Funding and the performance of the Contractor, the ESFA reserves the right to increase by 50% the Contract Value as set out in Appendices 1 and 2 as at the Effective Date.

APPENDIX 1 - SUMMARY OF FUNDING

Organisation Name:	WORKPAYS LIMITED
UKPRN:	10037289

	Contract Ref	Start Date	End Date	Maximum Contract Values
SUPPORTING NEETS - South East Midlands LEP	ESF-5503	08/11/2021	31/03/2023	£800,000
Total Funding for this contract				£800,000

Education and Skills Funding Agency	Appendix 1	Master Contract ref: ESFA-21601
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REDACTED (Section 43(2) FOIA refers)

REDACTED (Section 43(2) FOIA refers)

REDACTED (Section 43(2) FOIA refers)

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

Staff Transfer

1 DEFINITIONS

In this Schedule, the following definitions shall apply:

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

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

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

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

a list provided by the Contractor of all Contractor Personnel who will transfer under the Employment Regulations on the Service Transfer Date;

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

a list prepared and updated by the Contractor of all Contractor Personnel who are at the date of the list wholly or mainly engaged in or assigned to the provision of the Services or any relevant part of the Services which it is envisaged as at the date of such list will no longer be provided by the Contractor;

**“Transferring
Authority
Employees”**

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

**“Transferring
Former Supplier
Employees”**

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

**“Transferring
Supplier
Employees”**

those employees of the Contractor and/or the Contractor’s Sub-Contractors to whom the Employment Regulations will apply on the Service Transfer Date.

2 INTERPRETATION

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

PART A: NOT USED

ESF Contract for Services – Education and Training

Education and Skills Funding Agency Contract Reference ESFA-21601

www.gov.uk/ESFA

ANNEX TO PART A: NOT USED

PART B: Transferring Former Supplier Employees at commencement of Services

1 RELEVANT TRANSFERS

1.1 The ESFA and the Contractor agree that:

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

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

2 FORMER SUPPLIER INDEMNITIES

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

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

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

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

- (a) arising out of the resignation of any Transferring Former Supplier Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Contractor or any Sub-Contractor to occur in the period from (and including) the Relevant Transfer Date; or
 - (b) arising from the failure by the Contractor and/or any Sub-Contractor to comply with its obligations under the Employment Regulations.
- 2.3 If any person who is not identified by the ESFA as a Transferring Former Supplier Employee claims, or it is determined in relation to any person who is not identified by the ESFA as a Transferring Former Supplier Employee, that his/her contract of employment has been transferred from a Former Supplier to the Contractor and/or any Notified Sub-contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:
 - (a) the Contractor shall, or shall procure that the Notified Sub-contractor shall, within 5 Working Days of becoming aware of that fact, give notice in writing to the ESFA and, where required by the ESFA, to the Former Supplier; and
 - (b) the Former Supplier may offer (or may procure that a third party may offer) employment to such person within 15 Working Days of the notification by the Contractor and/or the Notified Sub-contractor or take such other reasonable steps as the Former Supplier considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law.
- 2.4 If an offer referred to in Paragraph 2.3(b) is accepted, or if the situation has otherwise been resolved by the Former Supplier and/or the ESFA, the Contractor shall, or shall procure that the Notified Sub-contractor shall, immediately release the person from his/her employment or alleged employment.
- 2.5 If by the end of the 15 Working Day period specified in Paragraph 2.3(b):
 - (a) no such offer of employment has been made;
 - (b) such offer has been made but not accepted; or
 - (c) the situation has not otherwise been resolved,the Contractor and/or any Notified Sub-contractor may within 5 Working Days give notice to terminate the employment or alleged employment of such person.

- 2.6 Subject to the Contractor and/or any Notified Sub-contractor acting in accordance with the provisions of Paragraphs 2.3 to 2.5 and in accordance with all applicable proper employment procedures set out in Law, the ESFA shall procure that the Former Supplier indemnifies the Contractor and/or any Notified Sub-contractor (as appropriate) against all Employee Liabilities arising out of the termination of employment pursuant to the provisions of Paragraph 2.5 provided that the Contractor takes, or shall procure that the Notified Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 2.7 The indemnity in Paragraph 2.6:
- (a) shall not apply to:
 - (i) any claim for:
 - (A) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
 - (B) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,in any case in relation to any alleged act or omission of the Contractor and/or any Sub-Contractor; or
 - (ii) any claim that the termination of employment was unfair because the Contractor and/or Notified Sub-contractor neglected to follow a fair dismissal procedure; and
 - (b) shall apply only where the notification referred to in Paragraph 2.3(a) is made by the Contractor and/or any Notified Sub-contractor (as appropriate) to the ESFA and, if applicable, the Former Supplier, within 6 months of the Effective Date.
- 2.8 If any such person as is described in Paragraph 2.3 is neither re-employed by the Former Supplier nor dismissed by the Contractor and/or any Notified Sub-contractor within the time scales set out in Paragraph 2.5, such person shall be treated as having transferred to the Contractor or Notified Sub-contractor and the Contractor shall, or shall procure that the Notified Sub-contractor shall, comply with such obligations as may be imposed upon it under the Law.

3 CONTRACTOR INDEMNITIES AND OBLIGATIONS

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

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

determined that the Employment Regulations applied so as to transfer his/her employment from the Former Supplier to the Contractor or a Sub-Contractor, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date;

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

4 INFORMATION

The Contractor shall, and shall procure that each Sub-Contractor shall, promptly provide to the ESFA and/or at the ESFA's direction, the Former Supplier, in writing

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

5 PRINCIPLES OF GOOD EMPLOYMENT PRACTICE

- 5.1 The Contractor shall, and shall procure that each Sub-Contractor shall, comply with any requirement notified to it by the ESFA relating to pensions in respect of any Transferring Former Supplier Employee as set down in:
- (a) the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised 2007;
 - (b) HM Treasury's guidance "Staff Transfers from Central Government: A Fair Deal for Staff Pensions of 1999;
 - (c) HM Treasury's guidance: "Fair deal for staff pensions: procurement of Bulk Transfer Agreements and Related Issues" of June 2004; and/or
 - (d) the New Fair Deal.
- 5.2 Any changes embodied in any statement of practice, paper or other guidance that replaces any of the documentation referred to in Paragraph 5.1 shall be agreed in accordance with the Change Control Procedure.

6 PROCUREMENT OBLIGATIONS

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

7 PENSIONS

The Contractor shall, and shall procure that each Sub-Contractor shall, comply with the pensions provisions in the Annex to Part B with regards to the Schemes and Part E of this Schedule with regards to the LGPS.

ANNEX TO PART B

PENSIONS

1 PARTICIPATION

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

2 FUTURE SERVICE BENEFITS

- 2.1 If the Contractor is re-joining the Schemes for the first time, the Contractor shall procure that the Fair Deal Employees shall be either admitted to or offered continued membership of the relevant section of the Schemes that they became eligible to join on the Relevant Transfer Date and shall continue to accrue or accrue benefits in accordance with the provisions governing the relevant section of the Schemes for service from (and including) the Relevant Transfer Date.
- 2.2 If staff have already been readmitted to the Schemes, the Contractor shall procure that the Fair Deal Employees, shall be either admitted into, or offered continued membership of, the relevant section of the Schemes that they currently contribute to, or were eligible to join immediately prior to the Relevant Transfer Date and the Contractor shall procure that the Fair Deal Employees continue to accrue benefits in accordance with the provisions governing the relevant section of the Schemes for service from (and including) the Relevant Transfer Date.

- 2.3 The Contractor undertakes that should it cease to participate in the Schemes for whatever reason at a time when it has Eligible Employees, that it will, at no extra cost to the ESFA, provide to any Fair Deal Employee who immediately prior to such cessation remained an Eligible Employee with access to an occupational pension scheme certified by the Government Actuary's Department or any actuary nominated by the ESFA in accordance with relevant guidance produced by the Government Actuary's Department as providing benefits which are broadly comparable to those provided by the Schemes on the date the Eligible Employees ceased to participate in the Schemes.
- 2.4 The Parties acknowledge that the Civil Service Compensation Scheme and the Civil Service Injury Benefit Scheme (established pursuant to section 1 of the Superannuation Act 1972) are not covered by the protection of New Fair Deal.

3 FUNDING

- 3.1 The Contractor undertakes to pay to the Schemes all such amounts as are due under the Admission Agreement and shall deduct and pay to the Schemes such employee contributions as are required by the Schemes.
- 3.2 The Contractor shall indemnify and keep indemnified the ESFA on demand against any claim by, payment to, or loss incurred by the Schemes in respect of the failure to account to the Schemes for payments received and the non-payment or the late payment of any sum payable by the Contractor to or in respect of the Schemes.

4 PROVISION OF INFORMATION

The Contractor and the ESFA respectively undertake to each other:

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

5 INDEMNITY

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

6 EMPLOYER OBLIGATION

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

7 SUBSEQUENT TRANSFERS

The Contractor shall:

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

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

8 BULK TRANSFER

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

- (a) fully fund any such broadly comparable pension scheme in accordance with the funding requirements set by that broadly comparable pension scheme's actuary or by the Government Actuary's Department;
- (b) instruct any such broadly comparable pension scheme's actuary to, and to provide all such co-operation and assistance in respect of any such broadly comparable pension scheme as the Replacement Supplier and/or the Customer may reasonably require, to enable the Replacement Supplier to participate in the Schemes in respect of any Fair Deal Employee that remain eligible for New Fair Deal protection following a Service Transfer;

- (c) allow, in respect of any Fair Deal Employee that remains eligible for New Fair Deal protection, following a Service Transfer, the bulk transfer of past service from any such broadly comparable pension scheme into the Schemes on a day for day service basis and to give effect to any transfer of accrued rights required as part of participation under New Fair Deal, for the avoidance of doubt should the amount offered by the broadly comparable pension scheme be less than the amount required by the Schemes to fund day for day service ("the Shortfall"), the Contractor agrees to pay the Shortfall to the Schemes; and
- (d) indemnify the Customer on demand for any failure to pay the Shortfall as required under sub-paragraph (c) above.

PART C: No transfer of employees at commencement of Services

2 PROCEDURE IN THE EVENT OF TRANSFER

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

2 INDEMNITIES

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

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

- (b) shall apply only where the notification referred to in Paragraph 1.2(a) is made by the Contractor and/or any Sub-Contractor to the ESFA and, if applicable, Former Supplier within 6 months of the Effective Date.

3 PROCUREMENT OBLIGATIONS

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

PART D: Employment Exit Provisions

3 PRE-SERVICE TRANSFER OBLIGATIONS

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

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

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

1.6 During the Term, the Contractor shall provide, and shall procure that each Sub-Contractor shall provide, to the ESFA any information the ESFA may reasonably require relating to the manner in which the Services are organised, which shall include:

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

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

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

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

2 EMPLOYMENT REGULATIONS EXIT PROVISIONS

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

- 2.2 The Contractor shall, and shall procure that each Sub-Contractor shall, comply with all its obligations in respect of the Transferring Supplier Employees arising under the Employment Regulations in respect of the period up to (and including) the Service Transfer Date and shall perform and discharge, and procure that each Sub-Contractor shall perform and discharge, all its obligations in respect of all the Transferring Supplier Employees arising in respect of the period up to (and including) the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and all such sums due as a result of any Fair Deal Employees' participation in the Schemes which in any case are attributable in whole or in part to the period ending on (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the Contractor and/or the Sub-Contractor (as appropriate); and (ii) the Replacement Supplier and/or Replacement Sub-contractor.
- 2.3 Subject to Paragraph 2.4, the Contractor shall indemnify the ESFA and/or the Replacement Supplier and/or any Replacement Sub-contractor against any Employee Liabilities arising from or as a result of:
- (a) any act or omission of the Contractor or any Sub-Contractor in respect of any Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee whether occurring before, on or after the Service Transfer Date;
 - (b) the breach or non-observance by the Contractor or any Sub-Contractor occurring on or before the Service Transfer Date of:
 - (i) any collective agreement applicable to the Transferring Supplier Employees; and/or
 - (ii) any other custom or practice with a trade union or staff association in respect of any Transferring Supplier Employees which the Contractor or any Sub-Contractor is contractually bound to honour;
 - (c) any claim by any trade union or other body or person representing any Transferring Supplier Employees arising from or connected with any failure by the Contractor or a Sub-Contractor to comply with any legal obligation to such trade union, body or person arising on or before the Service Transfer Date;
 - (d) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:

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

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

- (a) arising out of the resignation of any Transferring Supplier Employee before the Service Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Replacement Supplier and/or any Replacement Sub-contractor to occur in the period on or after the Service Transfer Date); or

- (b) arising from the Replacement Supplier's failure, and/or Replacement Sub-contractor's failure, to comply with its obligations under the Employment Regulations.
 - 2.5 If any person who is not identified in the Supplier's Final Supplier Personnel List claims, or it is determined in relation to any person who is not identified in the Supplier's Final Supplier Personnel List a Transferring Supplier Employee, that his/her contract of employment has been transferred from the Contractor or any Sub-Contractor to the Replacement Supplier and/or Replacement Sub-contractor pursuant to the Employment Regulations or the Acquired Rights Directive, then:
 - (a) the ESFA shall procure that the Replacement Supplier shall, or any Replacement Sub-contractor shall, within 5 Working Days of becoming aware of that fact, give notice in writing to the Contractor; and
 - (b) the Contractor may offer (or may procure that a Sub-Contractor may offer) employment to such person within 15 Working Days of the notification by the Replacement Supplier and/or any and/or Replacement Sub-contractor or take such other reasonable steps as it considers appropriate to deal with the matter provided always that such steps are in compliance with Law.
 - 2.6 If such offer is accepted, or if the situation has otherwise been resolved by the Contractor or a Sub-Contractor, the ESFA shall procure that the Replacement Supplier shall, or procure that the Replacement Sub-contractor shall, immediately release or procure the release of the person from his/her employment or alleged employment.
 - 2.7 If after the 15 Working Day period specified in Paragraph 2.5(b) has elapsed:
 - (a) no such offer of employment has been made;
 - (b) such offer has been made but not accepted; or
 - (c) the situation has not otherwise been resolved
- the ESFA shall advise the Replacement Supplier and/or Replacement Sub-contractor, as appropriate that it may within 5 Working Days give notice to terminate the employment or alleged employment of such person.
- 2.8 Subject to the Replacement Supplier and/or Replacement Sub-contractor acting in accordance with the provisions of Paragraphs 2.5 to 2.7, and in accordance with all applicable proper employment procedures set out in applicable Law, the Contractor shall indemnify the Replacement Supplier and/or Replacement Sub-contractor against all Employee Liabilities arising out of the termination of employment pursuant to the provisions of Paragraph 2.7 provided that the Replacement Supplier takes, or shall procure that the Replacement Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.

2.9 The indemnity in Paragraph 2.8:

- (a) shall not apply to:
 - (i) any claim for:
 - (A) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
 - (B) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,

in any case in relation to any alleged act or omission of the Replacement Supplier and/or Replacement Sub-contractor; or
 - (ii) any claim that the termination of employment was unfair because the Replacement Supplier and/or Replacement Sub-contractor neglected to follow a fair dismissal procedure; and
- (b) shall apply only where the notification referred to in Paragraph 2.5(a) is made by the Replacement Supplier and/or Replacement Sub-contractor to the Contractor within 6 months of the Service Transfer Date.

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

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

- (a) the Contractor and/or any Sub-Contractor; and
- (b) the Replacement Supplier and/or the Replacement Sub-contractor.

- 2.12 The Contractor shall, and shall procure that each Sub-Contractor shall, promptly provide to the ESFA and any Replacement Supplier and/or Replacement sub-contractor, in writing such information as is necessary to enable the ESFA, the Replacement Supplier and/or Replacement Sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations. The ESFA shall procure that the Replacement Supplier and/or Replacement Sub-contractor, shall promptly provide to the Contractor and each Sub-Contractor in writing such information as is necessary to enable the Contractor and each Sub-Contractor to carry out their respective duties under regulation 13 of the Employment Regulations.
- 2.13 Subject to Paragraph 2.14, the ESFA shall procure that the Replacement Supplier indemnifies the Contractor on its own behalf and on behalf of any Replacement Sub-contractor and its Sub-Contractors against any Employee Liabilities arising from or as a result of:
- (a) any act or omission of the Replacement Supplier and/or Replacement Sub-contractor in respect of any Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Supplier Employee;
 - (b) the breach or non-observance by the Replacement Supplier and/or Replacement Sub-contractor on or after the Service Transfer Date of:
 - (i) any collective agreement applicable to the Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List; and/or
 - (ii) any custom or practice in respect of any Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List which the Replacement Supplier and/or Replacement Sub-contractor is contractually bound to honour;
 - (c) any claim by any trade union or other body or person representing any Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List arising from or connected with any failure by the Replacement Supplier and/or Replacement Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or after the Service Transfer Date;

- (d) any proposal by the Replacement Supplier and/or Replacement Sub-contractor to change the terms and conditions of employment or working conditions of any Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List on or after their transfer to the Replacement Supplier or Replacement Sub-contractor (as the case may be) on the Service Transfer Date, or to change the terms and conditions of employment or working conditions of any person identified in the Supplier's Final Supplier Personnel List who would have been a Transferring Supplier Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Service Transfer Date as a result of or for a reason connected to such proposed changes;
- (e) any statement communicated to or action undertaken by the Replacement Supplier or Replacement Sub-contractor to, or in respect of, any Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List on or before the Service Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Contractor in writing;
- (f) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - (i) in relation to any Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date; and
 - (ii) in relation to any employee who is not a Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Contractor or Sub-Contractor, to the Replacement Supplier or Replacement Sub-contractor to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date;
- (g) a failure of the Replacement Supplier or Replacement Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List in respect of the period from (and including) the Service Transfer Date; and

- (h) any claim made by or in respect of a Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Supplier Employee relating to any act or omission of the Replacement Supplier or Replacement Sub-contractor in relation to obligations under regulation 13 of the Employment Regulations.

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

PART E: NOT USED

ANNEX: LIST OF NOTIFIED SUB-CONTRACTORS

APPENDIX G TO CLAUSE 1 OF SCHEDULE 1

TRANSFER VALUES

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

Schedule 2 GDPR AND DATA PROTECTION

Processing, Personal Data and Data Subjects

Description	Details
Subject matter of the Processing	<p>The subject matter is the Personal Data of Learners on education or training programmes administered by the ESFA that are subject to this Contract as defined in the ESFA privacy notice and ILR specification (as found at the second link below) and its appendices.</p> <p>ESFA: privacy notice - GOV.UK (www.gov.uk) Specification of the Individualised Learner Record for 2021 to 2022 (fasst.org.uk)</p>
Duration of the Processing	<p>The duration of the Processing covers the academic year data returns to the ESFA as defined in Appendix A of the ILR specification (see link) to enable funding and audit of the learning programmes defined in this Contract.</p> <p>Specification of the Individualised Learner Record for 2021 to 2022 (fasst.org.uk)</p>
Nature and purposes of the Processing	<p>The nature and purposes of the processing is defined in the ESFA privacy notice (see link).</p> <p>ESFA: privacy notice - GOV.UK (www.gov.uk)</p> <p>The processing of data in the agreement refers to the submission of ILR data to the ESFA only. The processing does not include the processing of Personal Data collected from the Learners by the body for the purposes of enrolling Learners onto programmes or delivering education or training, e.g. e-portfolios.</p> <p>The Contractor will be required to submit the data to the ESFA as set out in Clause 16 (Submission of Learner Data) of this Contract.</p>

Description	Details
Type of personal data	<p>The Personal Data to be processed is defined in the ILR specification (see link).</p> <p>Specification of the Individualised Learner Record for 2021 to 2022 (fasst.org.uk)</p>
Categories of data subject	<p>The data subjects are Learners on education or training programmes administered by the ESFA that are subject to this Contract.</p>
<p>Retention and destruction of the data once the processing is complete</p> <p>UNLESS requirement under union or member state Law to preserve that type of data</p>	<p>Information on how the data must be supplied to the ESFA is detailed in the ILR specification and its appendices (see link).</p> <p>Specification of the Individualised Learner Record for 2021 to 2022 (fasst.org.uk) For the purposes of the ESFA as a data controller of the data, the Contractor is required to retain the data for the funding and audit purposes set out in this Contract for six (6) years from the end of the Financial Year in which the last payment is made under this Contract.</p> <p>For the purposes of the ESFA for Work & Pensions as a data controller, where Learner Data is used as match on the 2014-20 ESF programme, the data must be retained securely until 31st December 2030.</p> <p>The Contractor (and any other data controller) is responsible for determining any further need to process the data, including its retention, prior to secure destruction.</p>

Schedule 3 – SECURITY AND DEPARTMENTAL POLICIES

Part A: Security

<p>“BPSS” “Baseline Personnel Security Standard”</p>	<p>means the Government’s HMG Baseline Personal Security Standard. Further information can be found at: Government baseline personnel security standard - GOV.UK (www.gov.uk)</p>
<p>“CCSC” “Certified Cyber Security Consultancy”</p>	<p>is the National Cyber Security Centre’s (NCSC) approach to assessing the services provided by consultancies and confirming that they meet NCSC's standards. See website: Certified Cyber Security Consultancy - NCSC.GOV.UK</p>
<p>“CCP” “Certified Professional”</p>	<p>is a NCSC scheme in consultation with government, industry and academia to address the growing need for specialists in the cyber security profession. See website: Certified Professional scheme - NCSC.GOV.UK</p>
<p>“CPA” “Commercial Product Assurance” (formerly called “CESG Product Assurance”)</p>	<p>is an ‘information assurance scheme’ which evaluates commercial off the shelf (COTS) products and their developers against published security and development standards. See website: Commercial Product Assurance (CPA) - NCSC.GOV.UK</p>
<p>“Cyber Essentials” “Cyber Essentials Plus”</p>	<p>Cyber Essentials is the government backed, industry supported scheme to help organisations protect themselves against common cyber-attacks. Cyber Essentials and Cyber Essentials Plus are levels within the scheme. There are a number of certification bodies that can be approached for further advice on the scheme; the link below points to one of these providers: IASME Governance Self Assessed Apply Now - IASME</p>
<p>“Department Data” “Department’s Information”</p>	<p>as defined in Clause 1 (Definitions) of the Contract</p>
<p>“Department”</p>	<p>means the ESFA</p>

“Departmental Security Standards”	means the Department’s security policy or any standards, procedures, process or specification for security that the Contractor is required to deliver.
“Digital Marketplace / GCloud”	means the online framework for identifying and procuring cloud technology and people for digital projects.
End User Devices	means the personal computer or consumer devices that store or process information.
“Good Industry Practice”	as defined in Clause 1 (Definitions) of the Contract.
“Good Industry Standard”	means the implementation of products and solutions, and the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a leading company within the relevant industry or business sector.
“GSC” “GSCP” “Government Security Classifications Policy”	means the Government Security Classification Policy which establishes the rules for classifying HMG information. The policy is available at: Government Security Classifications - GOV.UK (www.gov.uk)
“HMG”	means Her Majesty’s Government
“ICT”	means Information and Communications Technology (ICT) is used as an extended synonym for information technology (IT), used to describe the bringing together of enabling technologies used to deliver the end-to-end solution
“ISO/IEC 27001” “ISO 27001”	is the International Standard for Information Security Management Systems Requirements
“ISO/IEC 27002” “ISO 27002”	is the International Standard describing the Code of Practice for Information Security Controls.
“ISO 22301”	is the International Standard describing for Business Continuity
“IT Security Health Check (ITSHC)” “IT Health Check (ITHC)”	means an assessment to identify risks and vulnerabilities in systems, applications and networks which may compromise the

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“Penetration Testing”	confidentiality, integrity or availability of information held on that IT system.
“Need-to-Know”	the Need-to-Know principle is employed within HMG to limit the distribution of classified information to those people with a clear ‘need to know’ in order to carry out their duties.
“NCSC”	The National Cyber Security Centre (NCSC) formerly CESG is the UK government’s National Technical Authority for Information Assurance. The NCSC website is National Cyber Security Centre - NCSC.GOV.UK
“OFFICIAL” “OFFICIAL-SENSITIVE”	the term ‘OFFICIAL’ is used to describe the baseline level of ‘security classification’ described within the Government Security Classification Policy (GSCP). the term ‘OFFICIAL–SENSITIVE’ is used to identify a limited subset of OFFICIAL information that could have more damaging consequences (for individuals, an organisation or government generally) if it were lost, stolen or published in the media, as described in the GSCP.
“RBAC” “Role Based Access Control”	means Role Based Access Control. A method of restricting a person’s or process’ access to information depending on the role or functions assigned to them.
“Storage Area Network” “SAN”	means an information storage system typically presenting block based storage (i.e. disks or virtual disks) over a network interface rather than using physically connected storage.
“Secure Sanitisation”	means the process of treating data held on storage media to reduce the likelihood of retrieval and reconstruction to an acceptable level.

	<p>NCSC Guidance can be found at: Secure sanitisation of storage media - NCSC.GOV.UK</p> <p>the disposal of physical documents and hardcopy materials advice can be found at: Secure Destruction Public Website (cpni.gov.uk)</p>
<p>“Security and Information Risk Advisor”</p> <p>“CCP SIRA”</p> <p>“SIRA”</p>	<p>means the Security and Information Risk Advisor (SIRA) is a role defined under the NCSC Certified Professional (CCP) Scheme. See also:</p> <p>Certified Professional scheme - NCSC.GOV.UK</p>
<p>“Senior Information Risk Owner”</p> <p>“SIRO”</p>	<p>means the Senior Information Risk Owner (SIRO) responsible on behalf of the DfE Accounting Officer for overseeing the management of information risk across the organisation. This includes its executive agencies, arms length bodies (ALBs), non-departmental public bodies (NDPBs) and devolved information held by third parties.</p>
<p>“SPF”</p> <p>“HMG Security Policy Framework”</p>	<p>means the definitive HMG Security Policy which describes the expectations of the Cabinet Secretary and Government’s Official Committee on Security on how HMG organisations and third parties handling HMG information and other assets will apply protective security to ensure HMG can function effectively, efficiently and securely. Security policy framework: protecting government assets - GOV.UK (www.gov.uk)</p>

- 1.1. The Contractor will be aware of and comply with the relevant [HMG security policy framework](#), [NCSC guidelines](#) and where applicable Security and Departmental policies which include but are not constrained to the following paragraphs.
- 1.2 Where the Contractor will handle information at OFFICIAL for the Department, the requirements of [Cabinet Office Procurement Policy Note – Use of Cyber Essentials Scheme certification](#) - [Action Note 09/14](#) dated 25 May 2016, or any subsequent updated document, are mandated; the Contractor will endeavour to meet the requirements of Cyber Essentials for the 2021/22 Funding Year and present the results to the Department on request. The scope must be relevant to the Services supplied to, or on behalf of, the Department.
- 1.3 The Contractor will follow the Cabinet Office guidance on Government Security Classifications (GCSP) in respect of any Department Data being handled in the course of providing this Service and will handle this data in accordance with its security classification. (In the event where the Contractor has an existing Protective Marking Scheme then the Contractor may continue to use this but must map the HMG security classifications against it to ensure the correct controls are applied to the Department Data).
- 1.4 The Contractor will have in place and maintain physical security to premises and sensitive areas in line with those outlined in ISO/IEC 27002 including, but not limited to, entry control mechanisms (e.g. door access), CCTV, alarm systems etc.
- 1.5 The Contractor shall have in place and maintain an appropriate user access control policy for all ICT systems to ensure only authorised personnel have access to Departmental Data. This policy should include appropriate segregation of duties and if applicable Role Based Access Controls (RBAC). User credentials that give access to Departmental Data or systems shall be considered to be sensitive data and must be protected accordingly.
- 1.6 The Contractor will have in place and will maintain procedural, personnel, physical and technical safeguards to protect Department Data, including but not limited to:
 - (a) physical security controls;
 - (b) Good Industry Standard policies and processes;
 - (c) malware protection;
 - (d) boundary access controls including firewalls, application gateways, etc;
 - (e) maintenance and use of fully supported software packages in accordance with vendor recommendations;
 - (f) use of secure device configuration and builds;
 - (g) software updates and patching regimes including malware signatures, for operating systems, network devices, applications and services;
 - (h) user identity and access controls, including the use of multi-factor authentication for sensitive data and privileged account accesses;
 - (i) any services provided to the Department must capture audit logs for security events in an electronic format at the application, service and

system level to meet the Department's logging and auditing requirements, plus logs shall be:

- (i) retained and protected from tampering for a minimum period of six months; and
- (ii) made available to the Department on request.

- 1.7 The Contractor will ensure that any Department Data (including email) transmitted over any public network (including the Internet, mobile networks, or un-protected enterprise network) or to a mobile device shall be encrypted when transmitted.
- 1.8 The Contractor will ensure that any Department Data which resides on a mobile, removable or physically uncontrolled device is stored encrypted using a product or system component which has been formally assured through a recognised certification process agreed with the Department except where the department has given its prior written consent to an alternative arrangement.
- 1.9 The Contractor will ensure that any device which is used to process Department Data meets all of the security requirements set out in the NCSC End User Devices Platform Security Guidance, a copy of which can be found at: <https://www.ncsc.gov.uk/guidance/end-user-device-security> and <https://www.ncsc.gov.uk/collection/end-user-device-security/eud-overview/eud-security-principles>.
- 1.10 Whilst in the Contractor's care all removable media and hardcopy paper documents containing Department Data must be handled securely and secured under lock and key when not in use and shall be securely destroyed when no longer required, using either a cross-cut shredder or a professional secure disposal organisation. The term 'lock and key' is defined as: "securing information in a lockable desk drawer, cupboard or filing cabinet which is under the user's sole control and to which they hold the keys".
- 1.11 When necessary to hand carry removable media and/or hardcopy paper documents containing Department Data, the media or documents being carried shall be kept under cover and transported in such a way as to ensure that no unauthorised person has either visual or physical access to the material being carried. This clause will apply equally regardless of whether the material is being carried inside or outside of company premises. The term 'under cover' means that the information is carried within an opaque folder or envelope within official premises and buildings and within a closed briefcase or other similar bag or container when outside official premises or buildings.
- 1.12 In the event of termination, equipment failure or obsolescence, all Department Data, in either hardcopy or electronic format, that is physically held or logically stored by the Contractor must be accounted for and either physically returned or securely sanitised or destroyed in accordance with the current HMG policy using an NCSC approved product or method. Where sanitisation or destruction is not possible for legal, regulatory or technical reasons, such as data stored in a cloud system, Storage Area Network (SAN) or on shared backup tapes, then the Contractor or Sub-Contractor will protect the Department's information and data until such time, which may be long after the end of the contract, when it can be securely cleansed or destroyed. Evidence of secure destruction will be required in all cases.

- 1.13 Access by Contractor or Sub-Contractor staff to Department Data, including user credentials, shall be confined to those individuals who have a “Need-to-Know” in order to carry out their role; and have undergone mandatory pre-employment screening, to a minimum of HMG Baseline Personnel Security Standard (BPSS); or hold an appropriate National Security Vetting clearance as required by the Department. All Contractor or Sub-Contractor staff must complete this process before access to Department Data is permitted. Any Contractor or Sub-Contractor staff who will be in contact with Children or vulnerable adults must, in addition to any security clearance, have successfully undergone an Enhanced DBS (Disclosure and Barring Service) check prior to any contact.
- 1.14 All Contractor or Sub-Contractor employees who handle Department Data must have annual awareness training in protecting information.
- 1.15 The Contractor will, as a minimum, have in place robust Business Continuity arrangements and processes including IT disaster recovery plans and procedures that conform to ISO 22301 to ensure that the delivery of the Contract is not adversely affected in the event of an incident. An incident will be defined as any situation that might, or could lead to, a disruption, loss, emergency or crisis to the Services delivered. If an ISO 22301 certificate is not available, the Contractor will provide evidence of the effectiveness of their ISO 22301 conformant Business Continuity arrangements and processes including IT disaster recovery plans and procedures. This should include evidence that the Contractor has tested or exercised these plans within the last twelve (12) months and produced a written report of the outcome, including required actions.
- 1.16 Any suspected or actual breach of the confidentiality, integrity or availability of Department Data, including user credentials, used or handled in the course of providing this service shall be recorded as an incident. This includes any non-compliance with these Departmental Security Standards for Contractors, or other Security Standards pertaining to the solution. Incidents shall be reported to the department immediately, wherever practical, even if unconfirmed or when full details are not known, but always within 24 hours of discovery. If incident reporting has been delayed by more than 24 hours, the Contractor should provide an explanation about the delay. The Contractor will inform their Contract Manager in writing. Incidents will be investigated by the Contractor with outcomes being notified to the Department.
- 1.17 The Contractor will ensure that any IT systems and hosting environments that are used to handle, store or process Department Data will be subject to independent IT Health Checks (ITHC) using a NCSC approved ITHC provider before go-live and periodically (at least annually) thereafter. The findings of the ITHC relevant to the Service being provided are to be shared with the Department and all necessary remedial work carried out. In the event of significant security issues being identified, a follow up remediation test may be required.
- 1.18 The Contractor or Sub-Contractors providing the service will provide the Department with full details of any actual or future intent to develop, manage, support, process or store Department Data outside of the UK mainland. The

Contractor or Sub-Contractor will not go ahead with any such proposal without the prior written agreement from the Department.

- 1.19 The Department reserves the right to audit the Contractor or Sub-Contractors providing the Service within a mutually agreed timeframe but always within seven (7) days of notice of a request to audit being given. The audit will cover the overall scope of the Service being supplied and the Contractor's, and any Sub-Contractors, compliance with this Schedule 3 (Security and Department Policies).
- 1.20 The Contractor and Sub-Contractors will undergo appropriate security assurance activities and will provide appropriate evidence including the production of the necessary security documentation as determined by the Department. This will include obtaining any necessary professional security resources required to support the Contractor's and Sub-Contractor's security assurance activities such as: a Security and Information Risk Advisor (SIRA) certified to NCSC Certified Cyber Security Consultancy (CCSC) or NCSC Certified Cyber Professional.
- 1.21 The Contractor will contractually enforce all this Schedule 3 (Security and Department Policies) onto any third-party suppliers, Sub-Contractors or partners who could potentially access Department Data in the course of providing this Service.



Education & Skills
Funding Agency



European Union
European
Social Fund

SPECIFICATION

**INVITATION TO TENDER: [ITT_573, ITT_572,
ITT_571, ITT_570]**

**SUPPORT FOR YOUNG PEOPLE WHO ARE NEET
OR AT RISK OF BECOMING NEET**

DATE: 2021

SPECIFICATION: SUPPORT FOR YOUNG PEOPLE WHO ARE NEET OR AT RISK OF BECOMING NEET

DEFINITION OF TERMS

In addition to the Definition contained in Clause 1 (Definitions) of the Contract, in this Schedule 1: Specification & Monitoring the following words shall have the following meanings:

Apprentice: means an employee who works under an Apprenticeship Agreement.

Apprenticeship: means a job for an Apprentice with an accompanying skills development programme. [Further education and skills: Apprenticeships - detailed information - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/collections/apprenticeships).

Apprenticeship Agreement: means:

- i. an approved English apprenticeship as defined by Section A1 of the Apprenticeships, Skills, Children and Learning Act 2009; or
- ii. an apprenticeship agreement within the meaning given in section 32 of the Apprenticeship, Skills, Children and Learning Act 2009 as it applies in relation to England by virtue of provision made under section 115(9) of the Deregulation Act 2015.

At risk of becoming NEET: refers to a Young Person whom the Contractor has determined is at risk of becoming NEET in accordance with paragraph 4 of this Specification.

Eligible: means a Young Person who meets the Eligibility Criteria and is otherwise eligible to receive the Services.

ESF Managing Authority: means the government department responsible for the implementation of the Operational Programme in accordance with the ESIF regulations. For the European Social Fund it is the Department for Work and pensions.

NEET: refers to a person who is not in employment ("Employed"), education or training.

Participant: means a Young Person who:

- i. is NEET or at risk of becoming NEET; and
- ii. meets the Eligibility Criteria.

Traineeship: means a course that includes a work placement. It can last from 6 weeks up to 12 months as is more particularly set out at: <https://www.gov.uk/government/collections/traineeships--2>.

Young Person/People: means a person/people who is/are aged 15 years to 24 years.

PART 1: SERVICE REQUIREMENTS

1. The Contractor shall:
 - a. ensure that it is fully resourced to commence delivery of the Services on the Services Commencement Date; and
 - b. ensure that where subcontractors are used, they are fully resourced and staffed to perform their elements of the Services.
2. The Contractor shall maintain a physical operational base within the Lot Area throughout the Contract Period and shall otherwise ensure it is able to provide Services to the whole of the Lot Area.
3. The Contractor shall provide the Services to Participants.
4. The Contractor may determine that a Young Person is at risk of becoming NEET, where:
 - a. the Contractor has first consulted with a recognised third party or institution associated with that Young Person, including (but not limited to) a school, training provider, educator or local authority; and
 - b. as a result of that consultation, there is a reasonable basis for concluding that the Young Person is at risk of becoming NEET.
5. The Contractor shall keep a record of any determination that a Young Person is at risk of becoming NEET and provide it to the ESFA on request.

Management and quality assurance

6. The Contractor shall put in place and maintain effective management arrangements throughout the Contract Period. The Contractor's management arrangements shall include (without limitation) arrangements to ensure that:
 - a. the Services are delivered in accordance with the Contract;
 - b. the needs of Participants are fulfilled;
 - c. the Services are delivered to a high quality throughout the Contract Period; and
 - d. effective quality assurance and improvement processes are in place.
7. The Contractor shall ensure that the Services are flexible and responsive to local conditions, the changing economic and political landscape and take into consideration that the Services may need to change during the life of the Contract. The Contractor shall make such changes to the Services as may be required by ESFA from time to time to reflect such changes.

Partnership working

8. The Contractor shall ensure that the Services complement and avoid duplication with similar existing provision, including (but not limited to) services offered to Participants by the Co-Financing Organisation (CFO), Department for Work and Pensions, National Lottery Community Fund, Mayoral Combined Authority, Education and Skills Funding Agency, local authorities, National Careers Service and the Careers Enterprise Company funded provision.
9. The Contractor shall engage with and use reasonable endeavours to work in partnership with:
 - a. the LEP;
 - b. other organisations delivering similar education and training in the Lot Area;
 - c. every local authority in the Lot Area. (This will include identifying internal links across different departments of the local authority); and
 - d. other local stakeholders;to ensure the Service is complementary with other funded provision.
10. The Contractor shall ensure that the Services are designed to reflect local needs and opportunities and are updated from time to time to respond to changes to local needs and opportunities as well as policy changes.

Market intelligence and local knowledge

11. The Contractor shall ensure that the Services are designed and delivered to:
 - a. take into account conditions prevailing in the Lot Area as described in Part 4 with respect to the current employment market and the current and future social and economic indicators including labour market intelligence;
 - b. target local skills shortages and gaps within the Lot Area; and
 - c. work alongside any existing skills support structures the Lot Area.

Management information and reporting

12. The Contractor will develop and operate a management information system which enables the submission of data to the ESFA via the ILR and provides for Supplementary Data Returns.
13. The Contractor will ensure that all evidence required to support payments is collected and retained in accordance with the Evidence Requirements before the Contractor makes a claim for payment from the ESFA. The Contractor will provide supporting evidence to the ESFA on request.
14. The Contractor shall provide LEPs and the ESFA with details of the Regulated Learning and Non-Regulated Activity that is provided by its subcontractors as reasonably requested broken down to the level requested e.g. ward/district.
15. The Contractor shall provide the ESFA with a monthly report by the 8th Working Day in each month setting out such performance data as the ESFA may reasonably require including (but not limited to):
 - a. Participant and employer data at ward/district level covering referral source, Qualifications offered and delivered, cohorts supported, employer information, sector of employer and sector of support provided;

- b. pipeline activity;
 - c. progress made against the Contractor's profile for delivery of the Services;
 - d. actions that the Contractor proposes to undertake if performance has not met the anticipated profile;
 - e. current and future employer and partner engagement; and
 - f. where the Contractor is providing services under another contract separate returns shall be required in respect of each such contract.
16. The information listed in paragraph 15 is not exhaustive. The ESFA, the LEP and the Contractor shall meet to refine these requirements prior to the Service Commencement Date.
17. The Contractor shall design and deliver the Services with the aim of promoting economic and social inclusion through the reduction of the number of Young People classified as NEET or at risk of becoming NEET in the Lot Area by equipping them with personal/transferable skills, work experience and vocational skills.
18. The Contractor shall encourage Young People to realise their potential and progress in learning and in the workplace through the provision of the Services.
19. The Contractor shall ensure that the Services are tailored to each Participant. The Services shall:
- a. include the provision of employability skills such as job preparation, interview preparation, understanding employer requirements and personal skills development;
 - b. include the provision of opportunities for interventions such as employer-based vocational training and tasters, employment trials, work placements or internships, work pairing and volunteering and pre-recruitment training;
 - c. be designed to take in account the local LEP priorities set out in Part 4 (Local Service Requirements);
 - d. where the Contractor considers it appropriate, the provision of individualised wrap-around programmes of support focusing on English, maths, and IT skills;
 - e. include routeways to Traineeship and Apprenticeship opportunities;
 - f. include engagement with marginalised Participants and support for them to re-engage with education or training;
 - g. address the Basic Skills needs of Participants so that they can compete effectively in the labour market;
 - h. provide additional work experience and pre-employment training opportunities to Participants; and
 - i. support Participants who are lone parents to overcome the barriers they face in participating in the labour market (including childcare).

Content of the Services: the Participant's journey

Identifying Participants

20. The Contractor shall:

- a. actively promote the Services throughout the whole Lot Area, with particular focus on areas of highest need;
- b. identify, engage with and recruit Eligible Young People to be Participants within the Lot Area.
- c. employ such methods of engagement as it considers are best suited to maximise engagement with Young People in the Lot Area.

Eligibility

21. The Contractor shall assess all individuals to ensure that they are Eligible to receive the benefit of the Services. The Contractor shall retain records of all assessments and shall provide them to the ESFA on request in accordance with the Evidence Requirements.

Induction

22. The Contractor shall develop and deliver an induction programme for new Participants which is flexible enough to gain early engagement with them.

Initial Assessment and ILP

23. For each Participant, the Contractor shall:
 - a. carry out a comprehensive assessment and needs analysis, including an assessment of whether the Participant should be provided with a one to one key worker;
 - b. develop a bespoke ILP for the Participant which takes into account the findings of the assessment and needs analysis;
 - c. put in place and carry out regular progress reviews as determined at the initial assessment;
 - d. carry out an exit interview when a Participant has completed his or her ILP;
 - e. identify additional support needs throughout the delivery of the ILP to support progression, including needs relating to literacy and numeracy skills development where required.

Overcome barriers to engagement

24. The Contractor shall ensure that the Services address any mobility barriers to engagement, including, in particular, with regard to difficulties Participants may have in relation to accessibility to premises and transport. The Contractor shall take reasonable steps to address any such barriers, including (where practicable) by providing support for small groups in areas that are remote or difficult to access.

Provide IAG

25. The Contractor shall provide Participants with high quality IAG at all stages of a Participant's ILP. This should be designed to help the Participant gain a greater understanding of their own abilities, learning needs and the range of opportunities available supported by IAG.

26. Where the Contractor considers it appropriate in the initial needs analysis, the Contractor shall provide a Participant with a one-to-one key worker. The role of the key worker will include helping the Participant to gain and sustain an Outcome.
27. The Contractor shall ensure that the Services include personalised provision that:
- a. is flexible (in terms of content, times and location);
 - b. involves Participants in the design and delivery of their ILPs. This may include training to provide peer support and ensure that each Participant is given the most appropriate level of support in line with his or her assessed needs;
 - c. includes a personalised transition or 'moving on' plan for every Participant;
 - d. provides Participants with a portfolio of activities carried out and achievements gained whilst on the programme; and
 - e. takes into account each Participant's aspirations for their own future.

Provide Regulated Learning / Non-Regulated Activity

28. The Contractor shall ensure that each Participant is provided with a bespoke ILP comprising Regulated Aims and/or Non-Regulated Aims in accordance with the needs of the Participant. All learning aims must contribute towards addressing any specific barriers to employment, education or training that Participants may have.
29. The Contractor may also provide accredited units of learning at Level 3 and above where the qualification has been approved for unitised delivery (up to 15 credits or 150 Guided Learning Hours of a full qualification) and such provision will qualify for funding. The Contractor must ensure that the Services do not duplicate or undermine national policy, including policy on loans.

Outcomes

30. The Contractor shall use reasonable endeavours to achieve one of the Progression Outcomes for each Participant.
31. The Contractor shall use reasonable endeavours to achieve the Conversion Rates in delivering the Services.
32. In selecting Participants, the Contractor shall take into account and use reasonable endeavours to achieve the ESF programme targets for the supply of the Services to the priority groups in the percentages set out in Part 2, Table A.
33. The Contractor shall use reasonable endeavours to achieve the number of Participant Outcomes for each of the Outcomes specified in Part 5, Table C.

Engagement with Employers

34. The Contractor will engage with employers within the Lot Area in the design and delivery of the Services. This will include (without limitation) consulting employers on:
- the design of skills provision to ensure Participants gain the skills required by employers within the Lot Area; and
 - providing opportunities for job progression and Apprenticeship opportunities within the Lot Area.

Engagement with the LEP

35. The Contractor shall, if required by the LEP, but at no additional cost to the ESFA:
- work in partnership with the LEP to maximise the impact of the project delivery. Such partnership working may include: undertaking strategic coordination and engagement activity in consultation with the LEP; co-ordinating the gathering of labour market intelligence; developing creative approaches to responding to the skills needs of the LEP's priority sectors; building capacity and responsiveness of the delivery network; participating in new product development and innovation; employer engagement; supporting progression and the promotion of Apprenticeships.
 - participate in a local steering group including by attending regular steering group meetings and provide relevant management information upon request.

PART 2: PROGRAMME TARGETS

Table A

	Less Developed Area	Transition Area	More Developed Area
Participants from ethnic minorities	2%	10%	20%
Participants with Disabilities	15%	10%	10%
Participants without Basic Skills	15%	18%	16%
Participants who live in a single adult household with dependent children	5%	6%	4%
Female Participants	49%	46%	45%

Further information on programme outputs can be found at the following link: [ESF MI Definitions 14-20 version 2 \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/672222/ESF_MI_Definitions_14-20_version_2.pdf)

PART 3: FUNDING MODEL

36. Subject to paragraphs 37 and 38 the Contractor shall be paid an Outcome Payment for ST01 Learner Assessment and Plan and each of the Progression Outcomes achieved in relation to a Participant as set out in Table B
37. The Contractor shall be entitled to payment for one Progression Outcome (only) for each Participant who achieves the Progression Outcome within 28 days of finishing his or her ILP.
38. For each of RQ01 and NR01, the Contractor shall be paid for provision of Regulated Learning and Non-Regulated Activity in accordance with the Funding Rules and the rates published in LARS. For each unit of Regulated Learning or Non-Regulated Activity the Contractor shall be paid:
- 25% of the applicable LARS rate on the Participant starting the unit; and
 - 75% of the applicable LARS rate on the Participant completing the unit.
39. The Outcome Payments listed RQ01 and NR01 in Table B are the average cost of learning per Participant. The ESFA expects Participants to be provided with access to whatever provision is required to meet their bespoke needs and the Contractor must manage these outcome charges to ensure these averages are achieved across all Participants for the duration of the Contract.
40. The Contractor shall provide ESFA with the evidence set out in the Evidence Requirements to demonstrate that payment is due in respect of an Outcome Payment. The ESFA will be under no obligation to make payment until it has received such evidence.

Table B

Outcome	Outcome Payment	Conversion Rate
ST01 Learner Assessment and Plan	200	
RQ01 Regulated Learning	532.87	
NR01 Non-Regulated Activity	532.87	
PG01 Progression Paid Employment (EMP)	750	10%
PG03 Progression Education (EDU)	500	34%
PG04 Progression Apprenticeship (EDU)	750	5%
PG05 Progression Traineeship (EDU)	500	5%

PART 4: LOCAL SERVICE REQUIREMENTS

LOT 4 SOUTH EAST MIDLAND – MORE DEVELOPED

GEOGRAPHY / AREA OF DELIVERY

LEP background

The South East Midlands (SEMLeP) has enjoyed considerable success in recent years in bringing local partners together to share labour market information and

in generating and inspiring a pipeline of people to acquire the skills that local businesses need, both now and in the future.

In all the proposed activities, it is anticipated that there will be cross-cutting benefits of sustainability and the promotion of equality. To ensure the value of European Structural Investment Funds (ESIF) is maximised locally, SEMLEP plan to ensure that the Programme is open and accessible across the private, public, voluntary and community sectors.

However, the COVID-19 pandemic has had an impact upon the local labour market, with some job losses already realised, and more predicted to follow.

There are also extremely low rates of both economic activity and employment in 16 – 19 year-olds.

The Service will support Young People who are NEET or at risk of becoming NEET including those leaving care with a focus on mental health and wellbeing support. Provision to focus on attitude, character and values as well as task and work readiness. The rates of both economic activity and employment in 16 – 19 year-olds could be attributed to continuing education. However, the rates for both economic activity and employment for those people aged 20 – 24 are seven points below the SEMLEP working age average in both categories.

Further information can be found in:

- The SEMLEP ESIF strategy ([ESF \(semlep.com\)](#));
- The SEMLEP Economic Recovery Plan ([Economic Recovery Strategy \(semlep.com\)](#)); and
- The SEMLEP Skills Strategy ([SEMLEP Skills Strategy \(semlep.com\)](#)).

South East Midlands Partnership and Northamptonshire Enterprise Partnership merged in 2017 and serve the whole of South East Midlands including Northamptonshire. However, due to the structure of the Memorandum of Understanding with the ESF Managing Authority, ESF Co-Financing Organisation services are procured under the pre-merger geography. There are 13 Local Authorities covering the entire SEMLEP geography, with the population split 60% SEMLEP and 40% Northamptonshire based on pre-merger geography.

Local Authorities:

For the purposes of this LOT, the eligible Local Authority areas covered within the South East Midlands are limited to:

- Bedford
- Central Bedfordshire
- Luton
- Milton Keynes
- Northampton
- Kettering
- Corby
- South Northamptonshire
- Daventry

- Cherwell
- Aylesbury Vale

Key Priorities:

SEMLEP will give priority to areas that have lost, had a reduction or removal of service provision and align with the following key priorities:

1. Supporting more Young People to enter quality Apprenticeships and Traineeships across all sectors helping SEMLEP develop its talent pipeline by ensuring that Young People are work ready.
2. At risk of becoming NEET and NEET support including those leaving care, lone parents or carers working closely with Local Authorities and schools across the SEMLEP Area.
3. At risk of becoming NEET support for Young People diagnosed with ADHD, Dyslexia and high functioning autistic individuals. Evidence shows that programmes promoting early detection facilitate access to training.
4. Targeted support for Young People who have a Disability for example deafness or blindness to access training, employment opportunities and supported Apprenticeships.
5. Priorities that engage with 'unknown or hidden' Young People who are currently not registered on any programme.
6. Intervention for youth that are at risk of offending/ re-offending or gang involvement to support them into training or employment. Offering a cohesive approach working in collaboration with statutory authorities.

The Contractor must attend the LEP ESF Providers Forum to promote alignment and streamlining of provision.

PART 5: FUNDING AND OUTCOMES

41. The Contractor will be paid based on the achievement of Outcomes in accordance with Part 3 provided that the total payments made to the Contractor under this Contract shall not exceed the Maximum Contract Value.

42. The Maximum Contract Value will be £800,000 based on delivery of Outcomes. The Service Commencement Date is 18th October 2021 and delivery will commence immediately. All activity must be completed by 31 March 2023.

Table C

This table provides an indication of the number of Participant Outcomes to be achieved by the Contractor in return for funding of £800,000.

Outcome	Volume of Outcomes	Unit Cost	£
ST01 Learner Assessment and Plan	508	200	£ 101,600.00

RQ01 Regulated Learning			£ 271,450.00
NR01 Non-Regulated Activity			£ 271,450.00
PG01 Progression Paid Employment (EMP)	51	750	£ 38,250.00
PG03 Progression Education (EDU)	172	500	£ 86,000.00
PG04 Progression Apprenticeship (EDU)	25	750	£ 18,750.00
PG05 Progression Traineeship (EDU)	25	500	£ 12,500.00
Total of ESF Specification			£ 800,000.00

*ST01 require start on learning (RQ or NRQ) to be eligible for claiming.

Question 1

Readiness to Deliver

How will you ensure you have the necessary **resources**, **expertise** and **staffing** to deliver the Services as set out within the Specification from 18th October 2021?

As a minimum, your response must refer to the following requirements as detailed in the Specification Part 1:

- Set out the steps you will take to ensure delivery can commence on 18th October 2021 without impinging on any other service delivery you may be committed to or commit to in future whether in connection with the ESF Transition Programme or in relation to any other contracts that you might have.
- Describe the resources, expertise, and staffing infrastructure you will put in place to offer local and flexible access, provision and support to Participants and/or employers across the whole of the LOT Area including:
 - a physical operational base within the Lot Area as outlined in Section 2 of the Specification.
 - How you will overcome barriers to engagement for Participants in parts of the Lot Area which are remote or difficult to access from the physical operational base.
 - Describe how you will ensure that you and (if applicable) your sub-contractors will maintain sufficient resource expertise, staffing and capacity taking into account existing commitments and pipeline business.

Note: Sub-contractor details (where applicable) must be included on the sub-contractor tab in the Volumes and Values Workbook provided.

You must attach a one page organisational structure relevant to this Specification.

We already have an infrastructure in-place to support NEET/at risk of NEET individuals, with 11 delivery locations/18 existing staff and we will **ENSURE DELIVERY CAN COMMENCE** no later than 18/10/21 through:

-10+ years' experience of implementing 30+ contracts and never missing a start date. Usual lead time is 4 weeks using a detailed Project Implementation Plan (PIP), managed by our Prince 2 qualified CEO

-Concurrent with this tender we have completed an in-depth service review, taking lessons learnt from current SEMLEP NEET delivery and developed a PIP specifying the required staff/Subcontractor; recruitment needs/DBS checks; contract/safeguarding training/systems necessary to deliver the contract (via a NEET Standard Operating Manual (SOM)); IT/phone infrastructure; reviewing/improving resources/materials; PR/marketing; learner recruitment; employer engagement; outreach locations; stakeholder updates/launch

-The PIP ensures that this contract will not impinge on our existing NEET provision, with each activity/task having a clear deadline/tolerance

-To mitigate recruitment risks we ensure staff have flexible contracts, maintain a bank of peripatetic staff and have adverts on recruitment websites which scrape CVs with relevant knowledge/skills

We have the necessary **RESOURCES/EXPERTISE/STAFFING INFRASTRUCTURE ARE IN PLACE** to provide an accessible/responsive local service:

Resources: We have a skills bank of learner resources on a shared drive, along with our on-line learning portal Project W. All resources are reviewed/updated as part of the cycle of

standardisation embracing updates on SEMLEP priorities/LMI. The NEET SOM has a flow diagram with links to the process/learner resources required. We have centre/scheme approval/direct claims status to deliver progression focused qualifications plus developed/tested range of offers to meet learners needs including My Plan for Jobs/Sector-based Work Academy Programmes

Expertise/Staffing infrastructure: Our SEMLEP NEET team of 12.9FTE qualified, flexible staff includes:

-4.5FTE Keyworkers, responsible for engagement of learners to the programme and to support progression

-4.5FTE Tutors, to deliver employability/occupational/functional skills training

-1.7FTE Engagement Brokers, responsible for engaging employers/apprenticeship providers to provide progression routes

-Local Management/Admin support

For our NEET contract we use our network of Young Persons Ambassadors, including Commonwealth Gold Medallist/Tokyo Olympic Team Member, REDACTED (Section 40 FOIA refers).

Relationships: Key relationships in SEMLEP include: LEP Skills lead REDACTED (Section 40 FOIA refers) Youth Support Services, Sian Cooper; National Careers Service; 13 Jobcentre Plus Offices (we are a Kickstart Gateway); the 11 local authorities/other key stakeholders e.g. Leaving Care Services/Youth Offending Teams.

Workpays has 4 accessible **OPERATING BASES** in Kettering/Corby/Bedford/Luton. These bases have training rooms/IT/learning resources/break out facilities. In addition, we have 7 outreach centres which cover the other local authority areas.

To overcome **BARRIERS TO ENGAGEMENT** our Keyworker team have start targets/are community based and encouraged to be inquisitive/resourceful. Eg. visiting community venues 'out of hours'; hot desking in stakeholders offices/using social media/encouraging participants to refer friends/family.

We deliver from 'pop-up' centres including community centres, library's/stakeholder facilities, eg Scout Centre, Kettering, Quaker Meeting House, Luton. Each Tutor has a 'Classrooms in a box' with portable delivery equipment (Wi-Fi dongles/encrypted laptops, tablets/projector for remote learning/progression activity).

Our delivery partnership is currently delivering NEET provision in SEMLEP and **MAINTAINS SUFFICIENT RESOURCE/EXPERTISE/CAPACITY** through effectively planning delivery over the 17-month contract, maintaining staffing 10% above the level required, utilising delivery bases with 25% spare capacity and continually updating our learning resources.

4,000 Characters

Question 2

Management and Reporting

How will your organisation ensure it manages performance and reports effectively to the ESFA to meet its contractual requirements as set out in the specification.

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

- Describe the management information systems you will put in place to submit timely performance management data to the ESFA using the Individualised Learner Record (ILR) and Supplementary Data Return process required to generate payments from the ESFA.
- Describe the arrangements you will put in place to comply with the reporting and Evidence Requirements set out in the Specification. Describe how you will collect and retain evidence prior to submitting a claim to ESFA for payment.
- Describe how you will manage and monitor your or your sub-contractor(s)' performance to ensure high quality delivery is taking place that complies with the Funding Rules and the Evidence Requirements. Your response should describe how you will manage the performance to ensure the funds are fully and properly utilised.
- Describe how you will monitor your performance progress against your profile and what actions you would take to reduce the risk of underperformance.
- Describe how you will work with the LEP, including reporting relevant and timely management information and involvement in local steering groups, as detailed in Part 1 of the Specification.

Workpays manages and reports effectively and **MEETS CONTRACT REQUIREMENTS** by:

-Ensuring staff complete induction/training as part of our Project Implementation Plan. This includes contract details; roles/responsibilities/accountabilities; KPI's/standards; and policies/procedures, thus ensuring they understand the contract targets, outputs and outcomes

-Managing through individual 1:1s/team contract reviews to ensure that reporting standards are adhered to

INDIVIDUALISED LEARNER RECORD (ILR) RETURN

We use Pelcombe MI SYSTEM (PICS) to collect ILRs including learning and progression data. PICS interfaces with the Learner Registration Service (LRS) and last year processed c3,000 learners. PICS built-in cross field validation confirms accurate data entry. Our Compliance Team check/process ILRs weekly and uploads to the Hub monthly. We ensure that any updates or changes are made to our systems/process to they remain current throughout the contract duration.

REPORTING AND EVIDENCE REQUIREMENTS

Workpays hold 5 ESF contracts and our last Article 125 audit for the SEMLEP area returned a 'Green' outcome, we comply with the reporting and evidence requirements by:

-Mandatory annual system/data requirements training. PICS holds evidence for each ILR e.g. learning accessed, assessment/diagnostic results, learner progression. Each member of the team has an encrypted/password protected ensuring Data Protection/GDPR Compliance

-PICS evidence is supported by scanned/encrypted signed Learning Agreements, Individual Learning Plans, evidence of on/off-line learning/assessments, certificates/job outcome evidence. We archive learner files annually and data/evidence is securely stored in line with contract terms

MANAGING/MONITORING PERFORMANCE

Our Head of Operations manages/monitors our/our subcontractor's performance on a weekly basis, to ensure high levels of performance and compliance with funding rules/evidence requirements. All delivery teams use our PICS system which provides 'real time' Management Information (MI) which ensures all teams are on track against profile and we are able to flex allocations across the LEP/delivery to ensure funds are fully and properly utilised and localised needs met.

MONITORING/MANAGING PROGRESS AGAINST PROFILE

We monitor and manage progress against profile by ensuring all centres/team members/subcontractors have KPI's aligned to the contract requirements. Managers monitor progress against profile weekly and RAG rate centres/individuals (Red/Amber/Green = poor/moderate/good progress). For amber/red we implement Improvement Plans (IPs) with actions to address shortfalls e.g. extra staff training/caseload reviews, increased marketing and reviewing management practices. Milestones are set and continuous support provided with IP actions until the centre/person becomes green. Centres which do not improve will be allocated an additional manager. Staff who fail to meet their IP face disciplinary action.

WORK IN PARTNERSHIP WITH SEMLEP

We currently work in partnership with SEMLEP and meet monthly with the Skills Lead, Gail Parker. We support the LEP by tailoring our delivery to their specific needs i.e. supporting care leavers/those with disabilities, delivering provision which supports access to Apprenticeships and providing monthly MI reports to keep them abreast of progress. We are involved in a number of steering groups which include Employer networks/Apprentice/Young Apprentice Ambassador Networks, and work strategically with the 11 Local Authorities on Risk of NEET Initiatives.

We disseminate monthly reports to all partners to keep them informed/enable joint working to improve our provision and hold quarterly improvement meetings with these partners to: review performance/agree service improvements, work collaboratively, maximise progressions and improve value/efficiency; use and share local intelligence/MI/feedback/successes. We maintain/share a local service provision data base mapping gaps/avoid duplication with other provision.

4,000 Characters

Question 3

Engaging with and meeting the needs of Participants within the whole LOT Area

How will your organisation utilise market intelligence, local knowledge and partnership working to recognise and meet the needs of Participants within the whole LOT area in which you wish to deliver?

As a minimum, your response must include the following:

- Describe how you will utilise partnership working to ensure that the Services you deliver will complement similar existing delivery in the Lot Area and avoid unnecessary duplication?
- Describe how you will assess the skills, needs and barriers to engagement of Participants and employers in the whole LOT Area. Describe how:
 - you will identify Participants' skills needs and barriers to learning and progression (for example for those Participants with additional learning needs) and
 - you will design the Services to meet and overcome these barriers to learning for Participants within the whole LOT area as set out in Part 4 of the Specification.
- Tell us how you will provide Services that take into account the current employment market, social and economic conditions and market intelligence prevailing in the Lot Area.
- Tell us how you will provide Services that are flexible and are capable of responding to reflect any changes to local conditions, new priorities or opportunities and changes to economic and political landscape.
- List your proposed stakeholders (not Sub-Contractors) on the Stakeholder Tab attachment (this information may be verified prior to award of contract). Tell us how you will engage them. Describe your current level of engagement with the Stakeholders you have named in connection with the Services and how your Stakeholders will add value to your delivery model.

Over the past 2 years our delivery partnership has exceeded target, supporting 432 NEET/at risk of NEET across SEMLEP, with >60% achieving a planned, positive outcome. To achieve this, we utilise **LMI/LOCAL KNOWLEDGE/PARTNERSHIP WORKING** in the following ways:

-Our team have KPI's to maintain up to date links to key policies/documents used by SEMLEP/Local Authorities (LA)/JCP eg NEET register/Skills Plan. Our approach includes a SEMLEP provision tool, listing relevant programmes, enabling us to identify gaps/avoid duplication. We refer participants to provision/progression routes to ensure their learning/progression needs are met

-Our Keyworkers participate in focus/community/employer groups (eg Buckinghamshire NEET Solutions Panel) to ensure grass roots understanding of issues and strategic/local information is used to inform curriculum design.

We **IDENTIFY SKILLS NEEDS/BARRIERS TO LEARNING** with participants working through 'My Plan for Jobs' a DWP endorsed assessment which has been used with 4,000+ learners. This includes individualised IAG identifying learning needs/health issues/disabilities/fit to apprenticeship opportunities; CV/covering letters; 'Find a Job'/email accounts; social media/digital job search training; college/apprenticeship application/interview techniques. This is supported by:

-Skills Forward: Identifies Functional Skills needs (inc. Digital)/specific areas for development/learning needs eg dyslexia/dyspraxia

-Skills Gap Analysis: Captures previous qualifications/identifies vocational requirements

Our service design addresses **SKILLS NEEDS/BARRIERS TO LEARNING** in the following ways:

-Employers (including Apprenticeship opportunities)/FE require good levels of employability/vocational/English/Maths/IT skills, therefore we prioritise these areas

-We deliver in 11 locations/virtually through our on-line system 'Project W' which enables learners to access support in a medium/location which is best for them

-We employ a team of Keyworkers to provide complimentary support alongside teaching/learning, along with a progression-based risk assessment supporting progression

-We provide additional support to those with learning needs/disabilities,

We **ALIGN TO ECONOMIC CONDITIONS** by:

-Using information (LMI/SLEPs/NOMIS/ONS/UKCES data/reports) collated/updated by our team and maintaining existing strategic relationships with SEMLEP/providers/Growth Hub/employers/LAs/Chambers of Commerce/Kickstart Gateways, to understand skills needs eg supporting new SME's/larger business in all sectors to recruit new talent, via Apprenticeships, delivering vocational 'skills to get the job'/offer learners work experience in key areas, eg manufacturing

-Updating curriculum to need/claimant count/skills gaps, to advance to other provision e.g. apprenticeships/employment. Eg our current programme bespoke delivery to the Logistic sector which is strong in SEMLEP leading to jobs/Traineeships

Being 'on the ground' in SEMLEP along with our development processes/team agility, enables us to **FLEX OUR PROVISION** in-line with local demand/priority changes/opportunities. We flex delivery to meet requests eg rural outreach (Cherwell); adjust to policy e.g. focus on digital skills/construction skills (SEMLEP Local Skills Report); design demand led courses eg 'Work Skills' (32% of SEMLEP employers report a deficit) and engage new networks to build new links.

Our **ESTABLISHED LINKS WITH STAKEHOLDERS** eg 11 LA's/40+ referral partners/specialists/42 Kickstart employers eg Specsavers/Manor Concepts with over 200 vacancies with options for Apprenticeship progression, **ADDS VALUE** to delivery through: reviewing performance/agree enhancements; sharing MI/successes to boost confidence/referrals; mapping to fill gaps/avoid duplication; engaging the SEMLEP Skills Advisory Panel to match delivery; sector/employer roadshows to keep abreast of changes; joint work e.g. working with Luton Council to engage year 11/12 leavers with no destination/at risk of NEET/support Gadsby benchmarks.

4,000 Characters

Question 4

Meeting the needs of Participants and employers

How will your organisation engage with Participants and support them through their journey to achieving a Progression Outcome?

As a minimum, your answer must include the following:

- Describe how you will, promote, raise awareness, engage and recruit Participants and, where relevant, employers to the programme.
- Describe the mechanisms you will use to identify the skills needs of Participants and ensure your delivery programmes support positive outcomes in line with the specification for your Participants.
- Describe the processes you will use to carry out initial assessment and needs analysis for new Participants and the approach for developing individual learning plans.
- Tell us how you will ensure the activity delivered is appropriate, effective and tailored to the specific needs of the individual.
- Detail how you will engage employers in the designing skills provision to ensure Participants gain the skills that employers need in the Lot Area.
- Describe how you will engage employers within the Lot Area to provide job-progression and/or apprenticeship opportunities for Participants.

Reference should be made to ([Social-Value-Model-Edn-1.1-3-Dec-20.pdf](#)) Theme 2 – Tackling Economic Inequality.

Our **PROMOTIONAL/PARTICIPANT RECRUITMENT ACTIVITY** is enhanced by 5 years of relationship building particularly in 30 SEMLEP schools, we are well known as the provider of Apprenticeship IAG and for our unique Risk of NEET offer/taster sessions. Geographical mapping targets NEET individuals and understanding the behaviours/media consumption of young people drives referrals. We co-locate in stakeholder offices eg. Schools/Housing Associations/LA/other providers and conduct engagement activity in high footfall areas e.g. shopping centres/high areas of NEET e.g. Netherfield/Dallow wards. We run Google Adwords campaigns to drive traffic and successfully use tiktok/Instagram/facebook to directly engage parents, carers and eligible young people.

We use our My Plan for Jobs/Skills Forward/Skills Gap Analysis assessments tool to **IDENTIFY PRIOR LEARNING/KNOWLEDGE GAPS/SKILLS NEEDS**. This assessment means that our courses are delivered with clear progression/skills/soft skills objectives based on learners ambitions/local labour market. As a result, 60%+ of learners who complete our courses progress. The route to the objective is embedded within the learner's journey e.g. confidence building workshops/vocational specific courses

As social value we provided enhanced IAG in schools (above and beyond the contract) to support further outcomes.

INITIAL ASSESSMENT/DEVELOPMENT OF INDIVIDUAL LEARNING PLAN (ILP)

Learners have a 1hr (2hr for additional needs) robust, 1:1 assessment with an IAG Level 3 qualified Keyworker (we are Matrix accredited). We discuss the learners' goals/abilities/attitudes/support needs e.g. transport/caring responsibilities/display screen. Prior attainment is validated against the Personal Learning Record, with ineligible learners referred to suitable alternative provision.

Our Tutors use assessment findings to set out learning objectives and create a tailored ILP, setting out learning aims/realistic end date/progression requirements/learning timetable.

Our staff create conducive learning environments ensuring learners feel at ease/respond positively, increasing the likelihood of accurate assessment and positive outcome.

THE LEARNER JOURNEY REFLECTS INDIVIDUAL NEEDS/desired outcomes e.g. starting an apprenticeship. Learning is adapted to learner's preferred learning styles and those with learning needs receive additional support. Learners can study in their own time using our online learning portal.

We ensure progression via: setting realistic goals/timeframes; 1:1 support & progress/understanding checks; learner/learning support funds to overcome barriers; referrals to support organisations e.g. St Giles Trust; use of ambassadors to show what is possible; employer workshops to create ambition; next step guidance through IAG; post-programme contact/support.

ENGAGING EMPLOYERS IN PROGRAMME DESIGN

Workpays' thematic designs reflect local business needs identified through a local employer network including key SEMLEP sectors e.g. Logistics; from the Skills Advisory Panel; feedback from previous/current NEET delivery. Ongoing influence includes working with 42 Kickstart employers eg Specsavers/Manor Concepts with over 200 vacancies with options for Apprenticeship progression

Further learning comes from national network of 500+ employers & other research e.g. UKCES Surveys, which helped us to achieve 60%+ progressions/3000+ qualifications last year.

ENGAGING EMPLOYERS TO PROVIDE PROGRESSION

Our Engagement Broker Team will support/grow our network of MICRO/SME/LARGE EMPLOYERS e.g. Daventry International Freight Hub, Euro Hub Corby in Logistics, to maximise traineeship/apprenticeship/job/Kickstart opportunities. This including: a vacancy matching service to meet employer needs/growth plans in key LEP sectors; delivering sector specific qualifications e.g. Warehousing; developing succession schemes & apprenticeship/traineeship programmes.

As social value we offer Apprenticeship opportunities across our SEMLEP contracts for programme graduates.

3,999 Characters

REDACTED (Section 40 FOIA refers)