



Education & Skills  
Funding Agency

Cheylesmore House  
Quinton Road  
Coventry  
CV1 2WT  
T 0345 377 5000

HAMMOND SCHOOL LIMITED (THE)  
Mannings Lane  
Hoole Bank  
Hoole Village  
Chester  
CH2 4ES

Company No: 00838325

July 2020

**Dance and Drama Awards (DaDA) Contract for Services.  
Funding for Dance and Drama Awards (DaDA) for the Funding Year 1 August  
2020 to 31 July 2021 – ESFA-19810 ('the Contract').**

Please find attached your Dance and Drama Awards (DaDA) Contract for Services which details the requirements for Dance and Drama Awards (DaDA) for the Funding Year 1 August 2020 to 31 July 2021.

The terms and conditions set out in the attached Dance and Drama Awards (DaDA) Contract for Services for the Funding Year 1 August 2020 – 31 July 2021 will apply to all allocated funding received from the Secretary of State for Education (acting through the Education & Skills Funding Agency) from 1 August 2020 and will replace any previous terms and conditions.

Your total Dance and Drama Awards (DaDA) Funding is set out in the individual Funding Agreement in Schedule 2: Payment.

**In order to be receive payment in August 2020, you must sign your Contract for Services via the Manage Your Education and Skills Funding (MYESF) by 31 July 2020.**

If you have any questions about your Dance and Drama Awards (DaDA) Contract for Services, please contact REDACTED UNDER FOIA SECTION 43(2)

Education and Skills Funding Agency [www.gov.uk/esfa](http://www.gov.uk/esfa)

Contract Number: ESFA-19810

## SUMMARY OF FUNDING

Organisation Name: HAMMOND SCHOOL LIMITED (THE)

UKPRN: 10002869

Master Contract Number: ESFA-19810

1 August 2020 to 31 July 2021	Allocation			
	Contract Ref	Aug 20 - Mar 21	Apr 21 - Jul 21	Total
Dance and Drama Awards (DaDA)	DADA-1005	£515,963	£221,127	£737,090
Total:				£737,090

Total Funding for this contract:

£737,090



Education & Skills  
Funding Agency



European Union  
European  
Social Fund

<b>Agreement Type</b>	Contract for Services
<b>Funding Period</b>	1 <sup>st</sup> August 2020 to 31 <sup>st</sup> July 2023
<b>Between</b>	the Secretary of State for Education (acting through the Education and Skills Funding Agency)
<b>And</b>	HAMMOND SCHOOL LIMITED (THE)
<b>Funding for</b>	Dance and Drama Awards (DaDA)
<b>Master Contract Number</b>	ESFA-19810

**ACCEPTANCE BY THE CONTRACTOR**

BY ACCEPTING THIS CONTRACT VIA THE MANAGE YOUR EDUCATION & 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.

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

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

*Eileen M. Milner*

**This Contract is made on the date the Contract is digitally signed by the Contractor on the Manage Your Education & Skills Funding Service between:**

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HAMMOND SCHOOL LIMITED (THE)  
Mannings Lane  
Hoole Bank  
Hoole Village  
Chester  
CH2 4ES

AND

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

Company No: 00838325

Hereinafter called  
the Contractor

Hereinafter called  
the Department

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## **PART 1: PRELIMINARIES**

### **1 DEFINITIONS**

<b>“Account Manager”</b>	the person appointed by the Contractor in accordance with Clause 17.2 (Account Manager);
<b>“Agreement Date”</b>	the date of this Contract;
<b>“ASBOs”</b>	an anti-social behaviour order as defined in the Crime and Disorder Act 1998;
<b>“Awarding Organisation”</b>	an organisation that is regulated by Ofqual or is recognised by QAA as an access validating agency;
<b>“Background Intellectual Property”</b>	means any intellectual property, other than Foreground intellectual Property, which is used in performing the Services or comprises part of the Work;
<b>“Barred List”</b>	means the list of individuals who are barred from engaging in regulated activity with children, adults or both in England and Wales maintained by the Disclosure and Barring Service;
<b>“Brokerage”</b>	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;
<b>“Business Continuity Plan”</b>	any plan prepared pursuant to Clause 5.1, as may be amended from time to time;
<b>“Change”</b>	any change to the Services which will then be progressed through the Change Control Procedure (for the avoidance of doubt excluding a change to this Contract which will be dealt with in accordance with Clause 49 (Amendments to this Contract));
<b>“Change Control Procedure”</b>	means the procedure as set out in Schedule 3 (Change Control Procedure);



<b>“Change in Control”</b>	any event where any single person or group of persons acting in concert (within the meaning of The City Code on Takeovers and Mergers) acquires any direct or indirect legal and/or
	beneficial interest in the share capital (as defined in Section 545 of the Companies Act 2006) of the Contractor as a result of which that person or group of persons has a direct or indirect interest in more than 25% of the share capital of the Contractor. It shall also include any change in the top two tiers of the management team;
<b>“Child” or “Children”</b>	shall have the meaning given to it in Section 60 of the Safeguarding Vulnerable Groups Act 2006;
<b>“Combined Authority”</b>	means an authority established under section 103(1) of the Local Democracy, Economic Development and Construction Act 2009 or an authority to which a delegation of the Secretary of State’s functions has been made under section 39A of the Greater London Authority Act 1999;
<b>“Confidential Information”</b>	means any information, including Personal Data as defined by the Data Protection Laws, and any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel, and suppliers of the Parties including all IPRs, together with all information derived from any of the above, and any other information clearly designated as being confidential or which ought reasonably be considered to be confidential (whether or not it is marked "confidential");
<b>“Contract”</b>	means the Contract between the above named parties consisting of these Terms and Conditions, the specification and any other documents (or parts thereof) specified in the Contract and any variations to the Contract agreed in writing and signed by both Parties;
<b>“Contract Manager”</b>	the person appointed by the Department in accordance with Clause 17.1 (Contract Manager);

<b>“Contract Period”</b>	means the period between the Agreement Date and the Expiry Date, unless terminated earlier on the Termination Date;
<b>“Contractor Personnel”</b>	means all persons employed or engaged by the Contractor together with the Contractor’s servants, agents, consultants and subcontractors (and all persons employed by any sub-contractor together with the sub-contractor’s servants, consultants, agents, Contractor’s and
	sub-contractors) used in the performance of its obligations under this Contract;
<b>“Contractor Related Party”</b>	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;
<b>“Contractor System”</b>	the information and communications technology system used by the Contractor in performing the Services including the Contractor’s equipment and related cabling (but excluding the Department System);
<b>“Contracts Finder”</b>	means the Government’s publishing portal for public sector procurement opportunities;
<b>“Controller”</b>	takes the meaning given in the GDPR;
<b>“Convictions”</b>	other than for minor road traffic offences, any previous or pending prosecutions, convictions, cautions and binding over orders (including any spent convictions as contemplated by section 1(1) of the Rehabilitation of Offenders Act 1974 by virtue of the exemptions specified in Part II of Schedule 1 of the Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975 (SI 1975/1023) or any replacement or amendment to that Order, or is a Barred person in accordance with section 3 of the Safeguarding Vulnerable Groups Act 2006;

<b>“Crown Body”</b>	means any department, office or agency of the Crown, including Ofsted, the Care Quality Commission, the Charity Commission, the Office for Students, Ofqual, any and all local authority or Combined Authority bodies;
<b>“Database”</b>	the rights in or to the data held in the Contractor’s system in accordance with the Specification;
<b>“Data Loss Event”</b>	any event that results, or may result, in unauthorised access to Personal Data held by the Processor under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract, including any Personal Data Breach;
<b>“Data Protection Impact Assessment”</b>	an assessment by the Controller of the impact of the envisaged processing on the protection of

	Personal Data;
<b>“Data Protection Laws”</b>	means the Data Protection Act 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 General Data Protection Regulation (EU) 2016/679 or similar and any codes of practice, guidelines and recommendations issued by the Information Commissioner, any replacement body 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);
<b>“Data Protection Officer”</b>	takes the meaning given in the GDPR;
<b>“Data Subject”</b>	takes the meaning given in the GDPR;
<b>“Data Subject Access Request”</b>	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;

<b>“Department”</b>	means the Secretary of State for Education (acting through the Education and Skills Funding Agency);
<b>“Department Data”</b>	<p>means any data (including metadata), record, document or information howsoever stored which is either:</p> <p>(a) communicated by the Department, its staff, sub-contractors and agents to the Contractor in writing, orally, electronically or by any other means relating to the Learners and/or Services provided to the Learners; or</p> <p>(b) is obtained, gleaned, compiled or processed by the Contractor during the course of the Contractor providing the Services relating to or provided to the Learners, including Personal Data for which the Department is the data controller</p> <p>including but not limited to Learner Data and eportfolios;</p>
<b>“Department Policies”</b>	the policies of the Department referred to in

	Schedule 7 (Security & Department Policies) in force as at the Agreement Date and amended from time to time;
<b>“Department Related Party”</b>	means any officer, agent, worker, employee of the Department acting in the course of his office, engagement or employment in relation to the Services;
<b>“Department System”</b>	means the Department’s computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Department or the Contractor in connection with this Contract which is owned by or licensed to the Department by a third party and which interfaces with the Contractor System or which is necessary for the Department to receive the Services;
<b>“Disclosure and Barring Service or DBS”</b>	means the non-departmental public body established pursuant to the Protection of Freedoms Act 2012;

<b>“Dispute Resolution Procedure”</b>	means the procedure for resolving disputes as set out in Clause 18 (Dispute Resolution);
<b>“DPA 2018”</b>	Data Protection Act 2018;
<b>“Exempt Information”</b>	means any information or class of information (including but not limited to any document, report, contract or other material containing information) relating to this Contract or otherwise relating to the Contractor, which potentially falls within an exemption to FOIA (as set out therein);
<b>“Expiry Date”</b>	means 31 October 2021;
<b>“Financial Year”</b>	means a period of 12 months starting on 1 April and ending on 31 March;
<b>“FOIA”</b>	means the Freedom of Information Act 2000 and all regulations made thereunder from time to time or any superseding or amending enactment and regulations, and words and expressions defined in the FOIA shall have the same meaning in Clause 25 (Freedom of Information and Confidentiality);
<b>“FOIA Notice”</b>	means a decision notice, enforcement notice and/or an information notice;

<b>“Foreground Intellectual Property”</b>	means 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;
<b>“Funding Agreement”</b>	means the table as set out in Schedule 2 (Payment);
<b>“Funding Rules”</b>	means the documents produced by the Department which set out the detailed requirements with which the Contractor must comply in respect of the Services delivered under this Contract as may be amended by the Department from time to time and as referred to in the Specification (Schedule 1).

<b>“Funding Year”</b>	means a period of 12 months starting on 1 August and ending on 31 July;
<b>“GDPR”</b>	General Data Protection Regulation (Regulation (EU) 2016/679);
<b>“Good Industry Practice”</b>	that degree of skill, care, prudence, foresight and operating practice which would reasonably and ordinarily be expected from time to time of a skilled and experienced operator (engaged in the same type of undertaking as that of the Contractor) or any sub-contractor under the same or similar circumstances;
<b>“Guidance”</b>	any applicable guidance or directions with which the Contractor is bound to comply;
<b>“High Needs Learner”</b>	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;
<b>“ICT Environment”</b>	means the Department System and the Contractor System;
<b>“Incident Response Plan”</b>	means each Party’s operational plan for response to and recovery from Significant Incidents or Emergencies as identified in national, local and community risk registers and in accordance with the requirements of the Civil Contingencies Act
	2004;
<b>“Indirect Losses”</b>	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;

<b>“Insolvency Event”</b>	<p>means, in respect of the Contractor:</p> <ul style="list-style-type: none"> <li>(a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or</li> <li>(b) a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its windingup is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or</li> <li>(c) a petition is presented for its winding up (which is not dismissed within 14 Working Days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986; or</li> <li>(d) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or</li> <li>(e) an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or</li> <li>(f) it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or</li> <li>(g) being a "small company" within the meaning of section 382(3) of the Companies Act 2006, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986;</li> </ul>
<b>“Inspectorates”</b>	<p>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</p>
	<p>Quality Assurance Agency for Higher Education, the Office for Students, the Care Quality Commission (CQC) and the Local Government Ombudsman;</p>

<b>“Intellectual Property Rights”</b>	<p>means 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:</p> <ul style="list-style-type: none"> <li>(a) any renewals, revisions and extensions created or provided by the laws of any country;</li> <li>(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</li> <li>(c) the right to apply for registration of any such rights in any country of the world;</li> </ul>
<b>“Law”</b>	<p>means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Contractor is bound to comply;</p>
<b>“Learner”</b>	<p>means any third party including any student, apprentice (under an Apprenticeship), trainee or similar to whom the Contractor is required to deliver any of the Services;</p>
<b>“Learner Files” / “Evidence Packs”</b>	<p>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;</p>
<b>“Learning Programme”</b>	<p>means a programme of education and/or training delivered by the Contractor under this Contract;</p>
<b>“LED”</b>	<p>means the Law Enforcement Directive (Directive (EU) 2016/680);</p>



<b>“Local Enterprise Partnership (LEP)”</b>	means a legal relationship between two or more local authorities by way of partnership or otherwise, created for the purposes of identifying, determining and facilitating economic opportunities that generate economic growth, prosperity and job creation in a particular area;
<b>“Malicious Software”</b>	any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence;
<b>“Material Change”</b>	means a Change that leads to a demonstrable material increase to the Contractor’s costs or requires a significant Change to the Contract;
<b>“Minimum Standards”</b>	means the minimum quality standards as published by the Department;
<b>“Minor Change”</b>	means a Change during the Contract Period to operational and administrative procedures but which is not a Material Change;
<b>“Minor Breach”</b>	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;

<b>“Occasion of Tax Non-Compliance”</b>	<p>(a) any tax return of the Contractor submitted to a Relevant Tax Authority on or after 1 October 2012 is found on or after 1 April 2013 to be incorrect as a result of:</p> <ul style="list-style-type: none"> <li>(i) a Relevant Tax Authority successfully challenging the Contractor under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;</li> <li>(ii) the failure of an avoidance scheme which the Contractor was involved in, and which was, or should have been, notified to a Relevant Tax Authority</li> </ul>
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	<p>under the DOTAS or any equivalent or similar regime; and/or</p> <p>(b) any tax return of the Contractor submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise on or after 1 April 2013 to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Agreement Date or to a civil penalty for fraud or evasion;</p>
<b>“Offender Manager”</b>	means an officer from Her Majesty’s Prison and Probation Service who is working directly with an offender serving their sentence in the community;
<b>“Ofsted”</b>	means the Office for Standards in Education, Children’s Services and Skills;
<b>“Parties”</b>	means the Department acting on behalf of the Crown and the Contractor;
<b>“Personal Data”</b>	takes the meaning given in the GDPR;
<b>“Personal Data Breach”</b>	takes the meaning given in the GDPR;
<b>“Premises”</b>	means the location(s) where the Services are to be performed;
<b>“Processor”</b>	takes the meaning given in the GDPR;

<b>“Processor Personnel”</b>	means all directors, officers, employees, agents, consultants and contractors of the Processor and/or of any Sub-Processor engaged in the performance of its obligations under this Contract;
<b>“Prohibited Acts”</b>	means the acts specified in Clause 38 (Prohibited Acts);
<b>“Protective Measures”</b>	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 the such measures adopted by it including those outlined in the Terms and Conditions of the Contract;

<b>“Provision”</b>	the Services that the Contractor is under an obligation under this Contract to deliver in accordance with the Specification (Schedule 1);
<b>“Register of Apprenticeship Training Providers”</b>	means the register maintained by the Department of organisations qualified to receive Funding from the Department to deliver Apprenticeships.
<b>“Regulated Qualification Framework” or “RQF”</b>	a system for cataloguing all qualifications regulated by Ofqual;
<b>“Regulatory Body”</b>	means those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate or investigate the matters dealt with in this Contract or any other affairs of the Contractor or the Department, including, without limitation Ofsted, the European Commission and the European Court of Auditors;

<b>“Relevant Authority”</b>	any court with the relevant jurisdiction and any local, national or supra-national agency, inspectorate, minister, ministry, officer or public or statutory person of the Government of the United Kingdom or of the European Union;
<b>“Restricted Share Transfer”</b>	any transfer of shares or ownership in the Contractor or its holding company or in the senior management (including shadow directors) of the Contractor or its holding company to a person who had a significant influence as a director and/or a shareholder over another training provider and in respect of which within the last three years the Department has terminated one or more contract for similar Services as are being delivered under this Contract or the Department would have terminated the Contract had the training provider not pre-emptively terminated the relevant agreement;
<b>“Serious Breach”</b>	means 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 or a breach of
	security that adversely affects the Personal Data or privacy of an individual. Failure to comply with Law, or actions or omissions by the Contractor that endanger the Health or Safety of Learners, Contractor Personnel, and all other persons including members of the public would constitute a Serious Breach;
<b>“Services”</b>	means the services to be provided as set out in the Funding Rules and the Specification (Schedule 1);
<b>“Services Start Date”</b>	means the date as set out in the Specification (Schedule 1);

<b>“Significant Incident or Emergency”</b>	<p>an event or occurrence which:</p> <ul style="list-style-type: none"> <li>(i) constitutes an emergency for the purposes of the Civil Contingencies Act 2004; and/or</li> <li>(ii) constitutes an emergency under local and community risk registers; and/or</li> <li>(iii) is designated as a significant or emergency incident under the Incident Response Plan;</li> </ul>
<b>“Skills Advisory Panel” or “SAP”</b>	means a sub-board of a Combined Authority or Local Enterprise Partnership, which brings together local employers and skills providers to establish the skills need for the local area and to ensure alignment of skills provision with that local need;
<b>“SME”</b>	means an enterprise falling within the category of micro, small and medium-sized enterprises defined by the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises;
<b>“Specification”</b>	means the documents contained in Schedule 1 setting out the Department’s requirements for the Services to be provided under this Contract;
<b>“Staffing Information”</b>	as defined in Schedule 5;
<b>“Sub-Contractor Declaration”</b>	the declaration that the Department requires a Contractor to complete specifying whether or not the Contractor is sub-contracting any of the Services and if so, what Services and the amount of funding that represents;
<b>“Sub-Processor”</b>	any third Party appointed to process Personal Data on behalf of that Processor related to this
	Contract;
<b>“Successor Contractor”</b>	means the person nominated by the Department to undertake the services substantially the same as the Services after the termination of this Contract;
<b>“Termination Date”</b>	means any date on which this Contract terminates in accordance with Clause 40 (Termination);

<b>“Transferring Former Supplier Employees”</b>	As defined in Schedule 5;
<b>“Voluntary Community and Social Enterprise” or “VCSE”</b>	means a non-governmental organisation that is value-driven and which principally reinvests its surpluses to further social, environmental or cultural objectives;
<b>“Work”</b>	Means all materials created by the Contractor as a result of the provision of the Services including Confidential Information and 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;
<b>“Working Day”</b>	a day (other than a Saturday or Sunday) on which banks are open for domestic business in the City of London.

1.1 In this Contract, unless the context otherwise requires, capitalised expressions shall have the meanings set out in Clause 1 above or the relevant Schedule in which that capitalised expression appears. If a capitalised expression does not have an interpretation in Clause 1 or the relevant Schedule, it shall have the meaning given to it in this Contract.

1.2 In this Contract except where the context otherwise requires:-

1.2.1 the masculine includes the feminine and vice-versa;

1.2.2 the singular includes the plural and vice-versa;

1.2.3 a reference to any clause, sub-clause, paragraph, schedule or annex is, except where it is expressly stated to the contrary, a reference to such clause, sub-clause, paragraph, schedule or annex of this Contract;

1.2.4 any reference to this Contract or to any other document will include any permitted variation, amendment or supplement to such document;

1.2.5 any reference to any enactment, order, regulation, code, guidance or other similar instrument will be construed as a reference to the enactment, order, regulation, code, guidance or instrument (including any EU instrument) as amended, replaced, consolidated or re-enacted;

- 1.2.6 references to any documents being "in the agreed form" means such documents have been initialled by or on behalf of each of the Parties for the purpose of identification;
  - 1.2.7 a reference to a person includes firms, partnerships and corporations and their successors and permitted assignees or transferees;
  - 1.2.8 headings are for reference only;
  - 1.2.9 words preceding "include", "includes", "including" and "included" will be construed without limitation by the words which follow those words;
  - 1.2.10 the Schedules to this Contract form part of this Contract;
  - 1.2.11 references to the Parties shall be to the parties to this Contract;  
and
  - 1.2.12 references to months shall mean calendar months.
- 1.3 No review, comment or approval by the Department under the provisions of this Contract will operate to exclude or limit the Contractor's obligations or liabilities under this Contract or the Department's rights under this Contract.
- 1.4 Precedence of Documentation
- In the event of any inconsistency between the provisions of the Terms and Conditions and the Schedules, or between any of the Schedules, the conflict will be resolved according to the following descending order of priority:
- 1.4.1 the Terms and Conditions,
  - 1.4.2 Schedule 1 (the Specification);
  - 1.4.3 the remaining Schedules,
- for the avoidance of doubt, in the event of any inconsistency between this Contract and the Funding Rules, this Contract will take precedence.

## **PART 2: THE SERVICES**

### **2 COMMENCEMENT AND DURATION**

- 2.1 The Contract Period will commence on the Agreement Date and subject to Clause 2.2 terminate or expire on the earlier of:
- 2.1.1 the Expiry Date; or
  - 2.1.2 the Termination Date.
- 2.2 The Department may terminate this Contract early during the Contract Period by giving not less than 6 months prior written notice to the

Contractor to expire on the anniversary of the Agreement Date in the relevant year of the Contract which shall be the Termination Date.

### **3 SERVICE DELIVERY**

- 3.1 The Services to be delivered under this Contract are those as set out in Schedule 1 (Specification). The detailed requirements in respect of the Services are also set out in the Funding Rules as amended from time to time by the Department and which form part of the terms and conditions of this Contract.
- 3.2 The Services are to be delivered in accordance with the Specification, specific requirements of the Department, and all other Schedules, which all form part of the terms and conditions of the Contract.
- 3.3 The Contractor will comply (and will ensure that any sub-contractor complies) with the Department Policies.
- 3.4 The Contractor will ensure that data relating to Learners including Learner records is held and saved in a format that can be reasonably accessed by the Department on request.

### **4 DEPARTMENT OBLIGATIONS**

- 4.1 The Department will not wilfully impede the Contractor in the performance of its obligations under this Contract (having regard always to the interactive nature of the activities of the Department and of the Contractor).

### **5 EMERGENCIES AND SIGNIFICANT INCIDENTS**

- 5.1 The Contractor must have and maintain an up-to-date Business Continuity Plan. <https://www.gov.uk/government/publications/expectingthe-unexpected>
- 5.2 The Contractor must at the request of the Department provide whatever support and assistance may reasonably be required by the Department in response to any national, regional or local emergency or incident including at any premises identified by the Department.
- 5.3 The Contractor will ensure that Learners have access to portfolios, eportfolios, learning materials and other evidence at all times.

### **6 CHANGE IN SERVICE**

- 6.1 Any Change must be dealt with in accordance with the Change Control Procedure in Schedule 3.
- 6.2 Any dispute arising from the operation of the Change Control Procedure must be resolved in accordance with the Dispute Resolution Procedure. Notwithstanding any referral to the Dispute Resolution Procedure the



Contractor must nevertheless proceed to implement any Change requested by the Department which is required:

6.2.1 to implement or comply with the orders, directions, guidance, recommendations or advice of a Relevant Authority or the Department's auditors (whether internal or external) or the outcome of a statutory inspection;

6.2.2 to discharge a statutory duty;

6.2.3 to protect the health and safety of or prevent damage to persons, property or the environment;

6.2.4 to prevent acts of fraud or loss of revenue or income to the Department; and

6.2.5 in a Significant Incident or Emergency in accordance with Clause 5 (Emergencies and Significant Incidents) of the Contract.

6.3 If a Change requires the Contract to be amended, the Parties must follow the procedure set out in Clause 49 (Amendments to this Contract).

## **7 PERFORMANCE MONITORING**

### **7.1 Contractor Monitoring**

7.1.1 The Contractor must put in place the necessary internal control framework, including an internal audit function to ensure that it meets its obligations and those of its sub-contractors under this Contract.

### **7.2 Department Monitoring**

7.2.1 The Department will undertake its own performance monitoring, as set out in Schedule 1 (Specification) and may elect, at its own cost, to undertake further monitoring at any stage during the Contract Period for any purpose, including ensuring that the Services are being provided in accordance with this Contract.

7.2.2 The Contractor must use its reasonable endeavours to assist the Department in any performance monitoring exercise under Clause 7.2.1. The Department may notify the Contractor of the outcome of the performance monitoring exercise and the Contractor must have due regard to the Department's comments in relation to the future provision of the Services.

7.2.3 Without prejudice to the Department's rights under Clauses 39 (Minor and Serious Breach) and 40.3 (Termination) and to any other express rights under this Contract, where the Contractor has been found to be fraudulent or have recklessly submitted erroneous reports, claims and/or learner data, or the Department reasonably believes such reports to be fraudulent or erroneous

the Department may, by notice to the Contractor, increase the level of its monitoring of the Contractor, or (at the Department's option), of the Contractor's monitoring of its own performance of its obligations under this Contract in respect of the relevant Services the subject of such fraudulent, erroneous or misleading reporting until such time as the Contractor must have demonstrated to the reasonable satisfaction of the Department that it will perform (and is capable of performing) its obligations under this Contract, in which case, the following provisions will apply:

- (a) any such notice to the Contractor will specify in reasonable detail the additional measures to be taken by the Department or by the Contractor (as the case may be) in monitoring the performance of the Contractor;
- (b) if the Contractor (acting reasonably) objects to any of the specified measures on the grounds that they are excessive it will notify the Department in writing within five (5) Working Days of the receipt of the notice of the measures objected to (and of any Changes necessary in order to prevent prejudice to the Contractor's performance of its obligations under this Contract);
- (c) the measures to be taken by the Department and the Contractor (as the case may be) will be agreed between the Parties or, in the absence of agreement within ten (10) Working Days of the Department's receipt of the Contractor's objection, determined pursuant to the Dispute Resolution Procedure; and
- (d) the Contractor will bear its own costs and indemnify and keep the Department indemnified at all times from and against all costs and expenses reasonably and properly incurred by or on behalf of the Department in relation to such increased level of monitoring save where there is no evidence that the Contractor has been found to have been fraudulent or to have submitted erroneous reports and the Contractor has been exonerated.

### **7.3 Contractor Responsible**

7.3.1 The Contractor acknowledges and agrees that, notwithstanding any provision of this Contract which contemplates that the Department will or may from time to time:

- (a) monitor or inspect any performance of the Services;
- (b) check compliance by the Contractor with its obligations;
- (c) confirm or indicate approval of or non-objection to proposals made by the Contractor; or

(d) request that the Contractor makes a Change to the Services; it will always be fully the responsibility of the Contractor, and not the responsibility of the Department, to ensure that the Services are performed in all respects in accordance with the Contractor's obligations under this Contract and no such action by or on behalf of the Department will in any way limit or affect such obligations.

#### **7.4 Quality Management Systems**

7.4.1 The Department will have the right upon reasonable notice and at reasonable times to audit the Contractor's quality management systems (for example ISO 9000 or equivalent standard) and/or any other quality management system to which the Specification refers, including examining and inspecting services and activities on or off the premises owned or occupied by the Contractor to establish the adequacy or accuracy of the quality management system documentation. The Contractor will use all reasonable endeavours to assist the Department in such exercise.

### **8 HEALTH & SAFETY**

- 8.1 The Contractor must comply with all health and safety legislation and Health and Safety Executive working regulations, adopt and maintain safe operating systems of work and appropriate safety policies in order to protect the health and safety of Contractor Personnel, Learners and all other persons including members of the public.
- 8.2 Where part of the Services are provided in an environment outside the direct control of the Contractor, the Contractor must take all reasonable steps to ensure that adequate arrangements are in place to ensure the health and safety of Learners. This shall include but not be limited to, coordinating and co-operating with other organisations/bodies with responsibilities being clearly identified and documented as appropriate, to ensure understanding.
- 8.3 The Contractor must report all incidents that are reportable under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013 ("RIDDOR") in accordance with those regulations and must 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 must only use persons competent to investigate/assess Learner incidents with a view to identifying the causes of any incident and lessons to be learned.
- 8.4 The Contractor must inform the Department of the death of any Learner during the provision of the Services. This will be done by informing the Department's representative by telephone or email immediately upon the Contractor becoming aware of the death.

- 8.5 The Contractor will, 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 health and safety in this Clause 8 are included in the sub-contract with each sub-contractor.

## **9 LEARNER WELFARE**

- 9.1 In addition to its statutory health and safety responsibilities as referred to in Clause 8 (Health & Safety) above, the Contractor must ensure that the Services are delivered in safe, healthy and supportive environments, which meet the needs of Learners in accordance with this Clause 9 and Clause 26 (Employees).
- 9.2 Where the Contractor provides residential accommodation for Learners, the Contractor must inform the Department of the provision of such residential accommodation and comply with the requirements of the national minimum standards for residential accommodation for children in Colleges published from time to time by the Secretary of State under section 87C of the Children Act 1989 as if the Contractor were a College (as defined by section 87(10) of the Children Act 1989).
- 9.3 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.
- 9.4 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 <https://www.gov.uk/government/publications/prevent-dutyguidance/prevent-duty-guidance-for-further-education-institutions-inengland-and-wales>.
- 9.5 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).
- 9.6 The Contractor will 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.
- 9.7 The Contractor will co-operate with the Department 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.
- 9.8 The Contractor and/or the Contractor Related Parties 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.

- 9.9 The Contractor will ensure it notifies the Department via the Contact Form: General Enquiries at <https://www.gov.uk/government/organisations/education-and-skillsfunding-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):

9.9.1 a safeguarding concern related to sexual violence to Local Authority children's social care/adult social care and/or the police, or

9.9.2 an allegation of abuse made against a teacher, lecturer or other member of staff to the designated officer(s) (at the local authority).

- 9.10 The Contractor will ensure it notifies the Department via the Contact Form: General Enquiries at <https://www.gov.uk/government/organisations/education-and-skillsfunding-agency> of incident(s) and/or where a referral has been made, where the Contractor or one of the Contractor Related Parties:

9.10.1 is aware of an incident, or pattern of incidents, which undermines the promotion of British fundamental values as referred to in Clause 9.3 or the ability of the Contractor or the Contractor Related Parties to comply with the Prevent duty, or

9.10.2 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 CounterTerrorism and Security Act 2015 of the extent to which that individual is vulnerable to being drawn into terrorism,

- 9.11 The Contractor will, 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 welfare in this Clause 9 are included in the sub-contract with each sub-contractor.

## **10 EQUALITY OF OPPORTUNITY**

- 10.1 The Contractor must 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 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 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 10.2 to 10.4.

- 10.2 The Contractor will, in delivering the Services under this Contract, demonstrate that it has had regard to the duties placed on the Department and the Contractor by the Equality Act 2010. The Contractor will take all reasonable steps to ensure the observance of these provisions by all servants, employees or agents of the Contractor and all sub-contractors engaged in the delivery of the Services.
- 10.3 The Contractor must ensure that equality of opportunity is built into all aspects of Services; the business planning process; and the selfassessment process. The Contractor must 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 must use appropriate, specific and measurable objectives. These will be proportionate, relevant and aligned to the Services the Contractor is funded to deliver.
- 10.4 The Department 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.

## **11 QUALITY ASSURANCE AND RAISING STANDARDS**

- 11.1 The Contractor undertakes to the Department that it and any Contractor Related Party has the resources and skills necessary to carry out the Contractor's obligations pursuant to this Contract.
- 11.2 The Contractor must comply with the Funding Rules published by the Department as amended from time to time and any other requirements, which may from time to time be issued by the Department, Inspectorates, the Awarding Organisations and other Regulatory Bodies and of which the Contractor is made aware.
- 11.3 The Contractor must ensure that all activities carried out pursuant to this Contract will be documented in accordance with any requirements of the Department and must provide such documentation as the Department may request from time to time to ensure compliance with this Clause 11.3.
- 11.4 The Contractor will continuously seek to improve the Services and raise standards to benefit the Learner. The Contractor will have the primary responsibility for improving standards and will need to demonstrate to the Department's satisfaction that it has an effective quality assurance system based on the implementation of its own quality improvement process. The Department reserves the right to require the Contractor to provide the Department or Ofsted evidence to support the quality improvement processes.

11.5 The Contractor must use all reasonable endeavours to:

- (a) minimise dropout rates and deliver high completion and achievement rates and appropriate progression;
- (b) offer equality of access to learning opportunities and close equality gaps in learning and outcomes;
- (c) provide good management and leadership of the learning process;
- (d) deliver value for money and financial probity; and
- (e) ensure all sub-contractors delivering Services under the Contract on behalf of the Contractor comply with the requirements set out in Clauses 11.5(a) to 11.5(d) above.

11.6 Failure to meet the requirements set out in Clauses 11.5(a) to 11.5(e) may result in the Department assessing the Contractor to be in Serious Breach of the Contract under Clause 39 (Minor and Serious Breach) of the Contract.

11.7 Where appropriate, the Contractor must confirm in writing to the Department that their (including Contractor Related Parties) Centre Approval Status for the relevant Services is still current. The written statement will need to confirm approved centre status for the specific Regulated Qualification Framework ("RQF") titles and levels, including Awarding Organisation name(s). The Contractor must notify the Department immediately in writing via the Contact Form: General Enquires at <https://www.gov.uk/government/organisations/educationand-skills-funding-agency> if it receives any sanction from an Awarding Organisation.

11.8 The Department can request any Awarding Organisation reports, assessments and notices from the Contractor at any time.

11.9 The Department may assess the quality and delivery of the Services and the Contractor's compliance with the requirements in Clauses 11.5(a) to 11.5(e) during the Contract Period. The Contractor will be informed of the outcome of that process. Where the Department assesses the Contractor to be in Serious Breach of Contract following such assessment the Department will issue a notice in accordance with Clause 39.3.1 of the Contract which, where the Department is not terminating, may:

- (a) require the Contractor to meet improvement indicators to improve the quality of its Services. The Department 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 Department and in agreement with the Contractor;
- (b) agree detailed improvement plans and measures that set out clearly the expected timescale for improvement;

- (c) agree arrangements for more frequent monitoring of quality improvement plans.

## **12 FINANCIAL HEALTH**

12.1 The Department will undertake an assessment of financial health and control (<https://www.gov.uk/government/publications/esfa-financialhealth-assessment>). Should the Department, at its absolute discretion, consider that the outcome of any financial health and/or control assessment is inadequate the Department may, in its absolute discretion take one or more of the following actions:

- (a) require the Contractor to, and the Contractor will, accept and comply with additional Contract obligations relating to the improvement of financial health and/or control arrangements;
- (b) require the Contractor to suspend the recruitment of Learners to the Services and/or cap any growth in Learner numbers;
- (c) 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
- (d) terminate the Contract in accordance with Clause 40.4.2.

12.2 Where the Contractor fails to comply with requirements imposed under Clauses 12.1(a) and/or 12.1(b) the Department will consider termination under Clause 40.4.2.

12.3 Failure to submit accounts for assessment when requested will automatically deem the assessment under clause 12.1 as 'inadequate' and clauses 12.1(a) to 12.1(d) will apply.

12.4 Where the outcome of a financial assessment illustrates a deterioration from the previous assessment the Department may in its absolute discretion request such further assurance or information from the Contractor as it deems necessary.

12.5 The Contractor must notify the Department immediately if it, or any Contractor Related Party, is experiencing or forecasting any financial difficulties and the Department may ask for additional financial information to obtain assurance of continuity of delivery of the Services.

12.6 The Department may require the Contractor to carry out an independent business review at the Contractor's cost (or for the Department to procure and recharge to the Contractor at its sole discretion) if the Department has concerns over the financial health of the Contractor.

12.7 The Department can at any time require the Contractor at its own cost to provide a copy of the Contractor's latest accounts, any historic accounts as requested, and submit further copies of the accounts as soon as they become available and to provide, upon request:

- 12.7.1 the Contractor's up to date management accounts, including financial performance against delivery;



- 12.7.2 financial forecasts of the Contractor's financial position for the next 12 months;
  - 12.7.3 cash flow forecasts for the next 12 months;
  - 12.7.4 any additional financial information the Department deems necessary.
- 12.8 Where the further information required from the Contractor under Clauses 12.4, 12.5, 12.6 and 12.7 does not provide adequate assurance to the Department then the Department may in its absolute discretion take one or more of the actions set out in Clauses 12.1(a) to 12.1(d).
- 12.9 The Department reserves the right to request that the Contractor provide a guarantee or other form of security on terms that will be notified to the Contractor.

### **13 INSPECTIONS**

- 13.1 When the Contractor receives notification from an Inspectorate that the Services are to be inspected, the Contractor will, on request, provide the Department with details of its quality improvement activity, and any other relevant information in accordance with the required timescale of the Inspectorate. The Contractor must notify the Department via the Contact Form: General Enquires at <https://www.gov.uk/government/organisations/education-and-skillsfunding-agency> of the date of the meeting at which an Inspectorate gives feedback on the inspection and allow the Department's nominated representative to attend the meeting. The Contractor must confirm to the Department in writing the outcome of the inspection within 5 Working Days of receiving the feedback from the Inspectorate.
- 13.2 Ofsted may, at any time during the Contract Period, undertake an inspection of the Contractor. The Department will consider the outcome of any such inspection in the manner set out in Clauses 13.3 to 13.8.

#### **Inadequate or Requires Improvement in part**

- 13.3 Where Ofsted has assessed the Services to be inadequate or requires improvement in any graded sub-judgement, the Department may, in its absolute discretion take one or more of the following actions:
- (a) require the Contractor to accept and comply with additional Contract obligations relating to the improvement of the Services assessed as inadequate or requires improvement; and/or
  - (b) require the Contractor to suspend the recruitment of Learners to, and/or to cap any growth in, the Services which is assessed as inadequate or requires improvement; and/or
  - (c) give consideration to the Services which are assessed as inadequate or requires improvement in its allocations when

finalising the amount of Funding in any subsequent Contracts between the Parties; and/or

- (d) reduce, suspend or recover payment to the Contractor in respect of that part of the Services assessed as inadequate or requires improvement; and/or
- (e) terminate the Contract in accordance with Clause 40.4.5.

**Inadequate or Requires Improvement overall**

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

- (a) 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 or requires improvement;
- (b) commence discussions with the Contractor, and the local authority and/or Combined Authority where appropriate, within whose area the Contractor is located, either with the Inspectorate or not, as part of considering what actions as specified in Clauses 13.5(a) to 13.5(d) inclusive may be taken.

13.5 Where Ofsted has confirmed its assessment that the Services are inadequate or requires improvement overall, the Department may, in its absolute discretion take one or more of the following actions:

- (a) require the Contractor to accept and comply with additional Contract obligations relating to the improvement of the overall Services; and/or
- (b) 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 or requires improvement; and/or
- (c) give consideration to the assessment of inadequate or requires improvement in its allocations when finalising the amount of Funding in any subsequent Contracts between the Parties; and/or
- (d) reduce, suspend or recover payment to the contractor; and/or
- (e) terminate this Contract in accordance with Clause 40.4.5 (Termination).

13.6 The failure of the Contractor, as assessed by the Department, to comply with any requirements of Clauses 13.5(a) to 13.5(b) inclusive within such time as the Department may deem reasonable may lead to the Department taking such actions as it deems appropriate which may

include, but is not limited to, terminating the Contract in accordance with Clause 40.4.4 (Termination).

- 13.7 The Department will take action based on the Inspectorate's provisional and confirmed outcomes as in Clauses 13.4 to 13.5 above. Where the Department is made aware that the Contractor has made a complaint about the graded outcome of the overall assessment by Ofsted, the Department will continue to progress action under Clauses 13.4 to 13.5 but will be mindful of the implications arising from the outcome of a complaint. The Department will review any decisions made at such time as outcomes of any complaint are made known.
- 13.8 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 Department may, at its sole discretion, terminate the Contract.

## **14 NOT USED**

## **15 FRAUD AND IRREGULARITY**

- 15.1 The Contractor must notify the Department 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:
- 15.1.1 collusion with members of the staff of the Department or employees of the Department for Education;
  - 15.1.2 computer fraud;
  - 15.1.3 the submission to the Department of inaccurate, incomplete, misleading or falsified information for the purpose of a claim for funding;
  - 15.1.4 fraud involving Awarding Organisations; 15.1.5 fraud involving sub-contractors;
- provided that nothing in this Clause 15 will require the Contractor to do anything, which may cause it to infringe any Law.
- 15.2 Where the Department has reasonable cause to suspect that fraud or irregularity has occurred in relation to the delivery of the Contract and payments made hereunder, the Department and /or its agents will have the right of access to the Contractor's Premises (or that of any of its subcontractors) 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.
- 15.3 Where the Department has reasonable cause to suspect that fraud or irregularity has occurred in relation to the delivery of the Contract and payments made hereunder, the Department may require the Contractor to

procure the services of an independent accountant (or other equivalent/appropriate professional) to investigate at the Contractor's cost (or the Department will procure and recharge to the Contractor at its sole discretion).

15.4 Where the Department 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 Department and the Contractor, and payments made thereunder, the Department will 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.

15.5 Where the Contractor is a registered or exempt charity, the Contractor will inform the Department of any schemes, orders or official warnings issued to them by the Charities Commission. Failure to inform the Department will constitute a Serious Breach of this Contract.

15.6 The Parties will co-operate in the identification of Learners who may be unlawfully claiming benefits. The Department 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 Department will provide a named contact or telephone answering machine for receiving such information.

### **PART 3: CONTRACT GOVERNANCE**

## **16 RELATIONSHIPS**

### **16.1 Co-operate and Liaise**

16.1.1 Subject to any express provisions in this Contract to the contrary each Party agrees to co-operate with the other in good faith with the intent that there shall be a seamless interface between the provision of the Services and the Department's other operations and services. For the purposes of this Clause 16.1.1 "good faith" shall include using reasonable endeavours to avoid unnecessary disputes and claims against the other party.

### **16.2 Information and Assistance**

16.2.1 Subject to any obligation in respect of confidentiality, the DPA 2018 and Confidential Information, the Parties will use all reasonable endeavours to provide and share information and data reasonably required by the other:

- (a) to enable it to perform its obligations under this Contract; and/or
- (b) (in the case of the Contractor) which is reasonably necessary to enable the Department to perform its statutory

obligations and other functions insofar as such provision forms part of the Services.

16.2.2 Neither Party will hinder, delay or prevent the other Party in the performance of the other Party's obligations under this Contract.

### **16.3 Enquiries, Investigations and Inspections**

16.3.1 The Contractor must and will ensure that its sub-contractors will at all times during the Contract Period and for a period of six (6) years, or such other time period as stated in the Specification (Schedule 1), afterwards fully co-operate with any enquiry, investigation or inspection (whether routine or specific) which in any way concerns, affects or relates to the Services, or any sum claimed or charged in relation to this Contract or to any other contract of the Department. Such enquiry, investigation or inspection may be by, inter alia:-

- (a) the Department;
- (b) the Department's auditors (whether internal or external);
- (c) Regulatory Bodies; and/or (d) the Inspectorates.

16.3.2 Such co-operation will include (but not be limited to) the following:-

- (a) providing access to or copies of such files, documents, letters, emails, notes, minutes, records, accounts or any other information (whether held or stored electronically, in hard copy format or otherwise) which relate to the subject or Service (in whole or in part) under investigation;
- (b) providing access to the premises, equipment (including IT hardware and software) or other assets used by the Contractor and/or its sub-contractors in the performance of this Contract, such access to be supervised at all times unless the nature of the investigation requires the parties defined at Clause 16.3.1 to be unsupervised, such parties acting reasonably in making such assessment;
- (c) providing access to Contractor Personnel (of whatever seniority) involved in this Contract (including managerial or supervisory staff) or who may be the subject of, or be named in, any enquiry or investigation by the auditors or the ombudsmen (including providing suitable facilities for interviewing such staff);
- (d) maintaining the confidentiality of the enquiry or investigation when requested to do so;
- (e) making such explanations (whether written or oral) as may be necessary for the enquiry or investigation to be satisfied

that the terms and conditions of this Contract, the Funding Rules and the Law are being complied with;

- (f) at all times and without notice allowing access to the Inspectorates, in connection with any complaint, investigation or inspection relating to this Contract or the Services. This will extend to the Contractor's Premises; and to all documentation and information relating to this Contract to which the Contractor has access; and to the Contractor's agents, employees and sub-contractors.

16.3.3 Where the Department 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, require the Contractor to, and the Contractor will, accept and comply with additional Contract obligations and will meet the cost of such investigation.

16.3.4 Where the Contractor fails to comply with the contractual obligations imposed under Clause 16.3.3, within such time as the Department deems reasonable, the Department may take such actions as it deems appropriate which may include, but is not limited to, under Clause 39 (Minor and Serious Breach).

16.3.5 The Contractor will in performing the Services comply fully with all relevant rules and regulations of the Department in force from time to time.

16.3.6 The Contractor will, if requested by the Department, co-operate with the Department, at its own expense, in connection with any legal proceedings, adjudication, arbitration, court proceedings or ombudsmen enquiries in which the Department may become involved, arising from breaches of the Department's duties under the Equalities Legislation due to the alleged acts or omissions of the Contractor, its employees, sub-contractors or agents.

16.3.7 The Contractor will ensure that the terms of any sub-contract include identical provisions to this Clause 16 (Relationships) and will indemnify the Department against any losses, damages or claims it suffers in consequence of a failure to ensure the inclusion of such identical items.

## **16.4 Complaints and Feedback**

16.4.1 The primary responsibility for receiving feedback and investigating complaints promptly and thoroughly in respect of the Services will rest with the Contractor. The Contractor will have procedures in place including but not limited to a complaints framework, which are acceptable to the Department, to gather and act upon feedback and complaints from Learners and/or their representatives and employers and the wider community. The

Contractor must also keep a log of the complaints received which will be accessible to the Department upon request.

- 16.4.2 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. The complaints procedure must be published on the Contractor's website and be provided to the relevant parties as part of the Contractor's on-boarding process.
- 16.4.3 The Contractor will be responsible for resolving complaints in accordance with its own procedures and any guidance issued by the Department. Once the Contractor has concluded its investigations, including any appeal, it must inform the complainant in writing of the outcome.
- 16.4.4 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 Department (<https://www.gov.uk/government/organisations/education-and-skillsfunding-agency/about/complaints-procedure>) and co-operate with any investigation carried out by the Department and act on any recommendations made by the Department following the investigation.

## **17 REPRESENTATIVE**

### **17.1 Contract Manager**

- 17.1.1 Without limiting the Department's obligations or rights in respect of such matters the Department will appoint a Contract Manager who may subject to Clause 17.1.2 exercise the rights and powers conferred by this Contract upon the Department.
- 17.1.2 Except pursuant to Clause 49 (Amendments to this Contract), or unless specifically authorised for that purpose, the Contract Manager does not have authority to amend the Contract or to relieve the Contractor of any express obligations under the Contract.

### **17.2 Account Manager**

- 17.2.1 The Contractor will notify the Department in writing of the name, telephone number, e-mail address and the postal address of the person appointed as the Account Manager.
- 17.2.2 The Account Manager may exercise the functions, rights and powers conferred by this Contract upon the Contractor.
- 17.2.3 In the event that the Contractor wishes to change the identity of the Account Manager, it will, subject to Clause 17.2.4 give to the Department not less than 5 Working Days' notice in writing of such

change. Such written notice will inform the Department of the name, telephone number e-mail address and postal address of the new Account Manager.

- 17.2.4 In the event that it is not possible or practical for any reason for the Contractor to give notice to the Department in accordance with Clause 17.2.3 the Contractor will notify the Department by whatever means the Contractor considers appropriate and will confirm such notification in writing within 5 Working Days.

### **17.3 User Role Management System**

- 17.3.1 The Contractor must ensure that those senior members of staff who are authorised to agree and sign contracts on behalf of the Contractor, submit Funding claims and return data are registered as users of the user role management system at <https://logon.fasst.org.uk>. It is the Contractor's responsibility to maintain appropriate user roles on an on-going basis.

## **18 DISPUTE RESOLUTION**

- 18.1 Any dispute will be dealt with in accordance with this Clause 18.
- 18.2 In the first instance, a representative of each Party will each use their reasonable endeavours to resolve the dispute. If the dispute cannot be resolved by such representatives within 15 days of the dispute arising, it will be referred to a senior representative of each Party, who will each use their reasonable endeavours to resolve the dispute.
- 18.3 If a dispute cannot be resolved by negotiation as referred to in Clause 18.2 within 30 days of the dispute arising, either Party may refer the dispute for determination in accordance with the mediation procedure administered by the Centre for Effective Dispute Resolution, the costs of the mediator being split equally between the Parties, who will otherwise bear their own costs.

## **PART 4: IPR DATA AND CONFIDENTIALITY**

### **19 INTELLECTUAL PROPERTY RIGHTS**

- 19.1 The Parties retain the ownership of each other's Background Intellectual Property. The Contractor will give the Department a non-exclusive royalty-free licence in perpetuity to use its Background Intellectual Property in respect of the Work.
- 19.2 In consideration of the Department 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 Department 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 Department may reasonably require to be



able fully to exploit, develop and commercialise the results of the Services, including, without limitation, the Work.

- 19.3 The provisions of this clause will apply during the continuance of this Contract and after its termination howsoever arising.

## **20 ASSIGNMENT OF IPR IN DATABASES**

- 20.1 The Contractor hereby assigns to the Department, with full title guarantee, title to and all rights and interest in the information contained in or stored on the Database or shall procure that the first owner of the Database assigns it to the Department on the same basis.
- 20.2 The assignment under Clause 20.1 will either take effect on the Agreement Date or as a present assignment of future rights that will take effect immediately on the coming into existence of the Database, as appropriate.
- 20.3 The Contractor will waive or procure a waiver of any moral rights in the Database assigned to the Department under this Contract.
- 20.4 To the extent that it is necessary for the Department to obtain the full benefits of ownership of the Database, the Contractor hereby grants to the Department and shall procure that any relevant third party licensor will grant to the Department an irrevocable, non-exclusive and global licence to use the Database.

## **21 DEPARTMENT DATA**

- 21.1 The Contractor acknowledges that the Department Data is the property of the Department and the Department hereby reserve all Intellectual Property Rights which may subsist in the Department Data.
- 21.2 The Contractor must perform secure back-ups of all the Department Data and must ensure that up-to-date back-ups, where not in the cloud, are stored off-site in accordance with the Business Continuity Plan. Back-ups stored in the cloud must comply with Data Protection Laws. The Contractor must ensure that such back-ups are available to the Department at all times upon request.
- 21.3 The Contractor must take all necessary steps to ensure that any Department Data which comes into its possession or control is protected in accordance with the DPA 2018 and appropriate security procedures as set out in Schedule 7 (Security & Department Policies) and in compliance with Good Industry Practice (having regard to the nature of its other obligations under this Contract and under the DPA 2018).
- 21.4 In the event that the Department Data used in the provision of the Services is corrupted or lost by the Contractor as a result of a breach by the Contractor of Clause 24 (Security), the Department will have the option, in addition to any other remedies that may be available to them either under this Contract or otherwise, to elect either of the following remedies:-

- 21.4.1 the Department may require the Contractor at its own expense to restore or procure the restoration of such the Department Data using the back-up copy referred to in Clause 21.2; or
- 21.4.2 the Department may itself restore or procure restoration of such the Department Data using the back-up copy referred to in Clause 21.2 and will be repaid by the Contractor any reasonable expenses so incurred.
- 21.5 In the event that the Department Data used in the provision of the Services is corrupted or lost solely as a result of an act or omission by the Department the Department will, at its own expense,
  - 21.5.1 require the Contractor to restore or procure the restoration of the Department Data using the back-up copy referred to in Clause 21.2; or
  - 21.5.2 the Department may itself restore or procure the restoration of the Department Data.
- 21.6 The Contractor must:-
  - 21.6.1 not use the Department Data, except as may be required to provide the Services or as instructed by the Department;
  - 21.6.2 not disclose the Department Data to any third party, other than in accordance with the requirements of the DPA 2018 for the purposes of fulfilling its obligations under this Contract, except with the prior written consent of the Department or as required by this Contract;
  - 21.6.3 undertake its obligations under this Contract in such a manner as to preserve so far as reasonably possible the integrity and prevent any loss, disclosure, theft, manipulation or interception of the Department Data; and/or
  - 21.6.4 upon request provide the Department with full access to the relevant area of any systems of the Contractor or its subcontractors where the Department Data is stored or held for the purpose of viewing, retrieving, copying or otherwise dealing with the Department Data.

## **22 DATA PROTECTION AND PROTECTION OF PERSONAL DATA**

- 22.1 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 6 (i.e. submission of Learner data to the Department). Any other processing of Personal Data undertaken by the Contractor (i.e. Learner enrolment or delivering education & training, e.g. e-portfolios) will be as a Data Controller and not on behalf of the Department. Clauses 22.2 to 22.14 below apply only in relation to the processing of Personal Data on behalf of the Department as set out in Schedule 6, and the only

processing that the Processor is authorised to do on behalf of the Department is listed in Schedule 6 by the Department and may not be determined by the Processor.

22.2 The Processor must notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Laws.

22.3 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:

- (a) a systematic description of the envisaged processing operations and the purpose of the processing;
- (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
- (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
- (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

22.4 If requested by the Department's Contract Manager, the Processor must, in relation to any Personal Data processed in connection with its obligations under this Contract:

22.4.1 process that Personal Data only in accordance with Schedule 6, 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;

22.4.2 ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Controller may reasonably reject (but failure to reject shall 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;

22.4.3 ensure that:

- (a) the Processor Personnel do not process Personal Data except in accordance with this Contract (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:

- (i) are aware of and comply with the Processor's duties under this clause;
- (ii) are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;
- (iii) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Controller or as otherwise permitted by this Contract; and
- (iv) have undergone adequate training in the use, care, protection and handling of Personal Data; and

22.4.4 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;

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

22.5 Subject to Clause 22.6, the Processor must notify the Controller immediately if it:

- 22.5.1 receives a Data Subject Request (or purported Data Subject Request) in relation to processing their data under this Contract only (submission of learner data);
- 22.5.2 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 Contract Manager;
- 22.5.3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Laws;

- 22.5.4 receives any communication from the Information Commissioner or any other Regulatory Body in connection with Personal Data processed under this Contract;
  - 22.5.5 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
  - 22.5.6 becomes aware of a Data Loss Event.
- 22.6 The Processor's obligation to notify under Clause 22.5 will include the provision of further information to the Controller in phases, as details become available.
- 22.7 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 22.5 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:
- 22.7.1 the Controller with full details and copies of the complaint, communication or request;
  - 22.7.2 such assistance as is reasonably requested by the Controller to enable the Controller to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Laws;
  - 22.7.3 the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
  - 22.7.4 assistance as requested by the Controller following any Data Loss Event;
  - 22.7.5 assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.
- 22.8 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:
- 22.8.1 the Controller determines that the processing is not occasional;
  - 22.8.2 the Controller determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; or
  - 22.8.3 the Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 22.9 The Processor will allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.

- 22.10 Each Party will designate its own data protection officer if required by the Data Protection Laws.
- 22.11 Before allowing any Sub-processor to process any Personal Data related to this Contract (submission of learner data), the Processor must:
- 22.11.1 notify the Controller's Contract Manager in writing of the intended Sub-processor and processing;
  - 22.11.2 obtain the written consent of the Controller's Contract Manager;
  - 22.11.3 enter into a written agreement with the Sub-processor which give effect to the terms set out in this Clause 22 such that they apply to the Sub-processor; and
  - 22.11.4 provide the Controller with such information regarding the Subprocessor as the Controller may reasonably require.
- 22.12 The Processor will remain fully liable for all acts or omissions of any of its Sub-processors.
- 22.13 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 shall apply when incorporated by attachment to this Contract).
- 22.14 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 Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- 22.15 Where the Contractor is providing the Services to Learners claiming out of work benefits, the Secretary of State for Work and Pensions (or their successor) is the 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 22 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.
- 22.16 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.
- 22.17 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 22 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.

- 22.18 The Processor will comply with any further written instructions or additional conditions from the Department's Controller in relation to the data processing.

## **23 SUBMISSION OF LEARNER DATA**

### **23.1 General**

- 23.1.1 The Contractor must supply the Department with data in accordance with the following:

- (a) in line with agreed audit arrangements;
- (b) in adherence with the Data Protection Act 2018;
- (c) to support payments to be made;
- (d) to enable reconciliation to take place; and
- (e) to support the contract management and allocation processes.

- 23.1.2 The Contractor undertakes to the Department to submit accurate data.

- 23.1.3 Where the Department is concerned about the quality of the data, including the completeness or accuracy of the data, provided by the Contractor, the Department may require the Contractor to supply data more frequently for such a period as

the Department will require and the Department may audit, or instruct a third part to audit, at the Contractor's cost, the Contractor's data and controls to gain assurance that the quality improvements have been made.

- 23.1.4 The Department reserves the right to require the Contractor, at its own cost, to carry out such work as the Department deems necessary to improve the quality of data.

- 23.1.5 The Department 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.

- 23.1.6 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 23 will constitute a Serious Breach of Contract in accordance with Clause 39 (Minor and Serious Breach) of this

Contract and may result in payments for this part of the Services to be delayed or withheld.

23.1.7 The Contractor must update the course information funded by the Department at <https://coursedirectory.nationalcareersservice.org.uk/>.

23.1.8 The Contractor must register with UKRLP (<http://www.ukrlp.co.uk/>) and Get Information About Schools (<https://get-information-schools.service.gov.uk/>) where appropriate and maintain contact details on an on-going basis.

23.1.9 The Contractor must publish online the set of information as set out at <https://www.gov.uk/guidance/what-academies-free-schoolsand-colleges-should-publish-online>.

23.1.10 The Contractor must submit data about any member of its workforce delivering GCSE English and Maths in the format and to the timescales as required by the Department.

23.1.11 Failure to transmit complete and accurate data to the Department in accordance with this Clause 23 will constitute a Serious Breach of Contract in accordance with Clause 39 (Minor and Serious Breach) of this Contract.

## **23.2 DaDA Data Submission**

23.2.1 The Contractor must submit Learner data and management information returns in accordance with part 1B of Schedule 1 (Specification and Monitoring).

## **24 SECURITY**

24.1 The Contractor must comply, and will ensure compliance by the Contractor Personnel, with the provisions of Schedule 7 (Security & Department Policies).

## **25 FREEDOM OF INFORMATION AND CONFIDENTIALITY**

### **25.1 Freedom of Information**

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

25.1.2 The Contractor acknowledges and agrees that the Department is required by Law to consider each and every request made under FOIA for information.

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

25.1.4 Notwithstanding anything in this Contract to the contrary



(including without limitation any obligations of confidentiality), the Department will 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 Department will use reasonable endeavours (but will not be obliged) to consult the Contractor and will not:

- (a) confirm or deny that information is held by the Department; or
- (b) disclose information requested

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

25.1.5 In relation to information relating to the Contractor or the Contract which the Contractor requests should be exempt under the FOIA. The Contractor will indemnify the Department for any and all costs (including legal fees) incurred by the Department 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 Department to withhold Exempt Information.

25.1.6 The Department will 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.

25.1.7 The Contractor will assist the Department as reasonably necessary to enable the Department to comply with its obligations under FOIA.

## **25.2 Confidentiality**

25.2.1 The Contractor hereby warrants that:

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

engagement) will not disclose any Confidential Information to any third party without prior written consent of the Department, except where disclosure is otherwise expressly permitted by the provisions of this Contract.

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

25.2.3 The provisions of Clauses 25.2.1 and 25.2.2 will not apply to any information:

- (a) which is or becomes public knowledge (other than by breach of Clauses 25.2.1 and 25.2.2);
- (b) which was in the possession of the receiving party, without restriction as to its disclosure, before the date of receipt from the disclosing party;
- (c) 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 Environmental Information Regulations.

25.2.4 Nothing in this Clause 25.2.4 will be deemed or construed to prevent the Department from disclosing any Confidential Information obtained from the Contractor:

- (a) to any other Central Government Body, Non-Departmental or Quasi Government Body or agency, central or local;
- (b) to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
- (c) to any professional adviser, consultant, contractor or other person engaged by the Department directly in connection with this Contract, provided that such information is treated as confidential by the receiving consultant, contractor or any other person;
- (d) on a confidential basis to any proposed successor body in connection with any assignment disposal of its rights, obligations or liabilities under this Contract.

25.2.5 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.

- 25.2.6 The Contractor will immediately notify the Department 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 Department in any investigation that the Department considers necessary to undertake as a result of any breach of security in relation to Confidential Information or data.
- 25.2.7 The Contractor must, at its own expense, alter any security systems at any time during the Contract Period at the Department's request if the Department reasonably believes the Contractor has failed to comply with Clause 25.2.6.
- 25.2.8 The Department reserves the right to publish details of this Contract and the payments made under it to comply with the Government's transparency requirements.
- 25.2.9 The provisions of this Clause 25 will apply for the Contract Period and after its termination.

## **PART 5: WORKFORCE**

### **26 EMPLOYEES**

- 26.1 The Contractor must 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, or an interim prohibition order made under regulation 14 of the Teachers' Disciplinary (England) Regulations 2012, to carry out teaching work (as defined in regulation 3 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).
- 26.2 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 will 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.
- 26.3 The Contractor will 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 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. References to 'must' in any such guidance will be treated as 'should' for the purposes of this Contract, 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.

26.4 The Contractor will make arrangements for ensuring that the Provision is delivered 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 will 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 will be treated as 'should' for the purposes of this Contract, 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.

26.5 The Contractor must ensure it takes the following action in respect of all Contractor Personnel and potential Contractor Personnel whom in connection with the Contractor's provision of the Services will or is likely to be in contact with Learners or who will have access to Learners information (other than Department Employees):

26.5.1 they are questioned as to whether they have any Convictions or Asbos;

26.5.2 the results are obtained of a background check with the DBS of the most extensive kind available;

26.5.3 to the extent permitted by Law, a copy of the results of such a background check as is referred to in Clause 26.5.2 are provided to the Department on request;

26.5.4 in respect of potential Contractor Personnel from overseas the Contractor must comply with the following guidance

<https://www.gov.uk/government/publications/criminal-recordschecks-for-overseas-applicants>,

the Contractor must take the above action before the relevant Contractor Personnel or potential Contractor Personnel commences any activities in relation to the Services.

- 26.6 The Contractor must carry out appropriate disclosure and barring service checks on all applicants for employment where such applicants would be employed to work in regulated activity relating to vulnerable adults (as defined by the Safeguarding Vulnerable Groups Act 2006) if successful, and must seek additional information about an applicant's conduct. The Contractor must also ensure that:
- 26.6.1 no person who appears on a Barred List following the results of a DBS background check shall be employed or engaged in the performance of the Services; and
  - 26.6.2 it and all its sub-contractors will comply with all reporting requirements to the DBS.
- 26.7 In so far as permitted by Law, where the Contractor has made a referral or provided information to the Disclosure and Barring Service in compliance with any duties of the Contractor under the Safeguarding Vulnerable Groups Act 2006, the Contractor will ensure that it informs the Department via the Contact Form: General Enquires at <https://www.gov.uk/government/organisations/education-and-skillsfunding-agency> that a referral has been made/information has been provided.
- 26.8 In the event that any Contractor Personnel or any employee of any subcontractor is added to a Barred List, the Contractor must ensure that such member of staff shall cease to be engaged in the Services.
- 26.9 The Contractor will require Contractor Personnel to declare annually whether there has been a change in their circumstances relating to the background checks referred to in this Clause 26. Where the selfdeclaration indicates a change in circumstances relating to those background checks, the Contractor will:
- 26.9.1 assess the risk of continuing to engage such member of Contractor Personnel in the delivery of the Services;
  - 26.9.2 request new background checks of such member of Contractor Personnel as required by this Clause 26;
  - 26.9.3 put in place appropriate actions to ensure Learners are safeguarded, including, but not limited to, extra supervision of the member of Contractor Personnel, re-assignment to an area of the delivery of the Services that does not bring the member of Contractor Personnel into regular contact with Learners, or removal from the delivery of the Services of the member of Contractor Personnel, until such time as the Contractor has received the outcome of the background checks required under Clause 26.9.2 and has taken any action required as a result of the outcome of such background checks.
- 26.10 Pending the receipt by the Contractor of the results of the background checks referred to in this Clause 26, Contractor Personnel will not be used in the provision of the Services.

- 26.11 Failure by the Contractor to comply with Clauses 26.5 to 26.10 will constitute a Serious Breach.
- 26.12 The Contractor will provide details of its policies and procedures for recruitment, training, development, supervision and other employmentrelated policies when requested to do so.
- 26.13 The Contractor will ensure that it has in place and complies with an effective whistleblowing procedure, approved by the body responsible for the management of the Contractor, whereby staff may raise in confidence concerns about possible malpractice without fear of victimisation, subsequent discrimination or disadvantage. The procedure must be published on the Contractor's public-facing website. The Contractor will regularly review the procedure, including securing approval from the body responsible for the management of the Contractor of any amended procedure.
- 26.14 Unless Contractor Personnel transfer to the Department and/or a Successor Contractor under TUPE at expiry or termination of the Contract, the Contractor will retain employment records (or retain the right to access employment records) for seven (7) years following the last day such Contractor Personnel were engaged in providing Services save for Contractor Personnel in contact with Children and/or with access to information about Children where such records will be retained for fifteen (15) years following such date.
- 26.15 When requested by the Department on reasonable grounds, the Contractor will cease to use any Contractor Personnel specified by the Department in the provision of the Services. For the purposes of this clause Contractor Personnel will include non-executive directors.
- 26.16 The Contractor must ensure that:
- 26.16.1 there will be at all times a sufficient number of staff (including all relevant grades of supervisory staff) engaged in the provision of the Services with the requisite level of skill and experience. This obligation will include ensuring that there are sufficient staff to cover periods of holiday, sickness, other absences and anticipated and actual peaks in demand for each of the Services; and
  - 26.16.2 all Contractor Personnel receive such training and supervision as is necessary to ensure the proper performance of the Services under this Contract.
- 26.17 The Contractor must inform the Department if directors, or any other person who has powers of representation, decision or control, meet the characteristics set out in the Funding higher-risk organisations and subcontractor document.  
<https://www.gov.uk/government/publications/sfaffinancial-assurance-higher-risk-providers-and-subcontractors>. Failure to inform the Department will be a Serious Breach of the Contract.

- 26.18 Where the contract value is greater than £10,000,000, the Contractor will consider the use of Apprenticeships in the delivery of the Services.
- 26.19 The Contractor must ensure that there are set up and maintained by it and by all sub-contractors involved in the provision of the Services, personnel policies and procedures covering all relevant matters (including discipline, grievance, equal opportunities and health and safety). The Contractor must ensure that the terms and implementation of such policies and procedures comply with Law and Good Industry Practice and that they are published in written form. The Contractor must provide copies of such policies to the Department, on the Department's request.

## **27 KEY STAFF**

- 27.1 The Contractor will use its reasonable endeavours to ensure continuity of staff, knowledge and skills and inform the Department immediately of any change to the top two tiers in its senior leadership team.

## **28 TUPE**

- 28.1 Where there are Transferring Former Supplier Employees (as defined in Schedule 5 (TUPE)) between the Previous Contractor and the Contractor, the provisions set out in Schedule 5 (TUPE) to this Contract will apply.

## **29 RE-PROVISION OF THE SERVICES**

- 29.1 The Department and the Contractor will act on the basis that TUPE applies on expiry or termination of the Contract where the Department is proposing re-provision for services which are substantially the same as the Services. For the avoidance of doubt this Clause 29 does not apply where the Contractor will be providing the Services in the following Funding Year.
- 29.2 During the period of three (3) months preceding the expiry of the Contract or within 21 days after the Department or the Contractor has given notice to terminate the Contract, the Contractor will disclose to the Department and will permit the Department to disclose to any new provider or potential new provider of the services which are substantially the same as the Services, the Staffing Information provided that prior to so doing any such provider will have executed in writing a confidentiality undertaking in favour of the Contractor.
- 29.3 During the period of three (3) months preceding the expiry of this Contract or within 21 days after the Department or the Contractor has given notice to terminate the Contract, the Contractor must, subject to the provisions of the Data Protection Act 2018, provide and thereafter keep updated at monthly intervals, to the Department and to the Successor Contractor information equivalent to the relevant personnel documentation and the

Staffing Information in respect of each employee whom the Contractor reasonably believes will be a future transferring employee provided that prior to so doing the Successor Contractor nominated by the Department will have executed in writing a confidentiality undertaking in favour of the Contractor.

- 29.4 The Contractor must make reasonable endeavours to assist the Successor Contractor to communicate with, meet and inform and consult with the employees whom the Contractor reasonably believes will be a future transferring employee and their trade union or other employee representatives for the purposes of complying with TUPE.
- 29.5 The Contractor must immediately prior to the future transfer date provide to the Department or the Successor Contractor a complete and accurate list of the Staffing Information and identification details of all employees whom it reasonably believes will be future transferring employees.
- 29.6 Within a period of 21 days following the expiry or termination of this Contract the Contractor must provide to the Department or the Successor Contractor in writing final pay details of the future transferring employees.
- 29.7 The Contractor warrants that it will supply complete and accurate information pursuant to Clauses 29.2, 29.3, 29.5 and 29.6 in all material respects and the Contractor will indemnify and keep the Department indemnified fully now and in the future in respect of all or any costs whether arising in contract or under any relevant Law suffered or incurred by the Department or the Successor Contractor nominated by the Department by reason of any proceeding, claim or demand arising from or in connection with the provision of information and/or the failure to provide complete and accurate information under Clauses 29.2, 29.3, 29.5, and 29.6, and/or the provision of assistance and/or failure to provide assistance under Clause 29.4 of this Contract.
- 29.8 After receiving notice of the termination of this Contract and for six (6) months preceding expiry of this Contract the Contractor will promptly notify the Department or the Successor Contractor:
  - 29.8.1 of the period of notice given by the employment of any employee whom the Contractor reasonably believes will be a future transferring employee; and
  - 29.8.2 of any other change to any employee whom the Contractor reasonably believes will be a future transferring employee and their terms and conditions of employment, their Staffing Information and their relevant personnel documentation.
- 29.9 The Contractor warrants that it will supply the required information completely and accurately in all respects at the time of supply and will indemnify and keep the Department and/or any Successor Contractor indemnified in respect of all and any costs suffered or incurred by the Department or the Successor Contractor by reason of any proceedings, claim or demand arising out of or in connection with:



- 29.9.1 any claim against the Department or the Successor Contractor by any future transferring employee so far as it relates to any act or omission of the Contractor after the employee transfer date and prior to the future transfer date; and
- 29.9.2 any claim against the Department or the Successor Contractor by any future transferring employee whose name is not included on the list provided by the Contractor pursuant to Clause 29.5 so far as it relates to the dismissal of such future transferring employee within two Months of the Department or Successor Contractor becoming aware of the transfer of such future transferring employee.
- 29.10 For the purposes of Clause 29.9, in the event that the Department or the Successor Contractor incurs costs, liabilities or expenditure in respect of future transferring employees which is greater than would have been the case if the Required Information supplied by the Contractor had been accurate and complete, then such (net) greater costs, liabilities or expenditure will be deemed to be costs suffered or incurred by the Department or Successor Contractor and included within the indemnity provided by the Contractor.
- 29.11 The Department or Successor Contractor will be entitled to recover from the Contractor in full any legal, accountancy and other costs actually and reasonably incurred by the Department or Successor Contractor in connection with the costs and liabilities indemnified by the Contractor.
- 29.12 This Clause 29 will continue in effect for six (6) months following the expiry or termination of this Contract.

## **PART 6: PAYMENT AND AUDIT**

### **30 PAYMENT AND AUDIT**

#### **30.1 Funding and Payment**

- 30.1.1 In consideration of the Services to be provided by the Contractor, the Department agrees to pay the Contractor the amounts set out in Schedule 2 of this Contract on condition that the Contractor delivers the Services in accordance with the terms and conditions of this Contract.
- 30.1.2 The Contractor must use the Funding solely for the purpose of delivering the Services as set out in this Contract.
- 30.1.3 The Contractor will comply with the Funding Rules published by the Department as amended from time to time.
- 30.1.4 The Department 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

Department are being used effectively and efficiently or to require the Contractor to address concerns about its financial viability.

- 30.1.5 The payment of Funding by the Department will be without prejudice to any claims or rights, which the Department may have against the Contractor and will not constitute any admission by the Department as to the performance by the Contractor of its obligations under this Contract. Prior to any such payment of Funding, the Department shall be entitled to make deductions or deferments in respect of any disputes or claims whatsoever with or against the Contractor, arising from this Contract or any other agreement between the Contractor and the Department.
- 30.1.6 The Department shall be entitled to terminate, pursuant to Clause 40.4.9 this Contract on written notice if the Contractor does not recruit and/or data returns reveal that no Learners have been enrolled for the funding year to which this Contract relates. Where the Department terminates the Contract under this Clause 30.1.6, the Department will withdraw the allocation of Funding for the Funding Year and will take action to recover Funds where payments have already occurred.
- 30.1.7 Where the Department identifies errors which it deems to be material in the data that the Contractor is required to provide under the Contract to support the payment of Funding, the Department reserves the right at its absolute discretion to require the Contractor at the Contractor's cost to carry out a 100% audit of all or part of the Services by a deadline specified by the Department and / or to recover from the Contractor Funding equivalent to an amount based on the error rate identified and the total value of the Funding paid to the Contractor under this Contract.
- 30.1.8 Without prejudice to any other provisions in this Contract, such amounts as are identified as being recoverable under Clause 30.1.7, 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 by 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 39 (Minor and Serious Breach) of this Contract. The decision of the Department as to the amount of recovery under this Clause is final.
- 30.1.9 Where the Department, in accordance with Clause 30.1.7, identifies errors it may at its discretion review the controls and processes to gain assurance the errors will not occur again. Where further assurance work is required this will be at the Contractor's cost (or the Department will procure and recharge to the Contractor at its sole discretion). Where a full funding audit results in a "qualified" rating this will constitute a Minor Breach.

30.1.10 All payments by the Department will be made via BACS. **Tax**

**Compliance**

30.1.11 The Department may ask the Contractor to provide information which demonstrates how the Contractor complies with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax in respect of that consideration.

30.1.12 The Department may terminate this Contract if:

- (a) in the case of a request mentioned in Clause 30.1.11 the Contractor:
  - (i) fails to provide information in response to the request within a reasonable time; or
  - (ii) provides information which does not demonstrate either how the Contractor complies with Clauses 30.1.11 and 30.1.14 or why those clauses do not apply to it;
  - (iii) it receives information which demonstrates that is not complying with its obligations under the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax.

30.1.13 The Department may supply any information which it receives under Clause 30.1.11 to HMRC.

30.1.14 If, during the Contract Period, an Occasion of Tax NonCompliance occurs, the Contractor will:

- (a) notify the Department in writing of such fact within 5 Working Days of its occurrence; and (b)  
promptly give the Department:
  - (i) details of the steps it is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors it considers relevant; and
  - (ii) such other information in relation to the Occasion of Tax Non-Compliance as the Department may reasonably require.

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

### **31.1 In-Year Reconciliation**

31.1.1 Reviews of contractual performance and reconciliation will be carried out in accordance with part 1B of Schedule 1 (Specification and Monitoring).

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

### **31.2 Performance**

31.2.1 Performance will be monitored in accordance with the provisions of part 1B of Schedule 1 (Specification and Monitoring).

31.2.2 The Department will be able to share allocations and performance information with Combined Authorities, Crown Bodies and LEPs.

## **32 CONTRACTOR'S RECORDS AND AUDIT**

### **32.1 Maintenance of Records**

32.1.1 The Contractor must, and will procure that any Contractor Related Parties, maintain a full record of all incidents relating to data protection, health, safety and security, including CCTV, which occur during the Contract Period. The Contractor will make the aforementioned records available for inspection by the Department upon reasonable notice, and will present a report of them to the Department as and when requested.

### **32.2 Auditor**

32.2.1 The Department (in accordance with <https://www.gov.uk/government/publications/post-16-audit-code-ofpractice>), the European Commission, the European Court of Auditors and/or a Crown Body may at any time conduct audits for the following purposes:-

- (a) to establish that the Contractor has used the Funding (and proposed or actual variations to the Funding in accordance with this Contract) in the delivery of the Services and/or the costs of all suppliers (including sub-contractors) of the Services;
- (b) to verify the Contractor's claims for Funding;
- (c) to review the integrity, confidentiality and security of the Department Data as well as the Department's access to the Department Data;
- (d) to review the Contractor's and/or a Contractor Related Party's compliance with the DPA 2018, the FOIA in accordance with Clauses 21 (Department Data) and 25 (Freedom of Information and Confidentiality) and any other Law applicable to the Services;
- (e) to carry out the audit and certification of the Department's accounts;

- (f) to verify the accuracy and completeness of any management information delivered or required by this Contract;
- (g) to ensure that the Contractor and/or a Contractor Related Party is complying with the Department Policies and any British or equivalent European standards and any other audit that may be required by any Relevant Authority

such audits may be based on current or preceding years or preceding contracts.

32.2.2 The Department will use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Contractor or delay the provision of the Services.

32.2.3 Subject to the Department's obligations of confidentiality, the Contractor and/or a Contractor Related Party must on demand provide the Department (and/or its agents or representatives) with all reasonable co-operation and assistance in relation to each audit, including:-

- (a) all information requested by the Department within the permitted scope of the audit;
- (b) reasonable access to any premises and any equipment used (whether exclusively or non-exclusively) in the performance of the Services;
- (c) access to the Contractor's and/or a Contractor Related Party's systems; and
- (d) access to Contractor Personnel.

32.2.4 The Contractor will implement all measurement and monitoring tools and procedures necessary to measure and report on the Contractor's (including for the avoidance of doubt a Contractor Related Party's) performance of the Services.

32.2.5 The Department will endeavour to (but is not obliged to) provide at least ten (10) Working Days' notice of its intention to conduct an audit. The Department may carry out audit visits with or without prior notice at its discretion.

32.2.6 The Parties agree that they will bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause, unless the audit identifies a material breach or malpractice by the Contractor and/or a Contractor Related Party in which case the Contractor will reimburse the Department for all the Department's reasonable costs incurred in the course of the audit.

32.2.7 If the findings of an audit conducted pursuant to this Clause 32 results in the requirement for Learner data or management

information to be corrected and re-submitted the Contractor must re-submit the data to the Department, as set out in Clause 23 (Submission of Learner Data), within one month. Failure to do so will be a Minor Breach of this contract.

32.2.8 If the Department identifies that:-

- (a) the Contractor has failed to perform its obligations under this Contract in any material manner, without prejudice to any other remedy that the Department has, the Parties will agree and implement a remedial plan. If the Contractor's failure relates to a failure to provide any information to the Department about the Funding, proposed Funding or the Contractor's costs, then the remedial plan will include a requirement for the provision of all such information;
- (b) there has been any under or over payment it will be dealt with in accordance with Clause 30.1 (Funding and Payment).

32.2.9 The Contractor must permit records referred to in this Clause 32 (Contractor's Records and Audit) to be examined and copied from time to time by the Department's auditor and inspectors and their representatives and other representatives of the Department.

### **32.3 Retention**

32.3.1 The records referred to in this Clause 32 (Contractor's Records and Audit) will be retained for a period of at least six (6) years, subject to any requirements for a longer retention period set out in the Funding Rules, after the end of the Contract Period.

### **32.4 Information on Termination or Expiry**

32.4.1 Upon termination or expiry of this Contract the Contractor must (and will ensure that the sub-contractors will) comply with all reasonable requests of the Department to provide information relating to the Contractor's costs of providing the Services.

### **32.5 Confidentiality of Information**

32.5.1 All information referred to in this Clause 32 (Contractor's Records and Audit) is subject to the obligations set out in Clause 25.2 (Confidentiality) and Clause 25.1 (Freedom of Information).

32.5.2 For the purposes of the examination and certification of the Department's accounts and/or any examination of the economy, efficiency and effectiveness with which the Department has used its resources, the National Audit Office, internal or external auditor may examine such documents premises, systems and staff as he may reasonably require which are owned, held or otherwise within the control or employ of the Contractor or subcontractors (who must ensure that any person acting on its

behalf who has such documents and/or other information will also provide access) and may require the Contractor to produce such oral or written explanation as he considers necessary.

32.5.3 Where the Department appoints an independent third party to undertake, exercise or carry out any of the rights or powers contained in this Clause 32 (Contractor's Records and Audit) the Department must ensure that such independent third party enters into a Confidentiality Agreement with the Contractor simultaneously with its appointment.

### **33 STATE AID**

33.1 The Contractor should satisfy itself, if the European rules on State Aid apply to the Services delivered under this Contract. These can be accessed at <https://www.gov.uk/guidance/state-aid>.

33.2 Where the rules on State Aid apply, the Contractor will collect and retain appropriate records and will supply those records to the Department on its request.

33.3 The Department 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 Learner. Where a contribution is required, the Department will confirm to the Contractor in writing the exact percentage of the contribution.

33.4 Where Department requires the Contractor to obtain a contribution towards the cost of the Services under Clause 33.3 above, the Contractor must provide evidence that the contribution has been received.

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

## **PART 7: CORPORATE GENERAL**

### **34 ASSIGNMENT AND SUB-CONTRACTING**

34.1 Notwithstanding any sub-contract the Contractor has entered into, the Contractor will remain primarily and directly liable for the Contractor's obligations under this Contract.

34.2 The Contractor must ensure that any sub-contract it enters into includes terms and conditions which will not differ materially from those in this Contract. This includes references to the Funding Rules and other documents herein referred to.

34.3 Where the Contractor has sub-contracted any duties or obligations arising out of this Contract, the Contractor must ensure that there is a legally binding sub-contract in place with the sub-contractor and send copies of the sub-contract to the Department if requested in writing to do so.

- 34.4 The Contractor must ensure that sub-contractors are selected fairly and have sufficient capacity, capability, quality and financial standing to deliver the Services that are to be sub-contracted.
- 34.5 The Contractor will not enter into any agreement for Brokerage in relation to the Services under this Contract.
- 34.6 The Contractor must carry out its own due diligence checks when appointing sub-contractors and must take account of the criteria set out in the Funding High-Risk Organisations and sub-contractors document which is published at <https://www.gov.uk/government/publications/sfafinancial-assurance-higher-risk-providers-and-subcontractors>. The Contractor must have both the process it has followed for selecting and appointing sub-contractor(s) available for inspection by the Department. This process must consider non-financial as well as financial issues.
- 34.7 The Contractor must make payment to any sub-contractor within 30 days of receiving a valid claim for payment and must ensure that any subcontract entered into contains a term giving effect to this requirement.
- 34.8 The Department reserves the right to require the Contractor not to enter into, or to terminate, any sub-contract to deliver the Services under this Contract.
- 34.9 The Contractor must provide a fully completed Sub-Contractor Declaration by the deadline given to them by the Department in the Department's request. This will be at least twice a year. If the Contractor is not sub-contracting then a nil return must be received by the relevant deadline. The Contractor must update its Sub-Contractor Declaration if its sub-contracting arrangements change during the year.
- 34.10 Unless specifically authorised in writing by the Department, the Contractor may only sub-contract the Services to one level. For the avoidance of doubt the sub-contractor must not further sub-contract the Services that have been sub-contracted to it. This is to ensure that the Contractor retains clear and transparent control of the quality of training provision, and that proper and appropriate measures are in place to manage the learner experience.
- 34.11 The Contractor must manage and monitor its sub-contractors in accordance with the relevant sub-contract to ensure that the subcontractors deliver the sub-contracted Services to the standard set out in Clause 3 (Service Delivery) of this Contract.
- 34.12 The Contractor will review annually its sub-contracts, including the rationale for entering into those sub-contracts, and will publish by 31 October 2020 a statement on its public facing website setting out a high level summary of its sub-contracts and the rationale.
- 34.13 Where a sub-contract expires or is terminated for whatever reason, the Contractor must make sure that there is continuity of Services for existing Learners.



34.14 Where the annual value of this Contract exceeds £5 million per annum and the Contractor wants to sub-contract one or more of the Services, the following provisions apply:

34.14.1 The Contractor will advertise on Contracts Finder all subcontract opportunities arising from or in connection with the provision of the Services above a minimum threshold of £25,000 that arise during the Contract Period.

34.14.2 Once a sub-contract has been awarded, the Contractor will update the notice on Contracts Finder with the details of the successful sub-contractor.

34.14.3 In addition to any other management information requirements set out in this Contract, the Contractor agrees and acknowledges that it will, at no charge, provide timely, full, accurate and complete SME Management Information ("MI") Reports to the Department which incorporate the following:

- (a) the total revenue received directly from the Contract;
- (b) the total value of Services under the Contract that have been sub-contracted (including revenues for nonSMEs/non-VCSEs); and
- (c) the total value of sub-contracted revenues to SMEs and VCSEs.

34.14.4 The SME Management Information Reports will be provided on a Manage Your Education & Skills Funding return and in the correct format as required by the Department and any guidance issued by the Department from time to time.

34.15 Failure to comply with any of the requirements under Clauses 34.1 to 34.14 may result in the Department taking such actions as it deems appropriate, which may include, but is not limited to, action under Clause 39 (Minor and Serious Breach).

## **35 INDEMNITIES AND LIABILITY**

### **35.1 Contractor Indemnity**

35.1.1 The Contractor will be responsible for, and will release and indemnify the Department, its employees and agents on demand from and against all liability from:

- (a) death or personal injury caused by its negligence or that of its employees, agents or sub-contractors (as applicable);
- (b) breach of statutory duty;
- (c) third party actions, claims or demands brought against the Department as a direct consequence of the Contractor's breach of this Contract;

- (d) fraud or fraudulent misrepresentation by it, its employees, agents or sub-contractors (as applicable);
- (e) loss of or damage to property; to the extent which the same may arise out of, or in consequence of:
- (f) the performance or non-performance by the Contractor of its obligations under this Contract; and
- (g) In all other respects, any negligent act, default or breach of statutory duty in connection with the performance or nonperformance by the Contractor of its obligations under this Contract.

### **35.2 Contractor Not Responsible**

35.2.1 The Contractor will not be responsible for or obliged to indemnify the Department for any injury, loss, damage, cost and expense caused by the negligence or wilful misconduct of the Department or by the breach by the Department of its obligations under this Contract.

### **35.3 Limitation of Indemnity**

35.3.1 An indemnity by either Party under any provision of this Contract will be without limitation to any indemnity by that Party under any other provision of this Contract.

### **35.4 Responsibility for Related Parties**

35.4.1 The Contractor will be responsible as against the Department for the acts or omissions of the Contractor Related Parties as if they were the acts or omissions of the Contractor and the Department will be responsible as against the Contractor for the acts or omissions of Department Related Parties as if they were the acts or omissions of the Department.

### **35.5 Notification of Claims**

35.5.1 Where either Party (the “Indemnified Party”) wishes to make a claim under this Clause 35 (Indemnities and Liability) against the other (the “Indemnifying Party”) in relation to a claim made against it by a third party (a “Third Party Claim”), the Indemnified Party will give notice of the relevant claim as soon as reasonably practicable setting out full particulars of the claim.

### **35.6 Conduct of Claims**

35.6.1 The Indemnifying Party may at its own expense and with the assistance and co-operation of the Indemnified Party have the conduct of the Third Party Claim including its settlement and the Indemnified Party will not, unless the Indemnifying Party has failed to resolve the Third Party Claim within a reasonable period (and the Indemnified Party has notified the Indemnifying Party in writing

that it is of the opinion that such reasonable period has expired), take any action to settle or pursue the Third Party Claim.

### **35.7 Costs of Claims**

35.7.1 The Indemnifying Party may, if it wishes to have conduct of any claim, give reasonable security to the Indemnified Party for any cost or liability arising out of the conduct of the claim by the Indemnifying Party.

35.7.2 The Contractor's liability to the Department pursuant to this Clause 35 (Indemnities and Liability) will be, for the avoidance of doubt, without prejudice to any other right or remedy available to the Department under this Contract.

### **35.8 No Limit on Liability**

35.8.1 Neither Party excludes or limits its liability to the other Party for:

- (a) death or personal injury caused by its negligence, or that of its employees, agents or sub-contractors (as applicable); or
- (b) any breach of any obligations implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982; or
- (c) fraud by it, fraud by its employees, fraud by its agents or sub-contractors (as applicable); or
- (d) the matters covered by the indemnities in Clause 19 (Intellectual Property Rights); or
- (e) sums due under Clause 28 (TUPE) and/or Clause 29 (Re-Provision of the Services); or
- (f) any breach of the DPA 2018.

### **35.9 Contractor Limit on Liability**

35.9.1 Subject to Clause 35.2 (Contractor Not Responsible) and 35.8 (No Limit on Liability) the liability of the Contractor will be Ten Million Pounds (£10,000,000) in aggregate in respect of all claims, losses or damages, whether arising under any indemnity from tort (including negligence), breach of contract or otherwise under or in connection with this Contract.

### **35.10 Contractor Aggregate Liability**

35.10.1 If the aggregate liability of the Contractor under Clause 35.9 (Contractor Limit on Liability) is equalled or exceeded at any time during the Contract Period, it will entitle the Department at its discretion to terminate this Contract pursuant to Clause 40.5 (Termination).

### **35.11 Department Limit on Liability**

35.11.1 With regard to the Department the total aggregate liability will be one million pounds (£1,000,000) and for the avoidance of doubt, this will be in addition to:

- (a) its obligation to pay the Funding as and when it falls due in accordance with this Contract; and
- (b) any pension liability which becomes payable in accordance with the Annex to Part B of Schedule 5 (TUPE) and is claimed.

### **35.12 Indirect Loss**

35.12.1 Neither Party will be liable to the other Party for any Indirect Loss or indirect damage.

### **35.13 Additional Clauses**

35.13.1 The Parties expressly agree that if any limitation or provision contained or expressly referred to in this Clause 35 (Indemnities and Liability) is held to be invalid under any Law, it will be deemed omitted to that extent, and if any party becomes liable for loss or damage to which that limitation or provision applied, that liability will be subject to the remaining limitations and provisions set out in this Clause 35 (Indemnities and Liability).

35.13.2 Nothing in this Clause 35 (Indemnities and Liability) will act to reduce or affect a Party's general duty to mitigate its loss and for the avoidance of doubt including any circumstances under which a party has the benefit of an indemnity under this Contract.

### **35.14 No Double Recovery**

35.14.1 Neither the Department nor the Contractor will be entitled to recover compensation or make a claim under this Contract in respect of any loss that it or they has or have incurred to the extent that the Party has already been compensated in respect of that loss pursuant to this Contract or otherwise.

## **36 INSURANCE**

### **36.1 Requirement to Maintain**

36.1.1 Without prejudice to its liability to indemnify the Department under Clause 35 (Indemnities and Liability) the Contractor must take out and maintain in force or procure the taking out and maintenance of the Required Insurances and any other insurances as may be required by Law. The insurances will be effective in each case no later than the date on which the relevant risk commences.

36.1.2 The Required Insurances referred to in Clause 36.1.1 will amount to:

- (a) ten million pounds (£10 million) in respect of public liability cover in respect of each and every occurrence;
- (b) ten million pounds (£10 million) in respect of employer's liability cover in respect of each and every occurrence; and
- (c) five million pounds (£5 million) in respect of professional indemnity cover in respect of each and every claim.

36.1.3 The Department reserves the right, at any time, to request evidence that the Required Insurances are in force.

### **37 CHANGE IN CONTROL**

37.1 The Contractor represents and warrants to the Department that at the Agreement Date the legal and beneficial ownership of the Contractor is as set out in any tender information or register information supplied by the Contractor and that no arrangements are in place that have or may have or result in any sale, transfer or disposal of any legal, beneficial, equitable or other interest in any or all of the shares in the Contractor.

37.2 The Contractor will inform the Department in writing if there is a change in its name at least one month prior to the change taking effect unless to do would put the Contractor in breach of the Law. If that is the case the Contractor will inform the Department of the change in name within 10 Working Days of it becoming lawful to do so.

37.3 The Contractor will inform the Department as soon as reasonably practicable and, in any event 12 weeks before any Change in Control of the Contractor takes effect unless to do would put the Contractor in breach of the Law. If that is the case the Contractor will inform the Department of the Change in Control within 10 Working Days of it becoming lawful to do so.

37.4 For the avoidance of doubt if there is a Change in Control in the Contractor, this will be considered under Regulation 72 of the Public Contracts Regulations 2015 as it could potentially constitute a contract modification. The Department will, upon receipt of a notification under Clause 37.3 consider if the requested change is permissible under Regulation 72 of the Public Contracts Regulations 2015. The Department may terminate this Contract under Clause 40.4.8 where the Change in Control is not permissible.

37.5 The Department may, at any time, request that the Contractor informs them of details of any Change in Control and the Contractor will comply with such a request as soon as reasonably practicable and in any event within twenty (20) Working Days of receipt of the Department's request.

37.6 The Department will consider any Change in Control in the context of all available information including that provided by the Contractor. The Department will consider the criteria set out in the Funding higher-risk organisations and sub-contractors document which is published on the Department's website

<https://www.gov.uk/government/publications/sfafinancial-assurance-higher-risk-providers-and-subcontractors>.

37.7 If the Change in Control or change in name breaches this Contract or any policies referred to in this Contract, the Department reserves the right to take action against the Contractor in accordance with Part 8 of this Contract (Termination and Exit Management).

37.8 If there is a Restricted Share Transfer of the Contractor:

37.8.1 the Contractor will give the Department notice of such Restricted Share Transfer at the earliest possible time that it is lawful for the Contractor to do so;

37.8.2 the Department reserves the right to take whatever actions it deems necessary; and

37.8.3 the Department may terminate this Contract under Clause 40.4.8 (Termination) within three (3) months of the Restricted Share Transfer taking place.

## **38 PROHIBITED ACTS**

38.1 The Contractor will not offer or give, or agree to give, to any member, employee or representative of the Secretary of State for Education 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 Contract or any other contract with the Department or for showing or refraining from showing favour or disfavour to any person in relation to this Contract or any such contract.

38.2 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 Contract or any contract with the Department or Her Majesty's Government will entitle the Department 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.

38.3 The Contractor will not enter into any contract with any political or religious organisation using any funding provided by the Department under this Contract if the effect of that contract would be to promote a particular political or religious point of view.

38.4 The Contractor will not hold itself out as acting on behalf of the Department without the Department's permission.

## **PART 8: TERMINATION AND EXIT MANAGEMENT**

### **39 MINOR AND SERIOUS BREACH**

39.1 For the avoidance of doubt:

- (a) This Clause 39 is subject at all times to the provision of Clause 40 (Termination) below;
- (b) neither Party will be liable for any Minor Breach or Serious Breach under this clause, which occurs as a direct result of any act or omission by the other Party, its staff or agents;
- (c) 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**

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

39.2.1 The Party not in breach will 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. In addition, where the Contractor is in breach, the Department may require the Contractor to suspend the recruitment of Learners, and/or may cap any growth while the breach is being remedied.

39.2.2 If the Party in breach fails to remedy the Minor Breach within the time specified in a notice served under Clause 39.2.1 or such other period as may be agreed between the Parties it will constitute a Serious Breach by the Party in breach.

#### **Serious Breach**

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

39.3.1 The Party not in breach will 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. In addition, where the Contractor is in breach, the Department may require the Contractor to suspend the recruitment of Learners, and/or may cap any growth while the breach is being remedied.

39.3.2 Where the Department has served a notice under Clause 39.3.1 the Department has the right to require the Contractor to suspend the recruitment of Learners and/or to suspend payments to the Contractor until the Department has confirmed that the breach has been remedied.

39.3.3 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 39.3.1 or such other period as may be agreed between the Parties the Department may cease funding the Contractor in respect of that part of the Service to which the Serious Breach relates.

39.3.4 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 39.3.1 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.

## **40 TERMINATION**

40.1 On the occurrence of any of the events described in this Clause 40 the Department will be entitled to terminate this Contract by notice to the Contractor with immediate effect.

40.2 Where the Contractor is an individual, if he shall die or be adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Health Act 1983 clause the Department will be entitled to terminate this Contract by notice to the Contractor or its representatives with immediate effect.

40.3 Either Party may terminate this Contract with immediate effect in the event that in the reasonable opinion of the Party wishing to terminate this Contract, the conduct of the other in performing its obligations under this Contract amounts to a Serious Breach of the Contract, which is incapable of remedy. For the avoidance of doubt this will include but not be limited to:

40.3.1 an Insolvency Event affecting the Contractor occurs; or

40.3.2 if Regulation 73(1) (b) of The Public Contracts Regulations 2015 applies to the Contractor; or

40.3.3 the Contractor commits one or more Prohibited Acts; or

40.3.4 any other Contractor breach has occurred that is incapable of remedy.

40.4 The Department reserves the right to terminate this Contract with immediate effect by giving notice in writing if the Contractor:

40.4.1 NOT USED

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

40.4.3 The Contractor fails to comply with requirements imposed under Clauses 11.9(a) and/or 11.9(b); and/or

40.4.4 The Contractor fails to comply with requirements imposed under Clauses 13.3, 13.4 or 13.5; and/or



- 40.4.5 An inspection results in the Services in part or overall thereof being assessed as inadequate or requires improvement; and/or
  - 40.4.6 The Contractor ceases to be validated by Trinity College London to provide Level 5 and 6 Professional Diplomas in Dance, Acting, and Musical Theatre; and/or
  - 40.4.7 Receives a “qualified” rating in two consecutive full funding audits; and/or
  - 40.4.8 A Change in Control is proposed or has taken place which is not permissible under Regulation 72 of the Public Contracts Regulations 2015; and/or
  - 40.4.9 In accordance with Clause 30.1.6 does not recruit and/or data returns reveal that no Learners have been enrolled for the funding year to which this Contract relates; and/or
  - 40.4.10 the Contractor fails to provide information as set out in Clause 30.1.12 and/or the Department receives information which demonstrates that the Contractor is not complying with its obligations under the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax.
- 40.5 The Department will be entitled to terminate this Contract forthwith on the grounds set out in Clause 35.10. In the event of any termination in accordance with Clause 35.10, the Exit Arrangements set out in Clause 42 (Exit Arrangements) and Schedule 8 (Exit Arrangements) will apply.
- 40.6 This Contract will be voidable where, following an evaluation of the last three (3) years’ Data Submissions relating to any other contract with the Department, the Department concludes that the Contractor was in Serious Breach of that contract or contracts and if the Department had known at the time of awarding and/or entering into this Contract that the Contractor had committed a Serious Breach, it would not have awarded and/or entered into this Contract.
- 40.7 If the circumstances set out in Clause 40.6 arise and the Contract is declared void, the parties will be deemed to have subsequently entered into a new legally binding agreement that includes the provisions set out in the table at Clause 57.1.2.
- 40.8 If the Department terminates another contract with the Contractor this Contract will be terminated forthwith unless the Department confirms in writing that the Contract is to remain in force.
- 40.9 In addition to the rights of termination under any other clauses of this Contract, either Party will 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.

- 40.10 Termination under this Clause 40 will not prejudice or affect any right of action or remedy, which shall have accrued or shall thereupon accrue to the Parties under this Contract.
- 40.11 Where the Contractor goes into administration or liquidation, the Department must be assumed to be a creditor of the Contractor. The Contractor must take steps to ensure that the Department is provided with details of the administrator or liquidator and receives notification of any creditors meetings. The Department will confirm whether in fact it is a creditor within 12 weeks of being notified that the Contractor is in administration or liquidation.
- 40.12 The Contractor must upon notice of termination of the Contract make available upon request to the Department all Learner files (including but not limited to e-portfolios), correspondence, documents, specification papers and other property belonging to the Department, which may be in its possession or under its control.
- 40.13 The Contractor must not recruit new Learners after notice of termination of the Contract has been given. The Department will not be liable to make payments in respect of any Learners recruited in breach of this clause.

## **41 CONSEQUENCES OF TERMINATION AND EXPIRY**

### **41.1 Accrued Rights**

- 41.1.1 The termination of this Contract howsoever arising is without prejudice to the rights, duties and liabilities of either Party accrued prior to termination. The clauses of this Contract which expressly or impliedly have effect after termination or expiry will continue to be enforceable notwithstanding termination in accordance with Clause 57 (Continuing Obligations).
- 41.1.2 On or before the Expiry Date (except where the Contractor will be responsible for delivering the Services in the subsequent Funding Year) or Termination Date, the Contractor must ensure that all documents or computer records in its possession, custody or control including but not limited to e-portfolios, which contain information relating to the Services including any documents in the possession, custody or control of a subcontractor are made available upon request to the Department.
- 41.1.3 For the avoidance of doubt, after notice of termination and/or an Insolvency Event affecting the Contractor, the Contractor must not share any information about Learners, including but not limited to Department Data, with another organisation unless the Department provides written authorisation for the Contractor to do so. In addition, the Contractor shall not recruit Learners from another contractor that has been issued with a notice of termination and/or in relation to whom an Insolvency Event has occurred, without the permission of the Department.

41.1.4 The Contractor hereby grants the Department a non-exclusive licence to access the Contractor's Premises from the date of a notice of termination for such periods as may be reasonably necessary to enable the Department to retrieve the information referred to in Clause 41.1.2. The Department will exercise the rights provided under this clause where the Contractor has failed to comply with Clause 41.1.2 and the obligations set out in Schedule 8 (Exit Arrangements).

## **42 EXIT ARRANGEMENTS**

42.1 The Department and the Contractor must, unless the Contractor will be responsible for delivering the Services in the following Funding Year, comply with the exit arrangements set out in Schedule 8 (Exit Arrangements) and any current Exit Plan.

42.2 On expiry or termination of this Contract for any reason, the Contractor shall do its utmost to minimise any disruption to Learners and shall cooperate fully with any reasonable requests made by the Department relating to this. For the avoidance of doubt the Department will be entitled to request that where the Contractor cannot complete Learners that it will co-operate in transferring the Learners to a new provider even if this is prior to the Termination Date or Expiry Date of this Contract and

the Contractor's Exit Plan should reflect this. The Department will not be liable for any costs prior to or after incurred by the Contractor in complying with this Clause 42.2.

42.3 Unless the Department otherwise requires, during the time between service of a notice of termination of this Contract in whole or in part and such termination taking effect, the Contractor must take all steps, which are necessary and consistent with its continuing obligations, to mitigate any losses, costs, liabilities and expenses which the Contractor may incur as a result of the termination, including to:

42.3.1 cancel all capital and recurring cost commitments in connection with the provision of the Services on the most cost-effective terms without fettering the Department's access to Department Data and the Database;

42.3.2 terminate all relevant contracts or the relevant parts of relevant contracts with its sub-contractors in connection with the provision of Services on the most favourable terms as can be achieved in the particular circumstances, having first ascertained from the Department whether such contracts are required to be transferred to the Department or any Successor Contractor instead; and

42.3.3 reduce labour costs by the redeployment or release of Contractor's Personnel to the extent possible in the circumstances.

If the Contractor does not fulfil its obligations in accordance with Clause 42.3, the Department will not pay any sums in excess of those which the Department would have paid had such action been taken.

## **PART 9: GENERAL PROVISIONS**

### **43 PROVISION OF INFORMATION**

- 43.1 The Department may share information provided by the Contractor under this Contract and information about the Contractor or Contract, with other Government departments, Crown Bodies, Inspectorates, Combined Authorities and local authorities.
- 43.2 In addition to the other requirements to provide information set out in this Contract, the Department reserves the right to request information from the Contractor in order to exercise its responsibilities and/or to fulfil requirements to provide information to the Secretary of State, to account to Parliament and to meet European funding requirements (where applicable). On occasion, the Department will require urgent information from the Contractor.
- 43.3 The Contractor must provide the Department or agents acting on its behalf with the information it requires under Clause 43.2 at the times and in the formats specified. This information will be of sufficient quality to meet the purposes for which it has been requested.
- 43.4 Failure to comply with any request for information under this clause, at all or in the required timescales, will constitute a Minor / Serious Breach of this Contract.

### **44 SERVICE OF NOTICES**

- 44.1 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.
- 44.2 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.

## **45 ENTIRE CONTRACT**

### **45.1 Prior Representations Superseded**

45.1.1 Except where expressly provided in this Contract, this Contract constitutes the entire agreement between the Parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings concerning the subject matter of this Contract.

### **45.2 Acknowledgements**

45.2.1 Each of the Parties acknowledges that:

- (a) it does not enter into this Contract on the basis of and does not rely, and has not relied, upon any statement or representation (whether negligent or innocent) or warranty or other provision (in any case whether oral, written, express or implied) made or agreed to by any person (whether a Party to this Contract or not) except those expressly repeated or referred to in this Contract and the only remedy or remedies available in respect of any misrepresentation or untrue statement made to it will be any remedy available under this Contract; and
- (b) this clause will not apply to any statement, representation or warranty made fraudulently, or to any provisions of this Contract which was induced by fraud, for which the remedies available will be all those available under the Law governing this Contract.

## **46 NO AGENCY**

### **46.1 No Partnership or Employment**

46.1.1 Nothing in this Contract will be construed as creating a partnership or as a contract of employment between the Department and the Contractor.

### **46.2 Power to Bind**

46.2.1 Save as expressly provided otherwise in this Contract, the Contractor must not be, or be deemed to be, an agent of the Department and the Contractor will not hold itself out as having authority or power to bind the Department in any way.

## **47 EXERCISE OF STATUTORY AUTHORITY**

47.1 Nothing in this Contract will be construed as a fetter or restriction on the exercise by the Department of its statutory functions.

## **48 PUBLIC RELATIONS AND PUBLICITY**

48.1 The Contractor must by itself, its employees or agents and procure that its sub-contractors must:

48.1.1 inform the Department of any communications with representatives of the press, television, radio or other communications media on any matter concerning this Contract; and

48.1.2 not use or make use of the Department's name, logo or other branding without the prior written approval of the Department, which should not be unreasonably delayed or withheld.

## **49 AMENDMENTS TO THIS CONTRACT**

49.1 This Contract will not be amended unless such amendment has been agreed in writing. For the avoidance of doubt this will include any amendments required to effect a Change agreed in accordance with Clause 6 (Change in Service) and the Change Control Procedure (Schedule 3).

## **50 WAIVER**

50.1 No term or provision of this Contract will be considered as waived by any Party to this Contract unless a waiver is given in writing by that Party.

50.2 No waiver under Clause 50.1 shall be a waiver of a past or future default or breach, nor shall it amend, delete or add to the terms, conditions or provisions of this Contract unless (and then only to the extent) expressly stated in that waiver.

## **51 SEVERABILITY**

51.1 If any term, condition or provision contained in this Contract is held to be invalid, unlawful or unenforceable to any extent, such term, condition or provision shall not affect the validity, legality or enforceability of the remaining parts of this Contract.

## **52 LAW AND JURISDICTION**

52.1 This Contract is governed by the Laws of England and Wales and, subject to Disputes which are properly referred to and resolved in accordance with the Dispute Resolution Procedure, the Parties submit to the exclusive jurisdiction of the courts of England and Wales.

## **53 INTEREST ON LATE PAYMENTS**

53.1 The Parties will pay interest on any amount payable under this Contract not paid by the required date, from that date to the date of payment at the rate of 4% above the base lending rate published by the Bank of England.

The Parties agree that this clause constitutes a substantial remedy for the purposes of the Late Payments of Commercial Debts (Interest) Act 1998. For the avoidance of doubt, the Contractor will have no right to claim interest on corrections issued by the Department.

#### **54 MITIGATION**

54.1 The Department and the Contractor will at all times take all reasonable steps to minimise and mitigate any loss for which the relevant Party is entitled to bring a claim against the other Party pursuant to this Contract and to take all reasonable steps to minimise and mitigate any effects or circumstances and/or events adversely affecting the performance of its obligations under this Contract which would otherwise entitle that Party to relief and/or to claim compensation hereunder.

#### **55 FURTHER ASSURANCE**

55.1 Each Party must do all things and execute all further documents necessary to give full effect to this Contract.

#### **56 THIRD PARTY RIGHTS**

56.1 No term of this Contract is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to this Contract.

#### **57 CONTINUING OBLIGATIONS**

57.1 Save as otherwise expressly provided in this Contract:-

57.1.1 the termination or expiry of this Contract will be without prejudice to any accrued rights and obligations under this Contract as at the Expiry Date or the Termination Date; and

57.1.2 the termination or expiry of this Contract will not affect the continuing rights or obligations of the Department and the Contractor under the clauses in the table below and/or under any other provision of this Contract which is expressed to survive expiry or termination or which is required to give effect to such expiry or termination or the consequences of such expiry or termination for a period of six (6) years, or such time period as set out in the Specifications (Schedule 1) for European Social Fund direct and match funding, after such expiry or termination:

Clause	Description
15	Fraud and Irregularity

16.4	Complaints and Feedback
18	Dispute Resolution
19	Intellectual Property Rights
20	Assignment of IPR in Databases
21	Department Data
22	Data Protection and Protection of Personal Data
25	Freedom of Information and Confidentiality
26	Employees
29	Re-Provision of the Services
30.1.7	Audit Recovery
32	Contractor's Records and Audit
35	Indemnities and Liability
36	Insurance
41	Consequences of Termination and Expiry
42	Exit Arrangements
48	Public Relations and Publicity

Clause	Description
Schedule 5	TUPE
Schedule 6	GDPR



Schedule 7	Security & Department Policies
Schedule 8	Exit Arrangements

## **SCHEDULE 1: SPECIFICATION & MONITORING**

### **DANCE AND DRAMA AWARDS (DaDA) SPECIFICATION**

#### **Definitions**

<b>“DaDA Funding Rules”</b>	Means <a href="https://www.gov.uk/guidance/dance-and-drama-awards-guide-2020-to-2021academic-year">https://www.gov.uk/guidance/dance-and-drama-awards-guide-2020-to-2021academic-year</a> and Annex 1, DaDA Scheme Institution Guide
<b>“DaDA Learning Programme”</b>	Means Trinity College London (TCL) Level 5 and 6 Professional Diplomas in Dance, Acting, and Musical Theatre

#### **Summary of Services**

1. The Services are the provision of support for Learners undertaking an eligible DaDA Learning Programme.
2. The Services include two income assessed elements:
  - a. Support towards tuition fees; and
  - b. Support towards living costs.
3. The Services cover the following groups of young people who are:
  - a. Aged 16-23 at the start of the Funding Year for DaDA Learning Programmes in Dance and Musical Theatre; or
  - b. Aged 18-23 at the start of the Funding Year for DaDA Learning Programmes in Acting and Musical Theatre.
4. The documents listed in the Definitions of this Schedule are those documents produced by the Department which constitute the DaDA Funding Rules for these Services.

#### **Services Commencement and Duration**

5. DaDA Services Start Date: 1st August 2020
6. DaDA Services Expiry Date: 31st July 2021 (final data submission).

## **Service Requirements**

7. The Contractor will support eligible Learners with these Services from the Services Start Date. New Learners must not be supported after 31st July 2021.
8. The support must comply with the DaDA Funding Rules.
9. All Learners must be enrolled on an eligible DaDA Learning Programme.
10. The Contractor will take steps to ensure they spend the allocated funding in the Funding Year.
11. The Contractor will maintain evidence of the delivery of the Services as set out in Annex 1, DaDA Scheme Institution Guide.
12. The Contractor will assess Learner income eligibility in accordance with Annex 1, DaDA Scheme Institution Guide.
13. The Contractor will provide support for the extra costs a Learner may incur as a direct result of a disability, mental health condition or specific learning difficulty from the Disabled Students Allowance (DSA). DSA support can only be provided to Learners who the Contractor has assessed as eligible for DaDA support (tuition fees and/or living costs) and who meet the specific DSA rules, as set out in Annex 1, DaDA Scheme Institution Guide.
14. In addition to the obligations set out in Clause 34, Assignment and SubContracting, the Contractor will adhere to the requirements set out in the Sub-Contracting Controls.
15. The Contractor will deliver the Services in a way that ensures:
  - a. Value for money;
  - b. The protection of public funds;
  - c. The effective delivery of a high-quality service for Learners appropriate to their needs; and
  - d. Meets the public benefit test.

## **DaDA Delivery Administration**

16. The Contractor will submit complete Management Information (MI) returns to the Department as set out in Annex 1, DaDA Scheme Institution Guide. Returns will be submitted as follows:
  - a. October 2020 (in-year data return); and
  - b. July 2021 (end-of-year data return).

- 17. MI returns will include data relating to new and continuing Learners.
- 18. The Contractor can use up-to 5% of their total allocation to meet the Service's administrative costs.
- 19. The Contractor must keep the Department informed of any changes to their bank details.

**The Department**

- 20. The Department will pay for the Services as set out in Schedule 2, DaDA Payments.
- 21. The Department will monitor the Services as set out in Schedule 1B, DaDA Monitoring.
- 22. The Department may terminate this Contract early in accordance with Clause 2.2 of the Contract.

## **SCHEDULE 1B: MONITORING**

### **DANCE AND DRAMA AWARDS (DaDA) MONITORING**

#### **Monitoring of Management Information (MI)**

1. The Contractor must ensure that Management Information (MI) returns are made in accordance with Annex 1, DaDA Scheme Institution Guide.
2. The Department will monitor and review the data submitted under Clause 16 above for all in-year monitoring purposes.
3. The Department will use the data to determine future funding allocations as set out in the DaDA Funding Rules.
4. The Department reserves the right to revise the allocations methodology based on available budget and affordability.
5. Where data is incorrect in the final data submission of the Funding Year the Department will amend or determine future funding allocations to recover the payments associated with the incorrect data.

#### **DaDA Delivery Reconciliation**

6. The Department will reconcile the funding paid following the end of the Funding Year. The reconciliation will be based on the end-of-year MI data return.
7. The Department will undertake an in-year reconciliation in December 2020 if the in-year MI data return identifies a significant amount of unused funding is being held by Contractors.

**SCHEDULE 1: ANNEX 1**

**DANCE AND DRAMA AWARD SCHEME (DaDA) INSTITUTION GUIDE TO  
SCHEME RULES AND INCOME ASSESSMENT**

# **Dance and Drama Award (DaDA) Scheme**

## **2020 to 2021 Academic Year**

### **Institution Guide to Scheme Rules and Income Assessment**

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## Scheme Rules

### Introduction

This document is for the 20 specialist private dance and drama institutions that administer the Dance and Drama Awards Scheme (DaDA). It is designed to act as a reference for institutions to provide detailed points of practice and eligibility on the DaDA scheme rules and the income assessment of application forms.

Institutions are required to undertake income assessments for new starters (for both tuition fees and living costs) and for students who are returning for their second and third year (living costs only) using the [income bands](#) for the 2020 to 2021 academic year.

This document is designed to be read in conjunction with the [Dance and Drama Awards Scheme: Guide for the 2020 to 2021 academic year](#), which provides an overview of the DaDA scheme. The guide sets out the funding rules for the Dance and Drama Awards (DaDA) scheme and forms part of institutions’ ESFA funding agreements (contract).

**The document is valid for the 2020 to 2021 academic year.** This guide covers the period of 1 August 2020 to 31 July 2021 and is our current advice for the funding year. We know that providers are working through exceptional circumstances due to coronavirus (COVID-19). We may publish further updates to this guide about the impact of coronavirus (COVID-19) on our guidance as these become clear.

Institutions should note that any non-DaDA related queries, for example information about Advance Learner Loans, enquiries should be directed to the Education and Skills Funding Agency’s (ESFA’s) enquiry service email address:

[enquiries.ESFA@education.gov.uk](mailto:enquiries.ESFA@education.gov.uk). They should **not** be sent to the DaDA team.

## Student eligibility

### 1. Residency

#### 1.1 Age

To be eligible to receive DaDA funding in the 2020 to 2021 academic year, students must be aged between 16 and 23 at the start of the academic year to apply for a dance course and aged between 18 and 23 at the start of the academic year to apply for an acting course.

#### 1.2 Residency criteria

Full details of the residency criteria can be found on pages 25 to 29.

**Institutions should check to ensure that the student is likely to fulfil the residency criteria for the duration of the course to be eligible for DaDA funding.**

### 2. Valid Provision

#### 2.1 Qualification

The DaDA scheme is intended to help enable students to achieve the vocational Trinity College London (TCL) Level 5 and 6 diplomas.

Only students enrolled on the Trinity College London (TCL) Level 5 and 6 Professional Diplomas in Dance, Acting and Musical Theatre are eligible for DaDA funding. Students must be studying one of these TCL diploma courses:

- Level 6 Diploma in Professional Acting (3 years)
- Level 5 Diploma in Professional Acting (1 year)
- Level 5 Diploma in Professional Dance (Classical Ballet or Contemporary Dance) (2 years)
- Level 6 Diploma in Professional Dance (3 years)
- Level 6 Diploma in Professional Musical Theatre (3 years)

DaDA funding cannot be used to support students undertaking Higher Education (HE) degree courses at institutions or any other qualifications the institution may deliver.

If an institution offers both vocational and HE provision and a student in receipt of DaDA funding wishes to register and complete a HE degree in addition to the TCL Diploma (Levels 5 & 6), the institution must make clear to the student:



- that the funding is given to the student to enable them to complete the TCL qualification (the DaDA offer letter must state clearly which Trinity qualification the student is studying for) and that any other study is voluntary and in addition to the Trinity qualification
- which parts of the course they must complete to receive the Trinity qualification and which part for the degree
- what the extra costs are for registering on the degree course
- that any work they undertake towards completing the degree must be secondary to the work towards the TCL Diploma, which is funded by the DaDA award.

## **2.2 HE Student loans**

DaDA students are not eligible to apply for a student loan and it is very important they understand they must not receive financial support from both the DaDA scheme and from a HE student loan. Institutions must ensure that students are aware of this and that where double funding is identified, the student will be required to return any overpayments.

Institutions who offer HE provision must ensure that students applying for DaDA support understand the correct funding stream for their course. These institutions must ensure that all DaDA supported students sign a written declaration to say that they have read and understood these rules and that they cannot, under any circumstances, be varied.

This declaration should be retained for audit purposes for 6 years by the institution's administrator.

A copy of the letter to give to students is shown in Annex 1.

# **Allocation and payment of DaDA funding**

## **3. Allocations**

### **3.1 Methodology**

DaDA allocations for each academic year are calculated using data on student numbers and spend from the full last year, taking into consideration projected spend to date in the current academic year.

For the 2020 to 2021 academic year, this means ESFA has used 2018 to 2019 academic year data (last full year) and projected figures for the 2019 to 2020 academic year (current year).

Institutions that did not fully utilise their funding in the 2018 to 2019 academic year, i.e. unspent funding of 5% or more, will see an adjustment to their allocation. This will ensure that the scheme continues to provide good value for public money and supports the maximum numbers of talented students it can. In some instances institutions may see a small increase in funding if they have

consistently fully utilised their DaDA allocation, however this approach is subject to the budget available, affordability and sustainability.

## **4. Payments**

### **4.1 Payment of DaDA funding**

Payments of DaDA funding will be made to institutions in two instalments: approximately two-thirds (70%) will be paid in August 2020 and the remaining one-third (30%) will be paid in April 2021.

Where institutions need to amend or change their bank details, this can be updated using the digital form via the link below.

<https://www.gov.uk/guidance/provide-information-about-your-banking-andpayments-to-dfe>

### **4.2 Reconciliation and business cases**

ESFA will reconcile any underspent funds from institutions in the 2020 to 2021 academic year.

ESFA will continue to operate the reconciliation and business case process, if this is required in the 2020 to 2021 academic year.

This means that if the October 2020 data return identifies high level underspends, we will recover funds from institutions and re-distribute them to other institutions following the submission and moderation of business cases. As the amount of funding available for redistribution is dependent on the level of underspends, ESFA can make no guarantees about additional funding at this time.

Institutions should note that underspends cannot be carried forward into future years. Where institutions hold a 'contingency' fund that is unspent at the end of the academic year this funding will be reconciled in the August payment.

## **Administration of DaDA Funding**

### **5. Allocation of funding**

#### **5.1 Notification of funding**

Students must be informed in writing when they are offered a Provisional and Final DaDA Award. The notification to successful students must include information about:

- the qualification the funding relates to, i.e. the TCL Level 5 or Level 6 diploma
- the length of the course and the total amount of funding the student is entitled to

- any additional funding that will be provided by the institution, i.e. from their own resources
- details of when payments will be made

Some DaDA students may be required to make a contribution towards their tuition fees. They should be informed of the amount, and the required payment date(s) in writing, by the institution once their application form has been assessed.

Following completion of the Self Declaration of Income (by the student), institutions can offer **provisional** Awards.

However, no provisional Awards should be offered **before** 1<sup>st</sup> March each year in any circumstances.

Final confirmation of eligibility can only be given after the student has completed the Dance and Drama Award Application form and the institution has completed a full income assessment.

Institutions should also refer to the Application/Assessment flowchart and the clearing process managed by The Council for Dance, Drama and Musical Theatre (CDMT).

Institutions should also note that they must not make offers of Awards to students that exceed the amount of funding allocated to the institution. They must also make clear to any students if they are to be placed on a reserve list to receive DaDA support and where they have been placed on that list.

## 5.2 APL students

Institutions may, in accordance with any guidance issued by the accrediting body, offer DaDA funding to a student that is of shorter duration than the full length of the course they are undertaking where a student has prior learning through experience or training, which will allow them to gain the qualification in a shorter period of time. Institutions must satisfy TCL that students have appropriate prior learning.

## 5.3 Flexibility in providing 'part' funding

Institutions may use discretion and flexibility in their allocated DaDA funding to provide partial funding for talented students if they have insufficient funds to provide the full amount of DaDA support (based on the student's household income).

Institutions must ensure they communicate to students and parents how they are using this flexibility so that their use of DaDA funding is clear and transparent. **Institutions must ensure that they only give out partial funding awards after all successful students applying for DaDA have been fully income assessed and the full DaDA funding process has been completed.**

The institution should inform the student of the full amount they are entitled to and make it clear that they are providing partial funding only and the amount of partial funding they are offering.

Institutions are not required to offer partial funding to students – this flexibility is for use at their discretion – and institutions may choose to continue to keep a small contingency fund instead of offering partial funding.

#### **5.4 Re-allocation of DaDA funding if a student leaves**

If a student chooses to leave their course before the end of the agreed period of his or her DaDA funding, (or if the institution withdraws DaDA funding for any reason) the institution may offer the funding to another eligible student, as they deem appropriate.

Funding should be re-allocated to another student as soon as the outgoing student has left the course i.e. either part way during a term or from the start of the following term.

Students that are offered DaDA funding as substitutes for the original student must:

- a) have reached the minimum age for DaDA funding on the TCL diploma course at the date they are selected as a substitute student
- b) have been judged to have the most potential to succeed in the profession at audition

The institution must keep a record of the start and end dates of study for the original student and the date that he or she was replaced by the substitute student for MI, reconciliation and audit purposes.

Where DaDA funding is transferred to another eligible student, the Budget Monitoring spreadsheet should be kept up-to-date accordingly, for example to record the amount of funding the incoming student will receive. The incoming student will only be allowed to apply for living costs support from the DaDA institution from the beginning of the next academic term.

#### **5.5 Second DaDA 'Awards'**

Students can only receive support from DaDA funding once. However they **may** be eligible to apply for a second funding award if:

- a) they were prevented from completing the course for which they were selected due to circumstances outside their control, i.e. such as illness or injury; or
- b) it becomes apparent that after having been selected for one course e.g. a ballet course, a different course would be more beneficial to their continued development i.e. a musical theatre course.

In this case, the transfer would normally be expected to take place **in the first year of training**. Students may not transfer from their existing

institution to a new institution and remain/start on the same course and qualification.

For students to be offered a second DaDA funding award, institutions must ensure they adhere to the points below:

- the second award of DaDA funding must not be for a period which would provide more than **four** academic years in total of training with DaDA support
- any second award of DaDA funding that is approved and offered to students to re-start a course in the 2020 to 2021 academic year must come from the institution's allocation. No additional funding is available from ESFA and DaDA support does not transfer with students if they move to an another institution
- appropriate evidence should be retained by the institution to support any second funding awards made for audit purposes, e.g. medical documents
- a student should not normally be considered for a second award of DaDA funding if they have already completed a course with DaDA support, or have had DaDA support withdrawn from them

**If institutions have any doubt about the appropriateness of making a second award of funding they should contact Emma Kershaw at ESFA for advice.**

## **5.6 Withdrawal of DaDA funding**

Students in receipt of DaDA funding are expected to make appropriate progress in their training, and to abide by the rules of their institution at all times.

Where students fail to meet these conditions, the institution may, after having discussed the situation with the student (verbal warning) and after issuing a formal written warning, withdraw DaDA support from them. However, students should be given the right to appeal the decision.

Where an institution does withdraw DaDA funding, they may re-allocate that funding to another student.

## **5.7 Unpaid contribution towards the tuition fees**

If a student does not pay their contribution to fees in accordance with the institution's normal terms and conditions, the institution may expel them. In such cases, DaDA funding can be re-allocated to the next student on the talent list and monitored through the budget management sheet in the normal way. Institutions may wish to seek to recover any payments owed to them from the student.

## **5.8 Student charges**

### **Audition Fees**

One of the key criteria for DaDA funding is that it is intended to support the most talented students, identified as such, at audition. A high audition fee may prevent students from applying for courses and/or for DaDA support.

However, recognising that institutions do need to charge an audition fee in order to prevent large numbers of abortive applications, they are permitted to charge students an audition fee up to a maximum of £45 in the 2020 to 2021 academic year.

### **Registration Fees**

Registration fees could act as a barrier to students from low-income families.

As a condition of DaDA funding, students who apply for DaDA support must not be charged a registration fee. Neither should institutions **charge** potential DaDA students to hold a place.

### **Miscellaneous**

Institutions are not permitted to make extra charges to DaDA students for tuition and other expenses related to their course.

### **Payment of student contribution in lieu of notice**

Where students leave without giving the appropriate period of notice required by the institution's rules, the following conditions determine whether institutions can claim fees in lieu of notice:

- if the institution can fill the place on the course then no claim for fees can be made
- if the institution is unable to fill the place, the institution may claim the student contribution directly from the student in the first instance. If no payment is received from the student, the institution may take the amount from their DaDA allocation for the remainder of the term in which the student left. This claim should be recorded on the Budget Management spreadsheet for audit purposes

## **5.9 Applying for help with living costs (maintenance)**

Students can only apply for extra help with their living costs (maintenance) if they are ordinarily resident (i.e. a permanent United Kingdom (UK) citizen) in England, Scotland, Wales or Northern Ireland at the beginning of the academic year, and have been ordinarily resident for the last three years.

Where any part of the three-year period of residence has been wholly or mainly for the purpose of receiving full-time education, eligibility is limited to those who were ordinarily resident in the European Economic Area (EEA) immediately prior to that three-year period.

Students who are European Union (EU) citizens and resident in the UK under the EU laws relating to free movement rights are **not** eligible to apply for and receive living costs funding from the DaDA scheme.

Students living in other countries in the EU should be advised to contact their home country to find out what extra help is available to them.

### **5.10 Late DaDA applications**

Applications for DaDA funding can only be backdated to the beginning of the term in which the application is received, provided the application is received in the correct academic year. If a student sends in an application form in Term 2 or 3 it should only be backdated to the beginning of Term 2 or 3 and not the beginning of the academic year. This applies to both tuition fees and any living costs payments.

### **5.11 Applications from students for the previous academic year**

Institutions should not accept applications from a previous academic year once a new academic year has begun. Applications must be submitted and assessed in the academic year they relate to.

Only in very exceptional circumstances can a previous year's application be assessed in a new academic year. Once an institution's academic year has ended (in either July or August), no further fees and living costs applications should be assessed.

### **5.12 Disabled Students Allowance**

Disabled Students Allowance (DSA) can provide support for the extra costs a student may incur as a direct result of a disability, mental health condition or specific learning difficulty. DSA does not cover disability-related costs a student may have if they were not attending a course, or costs that any student might have.

DSA will continue to be available in the 2020 to 2021 academic year. The rules remain the same and to apply for DSA, students must have been assessed as eligible for DaDA support (fees only or fees and living costs).

ESFA will assess all DSA applications from students.

Institutions are responsible for making payments:

- to all suppliers
- to Assessment Centres
- for the purchase of specialist equipment
- for study skills support for students
- for general allowances

Institutions are required to communicate the type and amount of DSA support that has been agreed to students and to maintain records of expenditure for each student to ensure that the agreed maximum amounts are not exceeded.

Where an institution reported historical DSA expenditure in the previous year, an additional amount of funding has been added to the DaDA allocation for the new academic year to accommodate this. The amount of any DSA funding was set out in the allocations letter (sent February 2020). Institutions should ensure this funding is only used for DSA purposes, it cannot be added to the main DaDA allocation for fees or living costs.

DSA application forms for the new academic year will be available from autumn 2020. ESFA will send them to DaDA institutions to distribute to eligible students.

Institutions must ensure students understand they must **not** arrange any DSA related support until the ESFA has assessed and approved their application. All students must have a completed Assessment of Needs report before confirmation of any support can be made.

Any DSA invoices that are received by the DaDA institution **prior** to approval and written confirmation being sent to the student should not be paid and should be returned to the student.

### **5.13 Benefits**

The Department for Work and Pensions (DWP) has advised that only students who claim benefits in their own right may be affected by receipt of DaDA funding i.e. receipt of living costs support from DaDA may affect their entitlement to benefits.

If it is clear on the full DaDA application form that a student is in receipt of benefits in their own right, the institution should make them aware of this.

Students should seek advice from their DWP benefit office to establish if being in receipt of DaDA living costs support payments may affect any of their benefits.

Students enrolled on the TCL Level 5 and 6 diplomas are not eligible to receive housing benefit. DWP's Housing Benefit Regulations definition of higher education includes education at a higher level (defined as higher than Level 3) – the TCL diplomas are at Levels 5 and 6.

## **Income Assessment**

### **6. Applications**

#### **6.1 Application process**

Institutions assess the amount of financial support a student is entitled to based on nationally set income bands. Household income is used to determine the level of financial support for both fees and living costs (maintenance).

Institutions will normally use the income assessment undertaken at the beginning of the students' first academic year on the TCL diploma course to set



the amount of tuition fee support for the whole of their course. However, an income assessment must be undertaken each year to establish the amount of living costs support the student is entitled to receive

Institutions are required to undertake income assessments for new starters (for both tuition fees and living costs) and for students who are returning for their second and third year (for living costs only) using the [income bands](#) for the 2020 to 2021 academic year.

Where information provided by returning students shows a change in their circumstances that has significantly increased or decreased their household income, institutions may wish to use their discretion to reassess them for tuition fees.

[The DaDA Application & Assessment flowchart](#) at Annex 2 sets out in broad terms how ESFA envisages the application process works. The flowchart is for indicative purposes only and ESFA recognises that individual institutions' processes may vary in some measure from that process.

Institutions are reminded that CDMT will continue to manage the clearing process for the 2020 to 2021 academic year.

## **6.2 In-year reassessment (death and disability only)**

In-year reassessments of income should **only** be considered in cases where death or disability of the responsible adult or partner occurs or where a student becomes estranged from their family. As such, the number of in-year reassessments is expected to be relatively small. **ESFA should be notified prior to the reassessment being carried out.**

If a dependant student becomes independent part way through their course a reassessment of their new status may be carried out. However, the student must be able to provide evidence that they meet one of the independent criteria set out in the table on pages 31 and 32.

In-year reassessments due to medical conditions covered by the Equality Act 2010 will continue to be undertaken by the DaDA institution.

In the event of a request for reassessment on medical grounds being made, the institution should email [emma.kershaw@education.gov.uk](mailto:emma.kershaw@education.gov.uk) in the first instance for details of the reassessment process.

General information on the Equality Act 2010 is given in Annex 3.

## **6.3 End of year reassessment**

Institutions have the flexibility/discretion to reassess (for tuition fees only) at the end of an academic year (**not in-year**) where there has been a significant change of circumstances.

A significant change is a long-term change that will impact on the student's circumstances going forward and/or changes that occurred for the whole of the previous academic year.

Changes include both those that significantly decrease household income and changes that significantly increase household income. Examples include divorce or relationship breakdown, changes in employment, marriage or cohabitation.

Students and parents have a responsibility to report significant changes in their circumstances that may impact on the amount of DaDA funding they are eligible to receive.

We recommend that institutions **do not** reassess for instances of a parent being made redundant, as this is usually a temporary/short-term situation.

However, this may be taken into consideration if the redundancy was for a long enough period of time to affect income in the previous tax year.

ESFA has been made aware of some instances where change of circumstances reassessments have taken place in-year (rather than at the end of the academic year) and would like to remind institutions that this is not in line with DaDA administrative rules.

#### **6.4 Budget Management tool for the 2020 to 2021 academic year**

The Budget Management tool is an Excel spreadsheet that has been developed to assist institutions in managing their DaDA funding.

In the 2020 to 2021 academic year, the Budget Management spreadsheet should be used to monitor those students who start a course in September 2020 and students who are returning for a second or third year of study. A copy of the updated spreadsheet was sent to institutions in March 2020.

Guidance on how to use the spreadsheet is incorporated within it. Institutions may need to develop their own additional systems for monitoring their budget - the Budget Management spreadsheet may not cover every eventuality.

Institutions should not exceed the amount of DaDA funding they are allocated by ESFA. However, some institutions may wish to provide additional support to students from other resources they may have and should record this outside of the Budget Management tool.

#### **6.5 Complaints and Appeals Process**

All complaints from students or parents about DaDA must be made in writing.

Complaints should be dealt with in the following way:

- If the complaint/appeal concerns an institution's operational processes, the institution should deal with the case in the first instance according to their own operational complaints/appeals procedure.

Only when an institution's complaints procedure has been fully exhausted (including an appeal) should the complaint be forwarded to ESFA.

- If the complaint/appeal concerns DaDA policy, it must be referred to ESFA in the first instance.

The complaint can be sent to the following email address [enquiries.ESFA@education.gov.uk](mailto:enquiries.ESFA@education.gov.uk)

## **6.6 Fraud and whistleblowing**

If it is identified or alleged that fraudulent details have been supplied on either the Self Declaration of Income form or the main DaDA income assessment application form, it is the responsibility of the institution to investigate and, if necessary, to take recovery action for any overpayments made.

ESFA take all concerns relating to financial irregularity or impropriety seriously and will instigate an investigation where it considers that concerns have been raised in good faith and there is sufficient evidence to warrant it.

Institutions may wish to refer to the GOV.UK website for useful information about concerns of financial irregularity or impropriety and whistleblowing.

<https://www.gov.uk/government/organisations/department-foreducation/about/complaints-procedure>

# **Communications, Governance and Monitoring**

## **7. Communications**

### **7.1 Websites**

Institutions are expected to display information about the DaDA scheme on their websites. Content should include information to set out what the scheme is; how to apply for funding; and the level of funding a student may be eligible to receive. Institutions are expected to keep this information up to date to ensure it provides accurate information for students and parents.

## **8. Governance and monitoring**

### **8.1 Office for Standards in Education (Ofsted) inspections**

Institutions will be subject to governance and audit regimes, which include the requirement for Ofsted inspections and the publication of inspection reports.

They must also permit any person authorised by the Office for Standards in Education (Ofsted) to inspect the institution and afford to such person all the facilities they may reasonably require for making such an inspection as and when required in line with Ofsted powers of entry and access to documents and its Common Inspection Framework, in accordance with section 131 and 132 of the Education and Inspections Act 2006.

Only institutions whose provision is assessed as Outstanding (Grade 1) or Good (Grade 2) at Ofsted inspection will be eligible to offer DaDA funding. The ESFA will cease to fund current institutions if they do not maintain their levels of quality unless there are exceptional circumstances.

Ofsted inspections are undertaken in line with the Common Inspection Framework and other guidance current at that time. The [Education Inspection Framework](#) and the [handbook for inspections](#) can be viewed on the GOV.UK website. All inspection reports are published.

Institutions should ensure they are fulfilling their responsibilities for safeguarding all learners and also ensure they are aware of the Government's Prevent Strategy about safeguarding young people from extremism and radicalisation: [the prevent strategy](#).

## **8.2 Contracted Services**

By entering into a contractual relationship with ESFA for DaDA funding, the institution is agreeing to deliver learning to the level of funding detailed in the Schedule 2 of the Contract for Services. For the avoidance of doubt the overall maximum values for the Learning Programme in the Payment Schedule may not be exceeded. If an institution exceeds the maximum Contract value, ESFA is under no obligation to provide any additional funding.

Where ESFA identifies that an institution is failing to deliver learning to the level of funding for the Learning Programme set out in the Schedule 2 of the Contract for Services, it reserves the right in its absolute discretion to reduce the overall maximum value for the Learning Programme.

## **8.3 Management Information (MI)**

Institutions must have administrative procedures in place, which record the following:

- numbers of applications received and offers of places
- numbers of students auditioning for DaDA funding and places
- numbers of students offered DaDA funding
- numbers of students accepting DaDA funding
- course and qualification for which DaDA support has been given
- numbers of students in each of the living arrangements/income bands
- total spend for fees
- total spend for living costs
- total spend for admin costs
- student diversity (age, gender, disability and ethnicity)
- numbers of early leavers and substitutions
- completion rates of students awarded the TCL diploma
- completion rates of students not awarded the TCL diploma
- graduate destination data
- total number of students from England, Scotland, Wales, Northern Ireland and the EU.

Institutions will be expected to submit an in-year MI return in October 2020 and an end of year return in **June** 2021 for the 2020 to 2021 academic year.

To enable financial reconciliation to be undertaken in December 2020 and at the end of each academic year, institutions will be asked to submit details of actual total spend of DaDA funding when submitting their MI return.

#### **8.4 Financial Information - Audit**

The ESFA's Provider Risk and Assurance team (PRA) is responsible for providing assurance on DaDA institutions' internal controls and use of funds. All DaDA institutions that ESFA contracts with are subject to audit work on a risk assessment basis carried out by PRA auditors. A sample of DaDA institutions will be selected for audit each academic year.

For DaDA institutions, the audit work undertaken will normally involve a risk assessment of institutions' control systems for administering the programme and an element of detailed transaction testing.

Audit testing is normally carried out on a sample basis and ESFA may recover funds found to be in error, calculated on an actual or extrapolated basis.

This work will be carried out by PRA auditors who will visit the institution for one or two days on a cyclical basis. Where audit work identifies significant findings, more frequent visits may be made to support institutions in improving their control systems and to ensure that funding is used for the purposes for which it is given.

Institutions should have administrative procedures that record DaDA applications and the award of funding. These records should comprise a fully and accurately completed application form, including a residency selfdeclaration, copies of any evidence requested for the purposes of determining eligibility, a budget management spreadsheet or equivalent, details of the household income assessment and funding awarded, any relevant lodgings

evidence, and evidence of independent status if the student has been assessed as such.

For audit purposes, hard or scanned copies of all documentation should be kept for a period of **six** years in a safe and secure manner that meets Data Protection requirements. This documentation should include evidence of the application process, documents relating to how the student was assessed (including copies of any evidence presented for the purpose of determining eligibility and household income, and a **fully** completed application form) and the funds issued.

PRA auditors will also be carrying out checks to ensure that DaDA funding has been given to a student based on talent.

## **8.5 Financial Information - Financial Health Assessments**

ESFA is required to carry out financial health assessments (FHA) of all of its institutions and this is a routine aspect of the contracting process. FHA are carried out by PRA auditors who will assess DaDA institutions' latest full (i.e. not abbreviated) annual financial statements.

Institutions will be expected to submit their latest returns to the ESFA in autumn 2020

Further details of the FHA will be sent out separately in summer 2020.

## **8.6 Equal Opportunities**

Institutions will, in delivering provision under the DaDA scheme, demonstrate that they have had regard to the duties placed on the ESFA by The Equality Act 2010 (under Schedule 19). Legislation, regulation and policy provide a framework within which ESFA will strive to promote equality of opportunity for all students, irrespective of their age, race, gender, religion or belief, sexual orientation, disability including physical or learning abilities.

The delivery of provision should comply with the principles set out in the Equality Act 2010.

Institutions must take account of equality of opportunity across all aspects of their provision. ESFA expects that policies for equality of opportunity are in place and published in appropriate formats, available to both staff and students. Additionally, statements summarising these policies should be made available in all promotional marketing materials.

ESFA funded institutions are required to maintain records of student diversity including age, gender, disability and ethnicity. This information should be made available to ESFA or its agents upon request, in particular through ESFA's yearly MI collection. ESFA expects that institutions will analyse this data in respect of participation, retention and achievement.

Where there are areas of concern, institutions should take steps to address these, by setting up and monitoring performance.

## **8.7 Data protection**

The Data Protection Act 2018 (DPA 2018) which incorporates the General Data Protection Regulation (GDPR) applies to all institutions which deal with students' applications for funding as the information is classed as sensitive personal data. The DaDA institutions will become Data Controllers and will therefore need to be registered with the Information Commissioner's Office (ICO) – further information can be found on the website - <https://ico.org.uk/>

The ICO provides guidance on GDPR - <https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/>

In this respect, institutions are responsible for ensuring that they comply with the DPA 2018. Data protection information can be found on the UK Legislation website - <http://www.legislation.gov.uk/ukpga/2018/12/contents/enacted> The data protection principals can be found on the following link - <http://www.legislation.gov.uk/ukpga/2018/12/part/3/chapter/2/enacted>

The institution will be responsible for compliance of the DPA 2018 and GDPR when transmitting personal data. Any sensitive and personal data that is transmitted via email should be encrypted beforehand and the password sent in a separate email.

**Letter for institutions to give to students taking HE and FE courses**

**INFORMATION FOR STUDENTS WITH DANCE AND DRAMA AWARDS**

Congratulations on being offered a Dance and Drama Award, to support you with the costs of participating in your chosen course.

The purpose of Dance and Drama Awards is to help enable students to achieve the vocational Trinity College London (TCL) Level 5 and 6 diplomas. The scheme offers students help, on an income-assessed basis, with tuition fees and living costs.

Your institution also offers Higher Education (HE) degree provision. Being in receipt of Dance and Drama Award funding does not stop you from entering into any other voluntary arrangement with your institution to study for a degree in addition to your TCL diploma. Therefore, if in addition to pursuing the TCL Diploma course, you also decide to register and complete a HE degree, you may do so providing that this remains secondary to your Dance and Drama Award supported training and diploma.

However, Government funding rules mean that you must not take up your Dance and Drama Award and receive any HE support at the same time. If you do, you will be required to immediately repay any HE student support that you have received. This includes any support from the HE Disabled Students Allowance (DSA).

**STUDENT DECLARATION**

**I have read and understood that in accepting a Dance and Drama Award, I am not eligible to apply for HE student support (including DSA) from either my local authority or from Student Finance England. If I do claim or receive HE student support, I understand that I will be required to repay the student fees and loan.**

Signed: \_\_\_\_\_

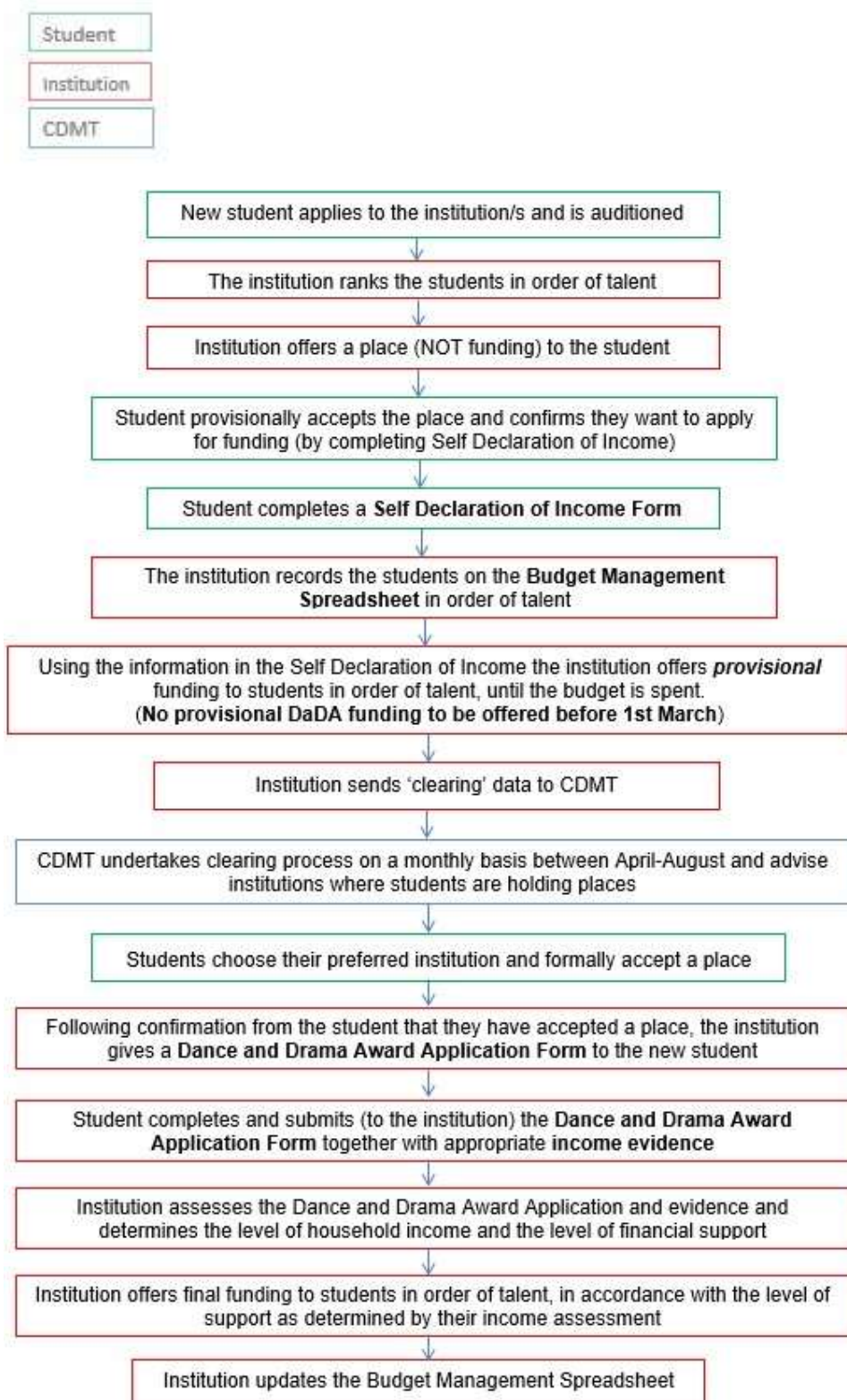
Name (Block Capitals): \_\_\_\_\_

Date: \_\_\_\_\_

Please now return this declaration to your dance and drama institution. They will give you a copy and keep one for their records.



## DaDA Application/Assessment Flowchart New Students only in academic year 2020 to 2021



**Some basic information about the Equality Act 2010 (this has replaced the Disability Discrimination Act) which may help if you have a request about an in-year reassessment in the event of disability.**

The Equality Act 2010 defines a disability as a physical or mental impairment which has a substantial and long term (that is more than 12 months) adverse effect on a person's ability to do normal daily activities.

If you would like to know more about the Equality Act and whether your medical condition is covered, then further information can be found at <https://www.equalityhumanrights.com/en/equality-act/equality-act-2010> The Act sets out the circumstances in which a person is 'disabled'. It says you are disabled if:

- you have a mental or physical impairment
- this has an adverse effect on your ability to carry out normal day-to-day activities
- the adverse effect is substantial
- the adverse effect is long-term (meaning it has lasted for 12 months, or is likely to last for more than 12 months or for the rest of your life).

There are some special provisions, for example:

- if your impairment has substantially affected your ability to carry out normal day-to-day activities, but doesn't any more, it will still be counted as having that effect if it is likely to do so again
- if you have a progressive condition and it will substantially affect your ability to carry out normal day-to-day activities in the future, you will be regarded as having an impairment which has a substantial adverse effect from the moment the condition has some effect on your ability to carry out normal day to day activities
- cancer, HIV infection and multiple sclerosis are covered effectively from the point of diagnosis
- people who have had a disability in the past but are no longer disabled are covered by certain parts of the Equality Act.

# Income Assessment

## Introduction

This section of the guide has been developed to aid DaDA institutions in the administrative process of assessing a student's application form for DaDA funding in the 2020 to 2021 academic year.

To be eligible to apply for DaDA funding, the student must be studying for the TCL Diploma (Level 5 or 6) in Professional Acting, Dance or Musical Theatre. No other qualifications are eligible for DaDA funding.

All applications will be assessed on a student's household income as follows:

- if they are a **Dependant Student**, the household income is their parent's income and that of any spouse or partner of their parent
- if they are an **Independent Student**, the household income is their spouse or partner's income if they have one.

**Before completing the assessment, the institution must make sure that:**

- all relevant questions in Section A have been fully answered
- all relevant questions in Section B have been fully answered and the appropriate household income evidence for the 2019 to 2020 tax year has been submitted
- where applicable, Section C – Benefit Income details has been completed and enclosed and the confirmation signed by the relevant benefits office
- if the term time address is different, their home address and evidence of living in lodgings has been submitted
- if they have applied as an Independent Student, the required supporting evidence has been submitted.

## **Assessment of the completed application form**

Where an application submitted to the institution is incomplete i.e. it does not contain all the relevant income and/or the required evidence, such as proof of lodgings, the institution should request this from the student as soon as possible and should also send a reminder communication to the student requesting the outstanding information if it is not returned promptly. All forms must be signed.

**Under no circumstances should the application be assessed and DaDA funding agreed until all the outstanding information has been received by the institution.**

When chasing any outstanding evidence or information from students, the institution may wish to implement a deadline date. If they do, they must ensure the student is aware of this and of any consequences of not returning the information on time i.e. the application being placed on hold and therefore

unable to be assessed. The institution may also wish to issue a “final” reminder to the student.

### **Looked after Children by a Local Authority or in Foster Care**

Where a child is looked after by foster parents and has been placed in care by the council who has retained financial responsibility for child, the income evidence required would not be the foster parents. In these circumstances, the student would be considered independent, and would be entitled to full support.

Institutions should ensure that they have written evidence from the social worker to confirm that the student is a looked after child for audit purposes and therefore does not have any parental income evidence to submit with the application form.

Where a looked after child is in foster care and the carers **do** have financial responsibility then it would be the carers' income evidence required to process the application.

### **Living Costs (maintenance) Assessment Rates**

There are three different rates at which students can be assessed:

**1. Students living at home**

This is the rate for students living at home with their parents or living in their own home (including rented accommodation).

**2. Students living in lodgings outside London**

This is the rate for students living in lodgings where the institution is situated outside a London Borough.

**3. Students living in lodgings inside London**

This is the rate for students living in lodgings where the institution is situated in one of the 32 London Boroughs (listed below).

When calculating the student's living costs support, the correct rate must be applied. The Budget Monitoring tool contains a drop down box for the institution to select the appropriate rate.

The fees rate for students from the EU will depend on where they are living in lodging i.e. inside or outside of London. Students from the EU (even if resident in the UK due to freedom of movement) are not eligible to receive funding towards their living costs.

#### London Boroughs

Inner London\*: Camden, Greenwich, Hackney, Hammersmith and Fulham, Islington, Royal Borough of Kensington and Chelsea, Lambeth, Lewisham, Southwark, Tower Hamlets, Wandsworth and Westminster.

\*City of London - this is not a 'borough' - it is governed by the City of London Corporation, but is an inner London 'council'.

Outer London: Barking and Dagenham, Barnet, Bexley, Brent, Bromley,

Croydon, Ealing, Enfield, Haringey, Harrow, Havering, Hillingdon, Hounslow, Kingston-upon-Thames, Merton, Newham, Redbridge, Richmond-upon-Thames, Sutton and Waltham Forest.

### **Payments to students**

Living costs payments should be paid directly to the student. It is recommended that the institution does not release the full amount of funding to the student at the beginning of the academic year but makes the payments on a termly basis. This will ensure that students will not receive funding that they are not entitled to. Where an institution issues high amounts of funding to a student, this payment is issued at the institution's own risk. Additional funding cannot be claimed from ESFA in the event that a student leaves prior to the end of the academic year.

It is recommended that the student should sign a declaration to confirm that they have received the living costs payment and that the institution should keep a record of this for audit purposes.

It is the responsibility of institutions to ensure that students are attending courses before payments are made. Institutions should inform students they could lose their entitlement to any fees and living costs funding if their attendance is unsatisfactory.

### **Recovery of Overpayments**

Where any fees and living cost support funding is paid in error resulting in an overpayment, recovery action should be taken. The institution may wish to recoup the funding paid to the student or deduct the overpayment from any future payments to be made.

If the institution becomes aware that fees and living costs payments have been made incorrectly, for example because of failure to disclose information as part of the application process, recovery action should be taken.

Recovery action should also be undertaken where overpayments are made because of the student failing to notify the institution promptly of any relevant changes.

### **Changes of Circumstance/Details**

The institution should be notified in writing where a student changes their details i.e. name, address (home or lodgings) or contact details.

Where a student moves from living at home with parents in to lodgings, then the application can be reassessed in-year, however the reassessment should only be carried out from the term after they moved into lodgings. No backdated payments can be made.

Students will need to complete a new application form to give updated details such as lodging address. If the student has supplied income details from the previous application, it is not necessary for the student to provide them again.

However, the student must provide proof of lodgings **before** any payments can be released.

## **Privacy Notice**

This section is where a student and their parents or spouse/partners' are informed that the DaDA institution may need to talk to anyone named on the application form during the assessment process.

Because the form contains personal and sensitive data, for example name address, date of birth and financial details, the DaDA institution **must** not give out any information about a students' application or payments to anyone other than those named on the application, without their agreement.

**Students are advised to read the privacy notice carefully.**

## **Section A – Student's details**

**This should be completed by the student. You must ensure that all questions in this section have been answered on the application form.**

### **A1 Name**

This should contain the student's first name and surname.

### **A2 Date of birth**

This should contain the student's date of birth.

Only students aged between 16 and 23 will be eligible for DaDA support in the 2020 to 2021 academic year.

### **A3 Permanent home address:**

This should contain the student's full home address where they live when they are NOT studying.

### **A4 Contact details:**

This should contain contact details for the student so that they can be contacted for further details relevant to their application if necessary.

### **A5 Residency**

DaDA funding can only be offered to new students who meet the residency conditions.

**This question must be completed.**

The application form must not be assessed unless this question has been completed.

You may be required to contact the student for further evidence to prove that they meet the residency criteria for DaDA fees and living costs funding.

Students will not be eligible for DaDA funding if they are:

- an asylum seeker
- have discretionary leave to enter or remain
- have exceptional leave to enter or remain
- resident outside the EU e.g. USA, Australia, Japan
- resident in The Channel Islands (e.g. Jersey, Guernsey) or the Isle of Man.

The student should mark **one** box only to confirm their residency status.

### **Box A**

Marked by a student who is a British Citizen and has lived in the UK for at least three years prior to the start of their course.

### **Box B**

Marked by a student where:

- they have 'settled status' in the UK and have been ordinarily resident in the UK for at least three years prior to the start of their course. 'Settled status' means having either indefinite leave to enter or remain (ILE/R) or having the right of abode in the UK.
- they are British citizens and certain other people who have the right of abode in the UK
- they are British Overseas Territory Citizens (e.g. Falkland Islands, Bermuda)
- their passports have been endorsed to show they have Right of Abode in the UK
- they have a certificate of naturalisation or registration as a British Citizen.

### **Evidence of residency status**

The DaDA Application Form enables students to self-declare their residency status. Should an institution have reason to suspect that the student has incorrectly declared their residency status, they should ask the student to present evidence (official) in support of their application, for example: **passport, Immigration Status Document or stamped Home Office Letter.**

**EU nationals** should complete box C only and not box B. Where an institution has reason to suspect that the student has incorrectly declared they have 'settled status' due to the freedom of movement, the institution should ask for clarification as EU nationals are **not** eligible to receive living costs even if they are resident in the UK.

EU students who start a DaDA funded course in the 2020 to 2021 academic year will remain eligible for DaDA support for the duration of their course (NB: this protection applies only to students whose eligibility is affected by the UK leaving the EU).

### **Box C**

Marked by a student if they are a national of any EU country (including

Gibraltar) or the spouse or civil partner or child of an EU national, and have been ordinarily resident in the EEA or Switzerland for at least the three years prior to the start of their course.

#### **Box D**

Marked by a student if they are either:

- an EEA migrant worker with the right to work in the UK, or the spouse, civil
- partner or child of an EEA migrant worker, who is ordinarily resident in the UK at the start of the course and have been ordinarily resident in the EEA, or Switzerland, throughout the three year period prior to that
- the child of a Swiss national who is ordinarily resident in the UK at the start of the course, and have been ordinarily resident in the EEA or Switzerland for the three years prior to that
- the child of a Turkish migrant worker who has the right to work in the UK, and who is ordinarily resident in the UK at the start of the course, and have been ordinarily resident in the EEA, Switzerland or Turkey for the three year period prior to that

#### **Box E**

Marked by a student if they have been granted 'refugee status' by the UK Government, or the spouse or civil partner or child of someone with 'refugee status', or have been granted Humanitarian Protection or have EU Temporary Protection.

#### **Box F**

Marked by a student where they do not fit in to any of the categories given in A to E above. If a student has marked this box then they are not eligible for DaDA funding and you must **reject** their application for funding.

However, where a student marks more than one box, this does not make them ineligible, for example if the student does not fully understand which residency category they fit in to and as a result of this has marked more than one box.

#### **Residency combinations**

The following combinations of boxes are **eligible** therefore, the application form can be assessed. However, you may wish to ask the student to provide clarification on what their residency status actually is.

Evidence you should ask the student to present in support of their application is either a passport, Immigration Status Document or stamped Home Office Letter.

1. (A or B) + E
2. C + E
3. D + E



4. (A or B) + C + E
5. (A or B) + D + E
6. C + D + E
7. (A or B) + C + D + E

Where the following combination of boxes has been marked, the student is **ineligible** for a Dance and Drama Award.

1. F + (any combination A to E)

### **Temporary Absences**

The three-year residency rule must be applied to all applications. However, in certain cases, temporary absences can be allowed.

Examples are given below:

- Absences totalling six months within three years are counted as temporary and disregarded for residency eligibility when determining if a student has been ordinarily resident in the UK or EEA for three years prior to the start of their course.
- Absences between six months and three years may be counted as temporary, provided the absence was always intended to be temporary and evidence is provided to support this for example details of a fixed-period working contract or continued maintenance of a family home in the UK.
- Applications from students whose family have been living overseas i.e. outside the UK or EEA for three years or more cannot be counted as a temporary absence.

### **Children of Military Personnel**

If a student has been accompanying a parent or carer on an official overseas posting, they will be exempt from having to have been ordinarily resident in the UK or EEA for the three years prior to the start of the course.

### **EEA Countries**

The EEA brings together the twenty-eight EU Members\* and the three European Free Trade Association countries (Iceland, Liechtenstein and Norway).

The EEA countries are as follows:

Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia,

Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the United Kingdom.

*\* Gibraltar is considered to be part of the EU and is therefore considered part of the EEA.*

## **A6 Term Time Address**

The student must confirm where they will be living during term time by marking one of the three boxes on the application form, these are:

- **‘With parents’** box - if they will be continuing to live with their parent(s) during term time.
- **‘Student lodgings’** box - if they will be living away from their permanent home address in student lodgings.
- **‘Own home’** box - if they will **not** be living with parent(s) or in student lodgings but living in their own permanent or rented accommodation.

**Details of the student’s term time address must be completed here if it is different from the permanent address given in question A3 even if they are not applying for living costs funding.**

Where a student has ticked the box to state that they do not have a lodgings address, the institution should **ensure** that this information is provided by the student once they have confirmation of the lodgings.

If the student will be living in lodgings during term time then they must provide evidence of this by submitting a copy of the rental agreement or a signed letter from the landlord that confirms the following:

- the student’s name
- the address of their lodgings
- the dates they will be lodging there
- landlord’s name, address and signature

During term time, where a student is living in student accommodation provided by the DaDA institution, this information should be retained on file by the institution.

**Living costs payments must not be made until all the evidence has been received from the student.**

## **A7 Your course**

The students must be studying for the TCL Diploma (Level 5 or 6) in Professional Acting, Dance or Musical Theatre.

The student must select in this section the course they are applying for and if they have had a previous award of DaDA funding at another DaDA institution including the reason why they left the course.

They should also provide details of the institution they attended and the dates they held DaDA funding. **Student status**

### **Dependant or Independent**

This section provides information about whose income should be used to assess the application.

All students should be assessed as a Dependant Student i.e. using the parental household income as evidence unless they meet one of the criteria for independent status as set out in the table on pages 31 and 32.

If they are applying for DaDA support as an Independent Student, it is essential that independent status is **established** before their application is assessed.

If the required evidence is not fully provided, they should be assessed as a Dependant Student and details of their parents' income (and any spouse/partner the parent may have) will be required, even if they no longer live with them.

The table on pages 31 and 32, sets out the evidence required that must be submitted in order for a student's application to be assessed as independent status for DaDA fees and living costs funding.

If they are applying as an Independent Student:

- their parent's income is not taken into account
- if they are married, in a civil partnership or living with their partner, the level of support given will be based on their spouse/partner's income for the 2019 to 2020 tax year

### **Single independent students (not married or living with partner)**

Students in this category do not need to provide their income details or income evidence as their income is not taken into account for the income assessment. They only need to complete question B1 on the application form.

Where the student has indicated in B1 that they are applying as an Independent Student and have confirmed that they are single, these students should be awarded the appropriate lodgings rate based on the location of the DaDA institution.

### **A8 Your previous student support**

The student will have completed this section if they are applying as an Independent Student on the basis that they have supported themselves financially. They should give details of any funding they have received e.g. Higher Education student loans.

Where a student states that they have been in Higher Education for three years prior to applying for DaDA funding, this period cannot be counted towards evidence of self-support.

## **A9 Periods of self-support**

The student will have completed this question if they are applying as an Independent Student on the basis that they have independently (no parental support) supported themselves financially for three years (36 months) or more prior to 1 September 2020.

Evidence of employment or benefits received must be provided i.e. P60s or letters from employers confirming employment dates or information from DWP.

The income that the student has received to support themselves for the preceding three years must match or be in excess of Income Support or the new Universal Credit benefit payments in place of Income Support. The figure for 2020 to 2021 is £57.90 per week. Information on Income Support can be found on the DWP's website <http://www.dwp.gov.uk/gov/>

This is to ensure that an individual was genuinely in gainful employment and therefore, genuinely financially independent from their family. The purpose is to establish that students are self-sufficient and to disregard those that are still dependent on parents/family but who had part-time jobs and may have submitted three years' worth of part-time pay slips.

## **Independent Status**

The table below sets out the criteria and evidence required by the student for claiming Independent Status

<b>Student's circumstances</b>	<b>Documentation required to establish Independent Status</b>
Married, entered a Civil Partnership or living with someone as though you are married before 1 September 2020	Marriage or Civil Partnership Certificate. If they have since divorced or separated, evidence of your divorce or separation should be provided <b>(photocopies only)</b> . If you are living with someone as though you were married you should provide evidence to show joints names for example, a copy of your council tax bill.
The natural or adoptive parent of a child who lives with the student	Child's birth certificate or certificate of adoption and evidence that you receive child benefit for the child <b>(photocopies only)</b> .

Supported themselves financially for the three years prior to 1 September 2020	<p>P60s or letters from employers to confirm the dates they worked there and your level of earnings. Letter from DWP to confirm the dates you received benefits and the type of benefits claimed.</p> <p><b>Evidence must cover a period of three consecutive years (36 months) in total (full and complete photocopies only).</b></p> <p>Periods where they worked part time whilst in fulltime education will not be included when establishing independent status.</p> <p>For periods of part-time employment, earnings must be above Income Support levels in order to be included when establishing independent status.</p>
They have no living parents	<p>Parent(s) death certificate(s) or letter from an independent source confirming your circumstances <b>(photocopies only)</b></p>
<p>Student is estranged from parents and has no contact with them</p> <p>Further information is given on page 32 in the estrangement section.</p>	<p>A letter from a social worker or a letter from the Department for Work and Pensions (DWP) Jobcentre Plus office indicating that they received benefits on the grounds of being estranged.</p>

### **Estrangement**

If a student states they are estranged from their parent(s) and wishes to claim independent status on this basis, they **MUST** provide confirmation of their estrangement from an independent source. This confirmation must be from a professional person outside of their family who is aware of their circumstances.

Acceptable proofs include a letter from a social worker, if applicable, or evidence of claiming income support or new Universal Credit if aged under 18 e.g. a letter from DWP's Jobcentre Plus office indicating that they received benefits on the grounds of being estranged.

If their relationship with their parents broke down while they were at institution or attending a previous educational establishment, an advice worker or personal tutor may be able to provide additional evidence by sending in a comprehensive letter confirming the student's situation and circumstances to help support their claim. A doctor who is aware of the student's circumstances may also be able to provide evidence to confirm the situation.

## A10 - Student Declaration

The student **must sign and date** the application for fees and if applicable, living costs and by submitting the application form, they are agreeing to:

- all of the conditions in each of the statements set out in the declaration
- the eligibility criteria for DaDA funding as outlined in the application form i.e. have understood and confirmed that their age and residency status given on the application form is eligible for DaDA funding
- have read and understood the DaDA application form guidance notes

If in receipt of DaDA funding they are also agreeing to the rules of the DaDA scheme and institution.

The student must sign the application form in to confirm that they have understood the student declaration. The student's funding application cannot be processed if the form has not been signed in the appropriate places.

## Section B – Income details

**This should be completed by:**

- **the student's parent(s) or parent's spouse/partner, if the student is dependant; or**
- **the student and their spouse/partner (if they have one) if they are independent.**

Dependant students - this normally means where the student lives with their parent(s), but also where a student may live with one parent and a step-parent or parent's partner.

The amount of DaDA funding the student receives will depend on the student's household income. For the DaDA application process, this means the household income for the tax year **6 April 2019 to 5 April 2020**.

If the student does not live with their parents i.e. they live with their grandparents, you will still require the household income of their parents even though they are living with relatives because you must income assess those adults who have a caring responsibility for the student i.e. the student's parents.

### Income Assessment evidence

To determine the total amount of fees and living costs support that the student will receive will depend on the student's household income.

For the DaDA application process, this means you must assess the application form using the household income for the tax year **6 April 2019 to 5 April 2020**.

Income evidence submitted should normally be a Tax Credit Award Notice (form TC602), copies of P60s, and P11D from employment or a SA302

selfassessment form for the correct financial year or a combination of types of evidence types that covers the whole of the correct tax year period.

Where evidence for the full tax year has not been submitted, the institution should request additional evidence to cover this period. **In cases where income evidence from EU applicants only covers part of the tax year i.e. January to December, further documentation should be requested to cover the remaining months of the correct tax year for January to March.**

### **B3 Tax Credit Award Notice (form TC602)**

Where a Tax Credit Award Notice (Form TC602) has been submitted you must check that it correctly states the household income for the 2019 to 2020 tax year, and that the amount has been included in the box provided in question B3.

Award Notices are sent out to families who receive Child Tax Credit or Working Tax Credit. You must make sure that the Award Notice refers to the student's household income for the whole of the 2019 to 2020 tax year. An example of a Tax Credit Award notice is shown below.

**HM Revenue & Customs**

Report reference: **TC603R**

MR KURT STONE  
MRS GRACE STONE  
1 ANY STREET  
ANYTOWN  
ANYWHERE  
XX1 1XX

Helpline  
0345 300 3900  
Minicom/Textphone  
0345 300 3909

TAX CREDIT OFFICE  
PILGROVE  
PR1 1SD

**Tax credits award for 06/04/2019 to 05/04/20**

MR KURT STONE National Insurance number AB 44 67 88D  
MRS GRACE STONE National Insurance number PY 56 57 56A

**Summary**

Tax credit for the period - see Part 2

Working tax credit (other than childcare)	£95.37
Child Tax Credit	£4268.30

**Amounts still to be paid to you - see Part 2**

Working Tax Credit	
to MR KURT STONE	£95.37
Child Tax Credit	
to MRS GRACE STONE	£4268.30

Tax credits are based on your personal circumstances and income for the whole tax year. After the end of the tax year, when all the information is known, we make a final decision about how much you are entitled to receive.

Part 1 of this form shows your circumstances, including your income. Please check this part and tell us immediately if anything is wrong, missing or has changed.

**Claimants**

Your tax credits are based on you being part of a couple. If you have separated, please tell us. You may be able to make a new claim to tax credits, either on your own or as part of a new couple.

**MR KURT STONE**

You work 16 hours a week.

**MRS GRACE STONE**

You claimed tax credits jointly with the person named above.

You work 16 hours a week.

**Qualifying child and young people**

1 aged one or less.  
3 aged between one and sixteen.  
3 aged between sixteen and twenty.

**Childcare costs**

You have no qualifying childcare costs. If you start to pay for childcare and you qualify for Working Tax Credit you may be able to claim the childcare element of Working Tax Credit. Contact us for details.

**Income**

This is the information we have about your income. Please check that it is correct.

**Your income for the year 06 April 2019 to 5 April 2020**

<b>MR KURT STONE</b>		
Earnings as an employee	£10000.00	
Your total income		£10000.00
<b>MRS GRACE STONE</b>		
Earnings as an employee	£5000.00	
Your total income		£5000.00
<b>Total income for the year 6 April 2019 to 5 April 2020</b>		<b>£15000.00</b>

If you have a Tax Credit Award Notice; write in your total income from 6 April 2019 to 5 April 2020 as shown here - not the amount of tax credits you are receiving. This diagram may help you.

You should not use a Review Notice (Form TC603R) form for income assessment purposes.

If an applicant does not have an Award Notice for the 2019 to 2020 tax year to send in or does not wish to wait for the Award Notice to be sent to them, they can apply using a P60 or other evidence of their income.



A week 52 payslip or payslip for the last month of the 2019 to 2020 tax year would also be acceptable. The application form asks for the household income amount to be rounded down to the nearest pound.

More information about Tax Credits can be found on the website, <https://www.gov.uk/browse/benefits/tax-credits> The Tax Credits Helpline number is 0345 300 3900.

## B4 Benefits

If a student's parents/carers or spouse/partner received Income Support, Income-based Jobseeker's Allowance, Income-related Employment and Support Allowance, Pension Credit or received Universal Credit in place of these eligible benefits for the whole or part of the 2019 to 2020 tax year, they must have completed the Section C Benefits Income Details form.

You must make sure that Section C has been completed and signed by the DWP's Benefit office as well as the student's parents/carers. **If the parent/s received income from employment as well as any of the specified Benefits, they must also complete sections B5 to B7, where applicable.**

Where a student lives in the parental home during study and where the parents are in receipt of Income Support or the new Universal Credit in place of Income Support, the application should be assessed at the '**students' living at home**' rate.

## B5 Total earnings as an employee

The total income from all paid employment in the tax year 6 April 2019 to 5 April 2020 should have been written on the application form. This figure is usually described as 'total pay' or 'total for year' on the P60 End of Year Certificate.

You will need to know the student's household total income for the year 2019 to 2020 **before** tax, National Insurance contributions and other deductions are taken off (don't include taxable fostering allowances). An example is below.

### Where to find details of your pay from employment in the tax year 6 April 2019 to 5 April 2020.

All your employers in 2019-20 should have given you a record of your earnings. This will be a P60 or a P45 if you left before 5 April 2020.

**If you had only one job in the year 2019-20** copy the figure labelled 'Total for year' on your P60. or 'Total pay to date' on your P45.

A snippet of a P60 form. The 'Total for year' field is circled in red and has a yellow arrow pointing to it from the text above. The value is £9,283.97.

A snippet of a P45 form. The 'Total pay to date' field is circled in red and has a yellow arrow pointing to it from the text above. The value is £9,283.97.

**If you had more than one job**, add together the 'in this employment' figures from all your P60s and P45s.

Where a parent/carer or spouse/partner has had more than one job in the previous tax year, either one after the other, or at the same time, you will need to ensure that this information has been included such as

- total pay from all employed work, including any tips and gratuities and Statutory Sick Pay
- payment from an employer because their job changed or ended. They should not have included the first £30,000 of any redundancy payment – they should only include any amount over this
- taxable gains from security options they got because of their job e.g. company shares or bonds
- strike pay which they received from a trade union • payment for work they did in prison or on remand.

A parent/carer or spouse/partner can **deduct**

- work expenses that they have paid out and that their employer has not paid back to them. However, the expenses must be wholly, exclusively and necessarily in the performance of their duties
- tax-deductible payments they have made and have not been paid back e.g. fees to professional bodies, indemnity insurance, agency fees
- flat-rate expenses agreed by their employer and HM Revenue & Customs (HMRC), to maintain or renew tools or special clothes (such as a uniform) that they need for their job
- any qualifying Gift Aid donations (gross amount).

*Institutions should note that a parent may be required to provide evidence of the Gift Aid donation. This could be in the form of a letter or confirmation of donation from the recipient.*

There is space in the student application form guidance notes (as indicated below) for the parents/carers or spouse/partner to work out earnings from more than one job - you may wish to look at these to help with the assessment process.

If you had more than one job, you may use the working sheet below to help you work out your total earnings.

	Adult 1	Adult 2
Job 1		
Job 2		
Job 3		
Job 4		
<b>Total</b> (round down to the nearest pound)		
	Enter this total on the form	Enter this total on the form

Where a parent/carer or spouse/partner gives figures for question B5, they must submit, with the application form copies of any P60, P60U or P45 form(s) they have relating to the 2019 to 2020 tax year. The photocopies should be clear and complete.

When sending application forms out to EU students, institutions can request that the form and evidence be submitted in English. Where financial details are not given in British Pounds institutions should use the latest HMRC exchange rates only to work out the total household income.

**The institution should apply one rate only to all application forms throughout the academic year.** This ensures consistency when assessing DaDA funding applications.

The exchange rates can be found on the HMRC website. Note that exchange rates for Euro zone countries are not included. <http://www.hmrc.gov.uk/exrate/>

## **B6 Benefits in kind from your employer**

The student's parent/carer or spouse/partner may have received benefits from their employer which were not paid out in wages but are taxable. These are called benefits in kind.

If they received any benefits in kind during the tax year 6 April 2019 to 5 April 2020 the employer should inform them what their 'cash equivalent' is on a form P11D. This information must be recorded on the application form.

For DaDA funding purposes, the value of the following benefits in kind is taken into account:

- goods and assets from their employer (for example, gifts of food, fuel, cigarettes or clothes) - shown on form P11D section A.
- payments made by their employer on their behalf (for example, payment of rent or utility bills) - shown on P11D section B in the first box numbered 15
- cash or non-cash vouchers and credit tokens (for example, a company credit card) - shown on P11D section C, . They do not need to include the cash equivalent of childcare vouchers if they are used to pay for registered or approved childcare
- mileage allowance. They should include payments for using their own car and should enter the taxable amount shown on form P11D section E. Also include running costs the employer has paid for - shown on P11D section E or included in section N
- company car - shown on P11D in box 9 of section F
- car fuel benefit – shown on P11D in box 10 of section F
- payments of expenses made to them or on their behalf - shown on P11D in sections J, M or N.

Where a parent/carer or spouse/partner includes figures for question B6, they must send in with the application copies of any P11D forms they have relating to the 2019 to 2020 tax year. The photocopies should be clear and complete.

## **B7 Total income from self-employment**

Where a parent/carer or spouse is self-employed (either on their own or in partnership) they must enter the **total** profit for the tax year to 5 April 2020.

The following points should be taken into consideration when they complete the application form

- if they have more than one business, they must include the adjusted profit from each of their self-employment pages; and add their share of the adjusted partnership profit from each of their Partnership (short or full) pages
- if their business had other income or profits they must include these in the amount – for example, rental income
- if they use averaging because they are a farmer, market gardener or creator of literary or artistic works, they cannot use averaging in the DaDA funding application claim, they will need to adjust their total profit figure to take out the averaging
- if they traded outside of the UK in 2019 to 2020 they should enter any profit in British pounds only and not foreign currency
- if they received taxable income from foster caring
- if they made Gift Aid payments or personal pension or retirement annuity contributions in 2019 to 2020 they need to deduct the gross amount
- if their business made a trading loss in the 2019 to 2020 tax year they can enter '0'. However, the DaDA rules on trading losses operate separately from those for Income Tax
- this means that for DaDA purposes they can deduct the trading loss from any other income they may have had for the year - in a joint claim, any other income which they and their spouse or partner may have had for the year.

*Institutions should note that Gift Aid should be made from the company and not an individual i.e. the business has to have made the donation and evidence can be requested in the form of a letter or confirmation of donation from the recipient.*

#### Example Self Assessment Tax Calculation

The image shows a screenshot of a 'Self Assessment - Tax Calculation' form for Mr Frank Peach for the 2019-20 tax year. The form lists various income sources and their amounts, totaling 18,500. The total income is circled in red.

Tax Calculation for 2019-20	
Income	
Employments and Directorships (PAYE) minus expenses	5,000
Self-Employment (as a sole trader)	5,000
Partnerships	1,000
UK Land and Property	5,000
UK Interest (before tax)	1,000
UK Dividends and tax credits	500
UK Pensions and benefits	1,000
<b>Total income</b>	<b>18,500</b>

If they have a Self-Assessment Tax Calculation form (for example, an SA302) for the 2019 to 2020 tax year (as shown) or self-served copies of the tax calculation from the HMRC online account, they should submit a copy with the application.

Photocopies are acceptable and can be sent in with the application, but it must be clear and complete.

Where income evidence is not readily available the institution can accept either a self-assessment summary for the correct financial year or the previous year's SA302 form providing there is sufficient evidence to support the earnings submitted. Provisional assessments of 'other' self-employed income evidence are not to be undertaken.

#### Income from Self-employment - Self-Assessment Tax Calculation Form (SA302)

These are only available when:

1. Self-assessment has been lodged **before 30 September**
2. The assessment has been verified by the HMRC
3. If self-assessment is lodged after this date it is unlikely that the parent will be able to supply an SA302 for the previous tax year as they have assessed their own income.

In the first instance you must ask for an SA302 or self-served copies of the tax calculation from the HMRC online account for 2019 to 2020 tax year. If this is not available you can accept an SA302 showing income for 2018 to 2019 tax year, but this must be as a last resort. Where a SA302 form for the previous tax year is used for assessment, a **specific** reason must be given as to why income details (evidence) from the correct tax year **cannot** be made available.

If the parent does not have an SA302 form or self-served copies of the tax calculation from the HMRC online account available from the 2018 to 2019 tax year, then you may ask if they have any other documentation verified by an accountant or HMRC for the 2018 to 2019 tax year.

A **Self-Assessment Summary** form is issued by HMRC in place of an SA302 if the parent did not submit their Tax Return before 30 September or when an accountant submitted the Tax Return.

This form should, wherever possible, be either stamped by HMRC or have an accompanying letter or compliments issued by HMRC.

In the first instance you must ask for a Self-Assessment Summary form for 2019 to 2020 tax year. If this is not available, then you can accept one showing income for 2018 to 2019 tax year.

The deadline date for submitting tax returns to HMRC is

- 31<sup>st</sup> October for paper returns
- 31<sup>st</sup> January for on-line returns

## B8 Total other income

In addition to social security benefits and earnings from work, any other income received in the tax year 6 April 2019 to 5 April 2020 is taken into account. The parents/carers or spouse/partner must use the table on the application form to work out their total (example given below).

They should include any other income above £300, plus the full amount of any Adult Dependant's Grant and miscellaneous taxable income. This £300 deduction is an allowable deduction that HMRC apply when calculating total income received through 'other income'.

### Do not include:

- maintenance payments received from a former partner
- Working Tax Credit and Child Tax Credit
- student loans - do not deduct student loan repayments from your income
- other student grants (except the Adult Dependant's Grant), such as those to meet the cost of tuition fees, childcare etc
- war pensions, or pensions or annuities payable under German or Austrian law to victims of Nazi persecution
- income your children may have had, unless it is taxable in your name or your partner's name.

Work out the total for both adults of any other income, including pensions, using the table below:

Annual amount of:	Adult 1	Adult 2
Income from savings and investments	3 0 0	
Income from property		
Trusts, settlements and estates	3 9 1	5 0 0
Foreign income		
Pensions (state, occupational or personal)	1 2 0 0 0	4 1 1 2
Notional income	1 6 0 4	
Now add together the totals	1 4 2 9 5	4 6 1 2
	+ = 1 2 9 0 7	
	Now deduct £300 - 3 0 0	
Total (if this makes a minus figure, just enter £0)	1 2 6 0 7	
Adult Dependant's Grant or miscellaneous taxable income (include the full amount)	5 0	
Total other income (round down to the nearest pound)	£ 1 2 6 5 7	

If they include any other income in question B8, they may be required to provide supporting evidence. Other income includes the following:

### Income from savings and investments

- gross interest on savings, investments and dividends (including interest from any Bank or Building Society). Enter the gross amount (before tax is taken off)
- the full amount of any 'chargeable event gain' from a life insurance policy
- but should not include Individual Savings Accounts (ISAs) or other tax-free investments.

### Income from property

- income from property or land in the UK that you let
- but should not include income from the 'rent a room' scheme (if they let a furnished room in their home for £7,500 a year or less). From **April 2019**, a new condition will mean that the lessor must be living in the property at the same time as their tenant for at least some of the letting period.
- should not include anything they have already included in box B7
- if their rental property made a loss in the 2019 to 2020 tax year they should enter '0'.

*Where a parent contacts you about Income from Property, ordinarily you will be able to off-set the capital value of the loss against the household income for the tax year. The institution will have to request proof of the loss and also a covering letter to accompany the application to confirm the situation.*

### Household income solely from rental of property

Changes have been announced to the [treatment of tax relief for residential rental properties](#). EFA recognises that the change could, in some instances, impact on the outcome of the household income assessment. However, DaDA guidance will not be amended to take account of these changes since doing so could circumvent the intended tax relief changes and *institutions should continue to assess all applications for DaDA funding in the usual way.*

### Trusts, settlements and estates

If they received income from a trust, settlement or estate, details will be given on the certificate R185, which the trustees or administrators should have sent to them. They should enter the **gross** amount i.e. add together the 'net' amounts and 'tax paid' or 'tax credit' amounts.

### Foreign income

- foreign income, for example, income from investments and property overseas. They should include the full amount in **British pounds**, whether or not it was remitted to the UK. The gross amount should be entered in **British pounds**
- if they get a foreign pension, they should include 90% of it here (in **British pounds**). They should deduct any bank charge or commission they paid when converting foreign currency.
- If they were employed or self-employed outside of the UK in 2018 to 2019, they should enter this amount (in **British pounds**) in boxes **B5**, **B6** or **B7** as appropriate. They will need to submit the required income evidence.

**Pensions (state, occupational or personal)**

- state pensions (including Widow's Pension, Widowed Mother's Allowance, Widowed Parent's Allowance and Industrial Death Benefit). They should not include the Christmas bonus and winter fuel payment
- other UK pensions they are getting including occupational pensions or annuities (not war pensions)
- if their pension includes an extra amount for work-related illness or injury, they should exclude that extra amount.

**Notional income**

This includes things like stock dividends or income that they could have received but chose not to for whatever reason.

**Adult Dependant's Grant or miscellaneous taxable income**

If the parent/carer and their spouse/partner received Adult Dependant's Grant for being a student or miscellaneous taxable income it should not be included in the main total but in the bottom section. They will need to include the full amount.

*Where a parent contacts the institution about the above sections, the institution should advise that they must include the total of any other taxable income that they have had in this section. Evidence of this is not required to be submitted with the application form however, the parent may wish to add a brief note explaining the source of the income on a separate sheet if necessary.*

**Allowable deductions****B9 Personal Pension Contributions**

Any personal pension contributions paid into a registered scheme should be included.

This includes Free-Standing Additional Voluntary Contributions and payments to Stakeholder pensions. They should enter the gross amount but not include 'occupational pension' contributions paid through their employer. They will have already had deductions made from the pay figure entered on their P60 or P45.

However, if the contributions are of a high level and after the income assessment has taken place a student is placed in to a lower income band and therefore becomes eligible to receive a higher level of DaDA support, institutions should request evidence of the personal pension contributions to support the application.

**B10 Statutory Maternity, Ordinary or Additional Paternity or Adoption Pay**

Examples are given in the application form guidance as to how to work out the total amount paid. The total will depend on the weekly allowance and the time they received it for.



If any payments were **more than** £100 a week, then multiply the number of weeks by £100 and enter this total in the box at **B12**, e.g. if they received them for 30 weeks, enter £3,000.

If any payments were **less than** £100 a week, then multiply the number of weeks by the amount received and enter this total in the box at **B12**, e.g. if they received £80 for 30 weeks, enter £2,400. They should not include Maternity Allowance.

## **B11 'Other' kinds of income**

During the 2019 to 2020 tax year, the household may have received some 'other' kinds of income.

This could include types of income and or benefits that are not taken into account when assessing household income but you should know about them.

If they received any of these types of income or benefits for all of the 2019 to 2020 tax year, or just part of the year, this should have been included in the application form.

See examples below.

- Benefit paid for a period of incapacity that began before 1995 and for which Invalidity Benefit used to be payable or any child dependency increase with these payments
- Child Benefit
- Child Tax Credit
- Council Tax Benefit
- Disability Living Allowance
- Income your children may have had
- Maintenance payments received from a former partner
- Maternity Allowance
- Personal Independence Payment
- Pension Christmas Bonus
- Student loans or grants (except The Adult Dependant's Grant) to meet the cost of tuition fees, childcare etc
- Tax-free savings income
- War pensions
- Winter Fuel Payment
- Working Tax Credit

*Child Tax Credits from 6 April 2019 to 30 September 2019 then got a job and this is shown in Income Details (Part B) and I've supplied my P60 as evidence.*  
*Maintenance from ex-partner and child benefit for the whole tax year*

Institutions should check that the other kind of income listed does fall in to the 'Other' category and is not a type of income that should have been listed under B8 – Total other income for example income from savings or investments (dividends).

## **Widowed Parent's Allowance**

If a parent is in receipt of the allowance then this would need to be entered at

B11 on the main application form as this question covers any other types of income.

However, because it's taxable income it should be included in the household income assessment, performed to determine eligibility for support.

The applicant could potentially supply a DWP or HMRC letter evidencing the amount of Widowed Parent's Allowance received in 2019 to 2020 tax year.

## **B12 Privacy Notice and Declaration**

This section is where a student's parents or spouse/partners are informed that the DaDA institution may need to talk to anyone named on the application form during the assessment process.

Because the form contains personal and sensitive data e.g. name, address, date of birth and financial details, the DaDA institution **must** not give out information about a students' application or payments to anyone other than those named on the application, without their agreement.

### **Declaration**

The student's parents or spouse/partners are **required to sign and date** the application for fees and if applicable, living costs and by submitting the application form, they are agreeing to:

- all of the conditions in each of the statements set out in the declaration
- the eligibility criteria for DaDA funding as outlined in the application form i.e. confirmed that the student is eligible for DaDA funding on age and residency grounds
- have read and understood the DaDA application form Income Notes
- all of the information given in support of the application is correct and complete to the best of their knowledge and belief.

## **Section C - Benefits Income Details Form**

The Section C Benefits Income Details Form should only be completed if the Student's parent(s) or parent's spouse/partner or the Student's spouse/partner received any of the following social security benefits at any point during the 2019 to 2020 tax year.

- Income Support
- Income-based Jobseeker's Allowance
- Income-related Employment and Support Allowance (ESA)
- Contribution based Employment and Support Allowance (ESA)
- Contribution based Jobseeker's Allowance

- Universal Credit
- Pension Credit
- Carer's Allowance
- Incapacity Benefit
- Bereavement Allowance

The Student should only enter their full name on form.

If more than one adult received any of the above benefits during the 2019 to 2020 tax year, the institution must check to make sure that information for both adults has been filled out.

The institution must make sure that the form has been fully completed and signed by the DWP Benefit office as well as the student's parents/carers.

Where a student lives in the parental home during study and where the parents are in receipt of Income Support, the application should be assessed at the **'students living at home'** rate.

Where a blank form has been submitted i.e. where the DWP officer has confirmed the amount of benefits a person was entitled to by ticking the **Yes, for the whole year** box, the student's application should be assessed as being in the Under £21,000 income band.

## **SCHEDULE 2: PAYMENT**

### **DANCE AND DRAMA AWARDS (DaDA) PAYMENT**

1. The Department will make the payments set out in the Funding Agreement to this Schedule.
2. All payments by the Department for these Services will be made via BACS on or before the 20th of the month.
3. Under Item 5A to Group 6 of Schedule 9 of the VAT Act 1994, the supply of education or vocational training funded by the Department 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. The Department is generally unable to recover any Value Added Tax charged. The maximum Funding payable under this Contract, as set out in the Funding Agreement of this Schedule is inclusive of all of the costs of the Service including, but not limited to, and any other VAT or taxes to be charged, where they apply.

### **Funding Agreement**

4. The following Funding Agreement sets out the funding available for these Services.

## **SCHEDULE 2**

### **Funding Agreement**

**Provider:** HAMMOND SCHOOL LIMITED (THE)

**UKPRN:** 10002869

**Master Contract Number:** ESFA-19810

**Start Date:** 01/08/2020

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

**Contract Ref:** DADA-1005

REDACTED UNDER FOIA SECTION 43(2)

### **SCHEDULE 3: CHANGE CONTROL PROCEDURE**

1. The Parties acknowledge that Minor Changes to the Contract may be necessary to reflect operational and administrative procedures during the Contract Period and that such Minor Changes will be advised to the Contractor.
2. The Contractor will use reasonable endeavours to incorporate Minor Changes implemented by the Department within the current Funding.
3. The Department may implement a Change provided that such Change does not amount to a Material Change that extends the scope of the Service(s).
4. The Department may implement a Change by communicating the change through the Department's publications, Update or Inform, or through updates to Funding Rules and other related documents on GOV.UK. The Contractor will subscribe to alerts from GOV.UK so they are made aware of Changes.
5. For the avoidance of doubt the Department may implement a reduction in Funding as set out in the Funding Rules through a notification and not a Change or deed of variation, such a notification will be deemed to be an amendment under Clause 49 (Amendments to this Contract).

**SCHEDULE 4: NOT USED**

## **SCHEDULE 5: TUPE**

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

#### **Staff Transfer**

#### **1 DEFINITIONS**

In this Schedule, the following definitions will apply:

<b>“Contractor’s Final Contractor Personnel List”</b>	a list provided by the Supplier of all Supplier Personnel who will transfer under the Employment Regulations on the Service Transfer Date;
<b>“Contractor’s Provisional Contractor Personnel List”</b>	a list prepared and updated by the Supplier of all Supplier Personnel who are at the date of the list wholly or mainly engaged in or assigned to the provision of the Services or any relevant part of the Services which it is envisaged as at the date of such list will no longer be provided by the Supplier;
<b>“Employment Regulations”</b>	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced or any other Regulation implementing the Acquired Rights Directive 77/187/EC
<b>“Former Supplier”</b>	a supplier supplying services to the Department before the Relevant Transfer Date that are the same as or substantially similar to the Services (or any part of the Services) and will include any sub-contractor of such supplier (or any sub-contractor of any such subcontractor);
<b>“Notified Sub-Contractor”</b>	a sub-contractor identified in the Annex to this Schedule to whom Transferring Former Supplier Employees will transfer on a Relevant Transfer Date;
<b>“Replacement Sub-Contractor”</b>	a sub-contractor of the Successor Contractor to whom Transferring Contractor Employees will transfer on a Service Transfer Date (or any sub-contractor of any such sub-contractor);



<b>“Relevant Transfer”</b>	a transfer of employment to which the Employment Regulations applies;
<b>“Relevant Transfer Date”</b>	in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place;
<b>“Service Transfer”</b>	any transfer of the Services (or any part of the Services), for whatever reason, from the Supplier or any sub-contractor to a Successor Contractor or a Replacement Sub-Contractor;
<b>“Service Transfer Date”</b>	the date of a Service Transfer or, if more than one, the date of the relevant Service Transfer as the context requires;
<b>“Staffing Information”</b>	<p>in relation to all persons identified on the Contractor’s Provisional Contractor Personnel List or Contractor’s Final Contractor Personnel List, as the case may be, such information as the Department may reasonably request (subject to all applicable provisions of the DPA), but including in an anonymised format:</p> <ul style="list-style-type: none"> <li>(a) their ages, dates of commencement of employment or engagement, gender and place of work;</li> <li>(b) details of whether they are employed, self employed contractors or consultants, agency workers or otherwise;</li> <li>(c) the identity of the employer or relevant contracting Party;</li> <li>(d) their relevant contractual notice periods and any other terms relating to termination of employment, including redundancy procedures, and redundancy payments;</li> <li>(e) their wages, salaries, bonuses and profit sharing arrangements as applicable;</li> <li>(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;</li> <li>(g) any outstanding or potential contractual, statutory or other liabilities in respect of such</li> </ul>

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;

**"Transferring** in relation to a Former Supplier, those **Former Supplier Employees**"                      Employment Regulations will apply on the Relevant Transfer Date; and

**"Transferring** those employees of the Supplier and/or the **Contractor Supplier's** sub-contractors to whom the **Employees**"                      Employment Regulations will apply on the Service Transfer Date.

## **2      INTERPRETATION**

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

**PART A: NOT USED**



**ANNEX TO PART A: NOT USED**

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

### **1 RELEVANT TRANSFERS**

1.1 The Department and the Supplier agree that:

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

1.2 The Department will procure that each Former Supplier will comply with all its obligations under the Employment Regulations and will perform and discharge all its obligations in respect of all the Transferring Former Supplier Employees in respect of the period up to (but not including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part in respect of the period up to (but not including) the Relevant Transfer Date) and the Supplier will make, and the Department will 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 Department will procure that each Former Supplier will indemnify the Supplier and any Notified Sub-Contractor against any Employee Liabilities arising from or as a result of:

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

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

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

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

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

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

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

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

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



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

- 2.6 Subject to the Supplier and/or any Notified Sub-Contractor acting in accordance with the provisions of Paragraphs 2.3 to 2.5 and in accordance with all applicable proper employment procedures set out in Law, the Department will procure that the Former Supplier indemnifies the Supplier and/or any Notified Sub-Contractor (as appropriate) against all Employee Liabilities arising out of the termination of employment pursuant to the provisions of Paragraph 2.5 provided that the Supplier takes, or will 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) will not apply to:
- (i) any claim for:
- (A) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
- (B) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,
- in any case in relation to any alleged act or omission of the Supplier and/or any sub-contractor; or
- (ii) any claim that the termination of employment was unfair because the Supplier and/or Notified Sub-Contractor neglected to follow a fair dismissal procedure; and
- (b) will apply only where the notification referred to in Paragraph 2.3(a) is made by the Supplier and/or any Notified Sub-Contractor (as appropriate) to the Department and, if applicable, the Former Supplier, within 6 months of the Effective Date.

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

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

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

- (a) any act or omission by the Supplier or any sub-contractor in respect of any Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee whether occurring before, on or after the Relevant Transfer Date;
- (b) the breach or non-observance by the Supplier or any sub-contractor on or after the Relevant Transfer Date of:
  - (i) any collective agreement applicable to the Transferring Former Supplier Employee; and/or
  - (ii) any custom or practice in respect of any Transferring Former Supplier Employees which the Supplier or any sub-contractor is contractually bound to honour;
- (c) any claim by any trade union or other body or person representing any Transferring Former Supplier Employees arising from or connected with any failure by the Supplier or a sub-contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;
- (d) any proposal by the Supplier or a sub-contractor prior to the Relevant Transfer Date to make changes to the terms and conditions of employment or working conditions of any Transferring Former Supplier Employees to their material detriment on or after their transfer to the Supplier or a sub-contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Former Supplier Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
- (e) any statement communicated to or action undertaken by the Supplier or a sub-contractor to, or in respect of, any Transferring Former Supplier Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Department and/or the Former Supplier in writing;

- (f) any proceeding, claim or demand by HMRC or other statutory Department 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 Department relates to financial obligations arising on or after the Relevant Transfer Date; and
    - (ii) in relation to any employee who is not a Transferring Former Supplier Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Former Supplier to the Supplier or a sub-contractor, to the extent that the proceeding, claim or demand by the HMRC or other statutory Department relates to financial obligations arising on or after the Relevant Transfer Date;
  - (g) a failure of the Supplier or any sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Supplier Employees in respect of the period from (and including) the Relevant Transfer Date;
  - (h) any claim made by or in respect of a Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee relating to any act or omission of the Supplier or any subcontractor in relation to obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the Former Supplier's failure to comply with its obligations under regulation 13 of the Employment Regulations; and
  - (i) a failure by the Supplier or any sub-contractor to comply with its obligations under Paragraph 2.8 above
- 3.2 The indemnities in Paragraph 3.1 will not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Former Supplier whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Former Supplier's failure to comply with its obligations under the Employment Regulations.

- 3.3 The Supplier will comply, and will procure that each sub-contractor will 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 will perform and discharge, and will procure that each sub-contractor will 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 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 will be made between the Supplier and the Former Supplier.

#### **4 INFORMATION**

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

#### **5 PROCUREMENT OBLIGATIONS**

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

#### **6 PENSIONS**

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

## **ANNEX TO PART B**

### **PENSIONS**

#### **7 INDEMNITY**

The Supplier undertakes to the Department to indemnify and keep indemnified the Department on demand from and against all and any losses whatsoever arising out of or in connection with any liability towards the Transferring Former Supplier 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).

#### **8 EMPLOYER OBLIGATION**

The Supplier will comply with the requirements of the Pensions Act 2008, section 258 of the Pensions Act 2004, and Regulation 10 of the Employment Regulations for all transferring staff.

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

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

1.1 The Department and the Supplier agree that the commencement of the provision of the Services or of any part of the Services will not be a Relevant Transfer in relation to any employees of the Department and/or any Former Supplier.

1.2 If any employee of the Department and/or a Former Supplier claims, or it is determined in relation to any employee of the Department and/or a Former Supplier, that his/her contract of employment has been transferred from the Department and/or the Former Supplier to the Supplier and/or any subcontractor pursuant to the Employment Regulations or the Acquired Rights Directive then:

(a) the Supplier will, and will procure that the relevant sub-contractor will, within 5 Working Days of becoming aware of that fact, give notice in writing to the Department and, where required by the Department, give notice to the Former Supplier; and

(b) the Department and/or the Former Supplier may offer (or may procure that a third party may offer) employment to such person within 15 Working Days of the notification by the Supplier or the subcontractor (as appropriate) or take such other reasonable steps as the Department 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 Department and/or the Former Supplier), the Supplier will, or will procure that the sub-contractor will, immediately release the person from his/her employment or alleged employment.

1.4 If by the end of the 15 Working Day period specified in Paragraph 1.2(b):

(a) no such offer of employment has been made;

(b) such offer has been made but not accepted; or (c) the situation has not otherwise been resolved,

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

## **2 INDEMNITIES**

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

- (a) indemnify the Supplier and/or the relevant sub-contractor against all Employee Liabilities arising out of the termination of the employment of any employees of the Department referred to in Paragraph 1.2 made pursuant to the provisions of Paragraph 1.4 provided that the Supplier takes, or will procure that the Notified Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities; and
- (b) procure that the Former Supplier indemnifies the Supplier and/or any Notified Sub-Contractor against all Employee Liabilities arising out of termination of the employment of the employees of the Former Supplier referred to in Paragraph 1.2 made pursuant to the provisions of Paragraph 1.4 provided that the Supplier takes, or will 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 Department and/or the Former Supplier as appropriate nor dismissed by the Supplier and/or any sub-contractor within the 15 Working Day period referred to in Paragraph 1.4 such person will be treated as having transferred to the Supplier and/or the sub-contractor (as appropriate) and the Supplier will, or will procure that the sub-contractor will, comply with such obligations as may be imposed upon it under Law.

2.3 Where any person remains employed by the Supplier and/or any sub-contractor pursuant to Paragraph 2.2, all Employee Liabilities in relation to such employee will remain with the Supplier and/or the sub-contractor and the Supplier will indemnify the Department and any Former Supplier, and will procure that the sub-contractor will indemnify the Department and any Former Supplier, against any Employee Liabilities that either of them may incur in respect of any such employees of the Supplier and/or employees of the subcontractor.

2.4 The indemnities in Paragraph 2.1:

- (a) will not apply to:
  - (i) any claim for:
    - (A) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil

partnership, pregnancy and maternity or sexual orientation, religion or belief; or

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

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

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

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

### **3 PROCUREMENT OBLIGATIONS**

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



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

### **1 PRE-SERVICE TRANSFER OBLIGATIONS**

1.1 The Supplier agrees that within 20 Working Days of the earliest of:

- (a) receipt of a notification from the Department of a Service Transfer or intended Service Transfer;
- (b) receipt of the giving of notice of early termination or any Partial Termination of this Contract;
- (c) the date which is 12 months before the end of the Contract Period; and
- (d) receipt of a written request of the Department at any time (provided that the Department will only be entitled to make one such request in any 6 month period),

it will provide in a suitably anonymised format so as to comply with the DPA, the Contractor's Provisional Contractor Personnel List, together with the Staffing Information in relation to the Contractor's Provisional Contractor Personnel List and it will provide an updated Contractor's Provisional Contractor Personnel List at such intervals as are reasonably requested by the Department.

1.2 At least 20 Working Days prior to the Service Transfer Date, the Supplier will provide to the Department or at the direction of the Department to any Successor Contractor and/or any Replacement Sub-Contractor:

- (a) the Contractor's Final Contractor Personnel List, which will identify which of the Supplier Personnel are Transferring Contractor Employees; and
- (b) the Staffing Information in relation to the Contractor's Final Contractor Personnel List (insofar as such information has not previously been provided).

1.3 The Department will be permitted to use and disclose information provided by the Supplier under Paragraphs 1.1 and 1.2 for the purpose of informing any prospective Successor Contractor and/or Replacement Sub-Contractor.

1.4 The Supplier warrants, for the benefit of the Department, any Successor Contractor, and any Replacement Sub-Contractor that all information provided pursuant to Paragraphs 1.1 and 1.2 will 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 Paragraphs 1.1(a), 1.1(b) and 1.1(c), the Supplier agrees, that it will not, and agrees to procure that each sub-contractor will not, assign any person to the provision of the Services who is not listed on the Contractor's Provisional Contractor Personnel List and will not without the approval of the Department (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 Contractor's Provisional Contractor 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 Contractor's Provisional Contractor Personnel List save by due disciplinary process,

and will promptly notify, and procure that each sub-contractor will promptly notify, the Department or, at the direction of the Department, any Successor Contractor 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 Contractor's Provisional Contractor Personnel List regardless of when such notice takes effect.

1.6 During the Contract Period, the Contractor will provide, and will procure that each sub-contractor will provide, to the Department any information the Department may reasonably require relating to the manner in which the Services are organised, which will 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 occupational pension scheme (within the meaning provided for in section 1 of the Pension Schemes Act 1993); and
- (d) a description of the nature of the work undertaken by each employee by location.

1.7 The Contractor will provide, and will procure that each sub-contractor will provide, all reasonable cooperation and assistance to the Department, any Successor Contractor and/or any Replacement Sub-Contractor to ensure the smooth transfer of the Transferring Contractor 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 Contractor 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 will provide, and will procure that each sub-contractor will provide, to the Department or, at the direction of the Department, to any Successor Contractor and/or any Replacement Sub-Contractor (as appropriate), in respect of each person on the Contractor's Final Contractor Personnel List who is a Transferring Contractor 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 Department 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 Contract or otherwise) resulting in the Services being undertaken by a Successor Contractor 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 Department 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 Contractor Employees (except in relation to any contract terms dis-applied 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 Successor Contractor and/or a Replacement Sub-Contractor (as the case may be) and each such Transferring Contractor Employee.

2.2 The Contractor will, and will procure that each sub-contractor will, comply with all its obligations in respect of the Transferring Contractor Employees arising under the Employment Regulations in respect of the period up to (and including) the Service Transfer Date and will perform and discharge, and procure that each sub-contractor will perform and discharge, all its obligations in respect of all the Transferring Contractor 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 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 will be made between: (i) the Contractor and/or the subcontractor (as appropriate); and (ii) the Successor Contractor and/or Replacement Sub-Contractor.

2.3 Subject to Paragraph 2.4, the Contractor will indemnify the Department and/or the Successor Contractor 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 Contractor Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Contractor 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 Contractor Employees; and/or
  - (ii) any other custom or practice with a trade union or staff association in respect of any Transferring Contractor 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 Contractor 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 Department 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 Contractor Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory Department 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 Contractor's Final Contractor 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 Department and/or Successor Contractor and/or any Replacement Sub-Contractor, to the extent that the proceeding, claim or demand by HMRC or other statutory Department 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 Contractor 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 Contractor Employee identified in the Contractor's Final Contractor Personnel List for whom it is alleged the Department and/or the Successor Contractor and/or any Replacement Sub-Contractor may be liable by virtue of this Contract and/or the Employment Regulations and/or the Acquired Rights Directive; and

- (g) any claim made by or in respect of a Transferring Contractor Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Contractor 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 Department and/or Successor Contractor to comply with regulation 13(4) of the Employment Regulations.

2.4 The indemnities in Paragraph 2.3 will not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Successor Contractor 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 Contractor Employee before the Service Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Successor Contractor and/or any Replacement Sub-Contractor to occur in the period on or after the Service Transfer Date); or
- (b) arising from the Successor Contractor'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 Contractor's Final Contractor Personnel List claims, or it is determined in relation to any person who is not identified in the Contractor's Final Contractor Personnel List a Transferring Contractor Employee, that his/her contract of employment has been transferred from the Contractor or any sub-contractor to the Successor Contractor and/or Replacement Sub-Contractor pursuant to the Employment Regulations or the Acquired Rights Directive, then:

- (a) the Department will procure that the Successor Contractor will, or any Replacement Sub-Contractor will, 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 Successor Contractor and/or any Replacement SubContractor or take such other reasonable steps as it considers appropriate to deal with the matter provided always that such steps are in compliance with Law.

2.6 If such offer is accepted, or if the situation has otherwise been resolved by the Contractor or a sub-contractor, the Department will procure that the Successor Contractor will, or procure that the Replacement Sub-

Contractor will, 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 Department will advise the Successor Contractor 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 Successor Contractor 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 will indemnify the Successor Contractor 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 Successor Contractor takes, or will 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) will 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 Successor Contractor and/or Replacement Sub-Contractor; or
  - (ii) any claim that the termination of employment was unfair because the Successor Contractor and/or Replacement SubContractor neglected to follow a fair dismissal procedure; and



- (b) will apply only where the notification referred to in Paragraph 2.5(a) is made by the Successor Contractor and/or Replacement SubContractor 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 Successor Contractor and/or Replacement Sub-Contractor within the time scales set out in Paragraphs 2.5 to 2.7, such person will be treated as a Transferring Contractor Employee.
- 2.11 The Contractor will comply, and will procure that each sub-contractor will comply, with all its obligations under the Employment Regulations and will perform and discharge, and will procure that each sub-contractor will perform and discharge, all its obligations in respect of any person identified in the Contractor's Final Contractor 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 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 will be made between:
- (a) the Contractor and/or any sub-contractor; and
  - (b) the Successor Contractor and/or the Replacement Sub-Contractor.
- 2.12 The Contractor will, and will procure that each sub-contractor will, promptly provide to the Department and any Successor Contractor and/or Replacement Sub-Contractor, in writing such information as is necessary to enable the Department, the Successor Contractor and/or Replacement Sub-Contractor to carry out their respective duties under regulation 13 of the Employment Regulations. The Department will procure that the Successor Contractor and/or Replacement Sub-Contractor, will 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 Department will procure that the Successor Contractor 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 Successor Contractor and/or Replacement Sub-Contractor in respect of any Transferring Contractor Employee identified in the Contractor's Final Contractor Personnel List or any

appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Contractor Employee;

- (b) the breach or non-observance by the Successor Contractor and/or Replacement Sub-Contractor on or after the Service Transfer Date of:
  - (i) any collective agreement applicable to the Transferring Contractor Employees identified in the Contractor's Final Contractor Personnel List; and/or
  - (ii) any custom or practice in respect of any Transferring Contractor Employees identified in the Contractor's Final Contractor Personnel List which the Successor Contractor 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 Contractor Employees identified in the Contractor's Final Contractor Personnel List arising from or connected with any failure by the Successor Contractor 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 Successor Contractor and/or Replacement SubContractor to change the terms and conditions of employment or working conditions of any Transferring Contractor Employees identified in the Contractor's Final Contractor Personnel List on or after their transfer to the Successor Contractor 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 Contractor's Final Contractor Personnel List who would have been a Transferring Contractor 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 Successor Contractor or Replacement Sub-Contractor to, or in respect of, any Transferring Contractor Employee identified in the Contractor's Final Contractor 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 Department 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 Contractor Employee identified in the Contractor's Final Contractor Personnel List, to the extent that the proceeding, claim or demand by HMRC or other statutory Department relates to financial obligations arising after the Service Transfer Date; and
- (ii) in relation to any employee who is not a Transferring Contractor Employee identified in the Contractor's Final Contractor 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 subcontractor, to the Successor Contractor or Replacement SubContractor to the extent that the proceeding, claim or demand by HMRC or other statutory Department relates to financial obligations arising after the Service Transfer Date;
- (g) a failure of the Successor Contractor 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 Contractor Employees identified in the Contractor's Final Contractor 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 Contractor Employee identified in the Contractor's Final Contractor Personnel List or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Contractor Employee relating to any act or omission of the Successor Contractor or Replacement SubContractor in relation to obligations under regulation 13 of the Employment Regulations.

2.14 The indemnities in Paragraph 2.13 will 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 subcontractor (as applicable) to comply with its obligations under the Employment Regulations.

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

## **SCHEDULE 6: GDPR**

### **PROCESSING, PERSONAL DATA AND DATA SUBJECTS**

<b>Description</b>	<b>Details</b>
Subject matter of the Processing	<p>The subject matter is the personal data of Learners on education or training programmes administered by the Department that are subject to this Contract as defined in the Department privacy notice and DaDA Funding Rules.</p> <p><a href="https://www.gov.uk/government/publications/esfa-privacynotice">https://www.gov.uk/government/publications/esfa-privacynotice</a></p>
Duration of the Processing	<p>The duration of the Processing covers the academic year data returns to the Department as defined in the DaDA Funding Rules to enable funding and audit of the learning programmes defined in this Contract.</p>
Nature and purposes of the Processing	<p>The nature and purposes of the processing is defined in the Department privacy notice.</p> <p><a href="https://www.gov.uk/government/publications/esfa-privacynotice">https://www.gov.uk/government/publications/esfa-privacynotice</a></p> <p>The Contractor will be required to submit the data to the Department as set out in Clause 23 (Submission of Learner Data) of this Contract.</p>
Type of personal data	<p>The personal data to be processed is defined in the DaDA Funding Rules.</p>
Categories of data subject	<p>The data subjects are Learners on education or training programmes administered by the Department that are subject to this Contract.</p>
Retention and destruction of the data once the processing is complete  UNLESS requirement under union or member state Law to preserve that type of data	<p>Information on how the data must be supplied to the Department is detailed in the DaDA Funding Rules.</p> <p>For the purposes of the Department 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 6 years from the end of the Financial Year in which the last payment is made under this Contract.</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 7: SECURITY & DEPARTMENT POLICIES**

### **Part A: Security**

<p>“BPSS” “Baseline Personnel Security Standard”</p>	<p>a level of security clearance described as preemployment checks in the National Vetting Policy. Further information can be found at: <a href="https://www.gov.uk/government/publications/government-baseline-personnel-security-standard">https://www.gov.uk/government/publications/government-baseline-personnel-security-standard</a></p>
<p>“CCSC” “Certified Cyber Security Consultancy”</p>	<p>is NCSC's approach to assessing the Services provided by consultancies and confirming that they meet NCSC's standards. This approach builds on the strength of CLAS and certifies the competence of suppliers to deliver a wide and complex range of cyber security consultancy Services to both the public and private sectors. See website: <a href="https://www.ncsc.gov.uk/scheme/certifiedcyber-consultancy">https://www.ncsc.gov.uk/scheme/certifiedcyber-consultancy</a></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 and are building a community of recognised professionals in both the UK public and private sectors. See website: <a href="https://www.ncsc.gov.uk/scheme/certifiedprofessional">https://www.ncsc.gov.uk/scheme/certifiedprofessional</a></p>
<p>“CC” “Common Criteria”</p>	<p>the Common Criteria scheme provides assurance that a developer's claims about the security features of their product are valid and have been independently tested against recognised criteria.</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. These CPA certified products can be used by government, the wider public sector and industry. See website: <a href="https://www.ncsc.gov.uk/scheme/commercialproduct-assurance-cpa">https://www.ncsc.gov.uk/scheme/commercialproduct-assurance-cpa</a></p>

<p>“Cyber Essentials”</p> <p>“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.</p> <p>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: <a href="https://www.iasme.co.uk/apply-forself-assessment/">https://www.iasme.co.uk/apply-forself-assessment/</a></p>
<p>“Department Data”</p>	<p>as defined in Clause 1 (Definitions) of the Contract</p>
<p>“Department”</p>	<p>as defined in Clause 1 (Definitions) of the Contract.</p>
<p>“Departmental Security Standards”</p>	<p>means the Department’s security policy or any standards, procedures, process or specification for security that the Contractor is required to deliver.</p>
<p>“Digital Marketplace / GCloud”</p>	<p>the Digital Marketplace is the online framework for identifying and procuring cloud technology and people for digital projects. Cloud services (e.g. web hosting or IT health checks) are on the G-Cloud framework.</p>
<p>“FIPS 140-2”</p>	<p>this is the Federal Information Processing Standard (FIPS) Publication 140-2, (FIPS PUB 140-2), entitled ‘Security Requirements for Cryptographic Modules’. This document is the de facto security standard used for the accreditation of cryptographic modules.</p>
<p>“Good Industry Practice”</p>	<p>as defined in Clause 1 (Definitions) of the Contract.</p>
<p>“Good Industry Standard”</p>	<p>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.</p>

<p>“GSC”</p> <p>“GSCP”</p> <p>“Government Security Classifications Policy”</p>	<p>means the Government Security Classification Policy which establishes the rules for classifying HMG information. The policy is available at: <a href="https://www.gov.uk/government/publications/government-security-classifications">https://www.gov.uk/government/publications/government-security-classifications</a></p>
<p>“HMG”</p>	<p>means Her Majesty’s Government</p>
<p>“ICT”</p>	<p>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</p>
<p>“ISO/IEC 27001” “ISO 27001”</p>	<p>is the International Standard for Information Security Management Systems Requirements</p>
<p>“ISO/IEC 27002” “ISO 27002”</p>	<p>is the International Standard describing the Code of Practice for Information Security Controls.</p>
<p>“ISO 22301”</p>	<p>is the International Standard describing for Business Continuity</p>
<p>“IT Security Health Check (ITSHC)”</p> <p>“IT Health Check (ITHC)”</p> <p>“Penetration Testing”</p>	<p>means an assessment to identify risks and vulnerabilities in systems, applications and networks which may compromise the confidentiality, integrity or availability of information held on that IT system.</p>
<p>“Need-to-Know”</p>	<p>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.</p>
<p>“NCSC”</p>	<p>The National Cyber Security Centre (NCSC) formerly CESG is the UK government’s National Technical Authority for Information Assurance. The NCSC website is <a href="https://www.ncsc.gov.uk">https://www.ncsc.gov.uk</a></p>

<p>“OFFICIAL”</p> <p>“OFFICIAL-SENSITIVE”</p>	<p>the term ‘OFFICIAL’ is used to describe the baseline level of ‘security classification’ described within the Government Security Classification Policy (GSCP) which details the level of protection to be afforded to information by HMG, for all routine public sector business, operations and Services.</p> <p>the ‘OFFICIAL–SENSITIVE’ caveat 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 Government Security Classification Policy.</p>
<p>“Secure Sanitisation”</p>	<p>secure sanitisation is the process of treating data held on storage media to reduce the likelihood of retrieval and reconstruction to an acceptable level. Some forms of sanitisation will allow you to re-use the media, while others are destructive in nature and render the media unusable. Secure sanitisation was previously covered by “Information Assurance Standard No. 5 - Secure Sanitisation” (“IS5”) issued by the former CESG. Guidance can now be found at:</p> <p><a href="https://www.ncsc.gov.uk/guidance/securesanitisation-storage-media">https://www.ncsc.gov.uk/guidance/securesanitisation-storage-media</a></p> <p>the disposal of physical documents and hardcopy materials advice can be found at:</p> <p><a href="https://www.cpni.gov.uk/secure-destruction">https://www.cpni.gov.uk/secure-destruction</a></p>
<p>“Security and Information Risk Advisor”</p> <p>“CCP SIRA”</p> <p>“SIRA”</p>	<p>the Security and Information Risk Advisor (SIRA) is a role defined under the NCSC Certified Professional (CCP) Scheme. See also:</p> <p><a href="https://www.ncsc.gov.uk/articles/about-certifiedprofessional-scheme">https://www.ncsc.gov.uk/articles/about-certifiedprofessional-scheme</a></p>
<p>“SPF”</p> <p>“HMG Security Policy Framework”</p>	<p>this is 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.</p> <p><a href="https://www.gov.uk/government/publications/security-policy-framework">https://www.gov.uk/government/publications/security-policy-framework</a></p>

1.1. Where the Contractor will handle information at OFFICIAL on behalf of the Department, the requirements under Cabinet Office Procurement Policy Note



09/14 – Use of Cyber Essentials Scheme certification, or any subsequent updated document, are mandated; the Contractor will endeavour to meet the requirements of Cyber Essentials for the 2020/21 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.

- 1.2 The Contractor will follow the Cabinet Office guidance on Government Security Classifications 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).
- 1.3 Processing of Department Data must be segregated from all other data on the Contractor's or sub-contractor's own IT equipment to protect the Department Data and enable the data to be identified and securely deleted when required. In the event that it is not possible to segregate any Department Data then the Contractor and any sub-contractor will be required to ensure that it is stored in such a way that it is possible to securely delete the data in line with Clause 1.13.
- 1.4 The Contractor will have in place and maintain physical security, in line with those outlined in ISO/IEC 27002 including, but not limited to, entry control mechanisms (e.g. door access) to premises and sensitive areas
- 1.5 The Contractor will have in place and maintain an access control policy and process for the logical access (e.g. identification and authentication) to ICT systems to ensure only authorised personnel have access to Department Data.
- 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: physical security controls; good industry standard policies and process; anti-virus and firewalls; security updates and up-to-date patching regimes for anti-virus solutions; operating systems, network devices, and application software, user access controls and the creation and retention of audit logs of system use.
- 1.7 Any data in transit using either physical or electronic transfer methods across public space or cyberspace, including mail and couriers systems, or third party provider networks must be protected via encryption which has been certified to FIPS 140-2 standard or a similar method approved by the Department prior to being used for the transfer of any Department Data.
- 1.8 Storage of Department Data on any portable devices or media will be limited to the absolute minimum required to deliver the stated business requirement and will be subject to Clauses 1.9 and 1.10 below.
- 1.9 Any portable removable media (including but not constrained to pen drives, flash drives, memory sticks, CDs, DVDs, or other devices) which handle, store or process Department Data to deliver and support the Service, will be under the control and configuration management of the Contractor or sub-contractors providing the Service, will be both necessary to deliver the Service and will be encrypted using a product which has been certified to FIPS140-2 standard or another encryption standard that is acceptable to the Department.

- 1.10 All portable ICT devices, including but not limited to laptops, tablets, smartphones or other devices, such as smart watches, which handle, store or process Department Data to deliver and support the Service, will be under the control and configuration management of the Contractor or sub-contractors providing the Service, and will be necessary to deliver the Service. These devices will be full-disk encrypted using a product which has been certified to FIPS140-2 standard or another encryption standard that is acceptable to the Department.
- 1.11 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 will be securely destroyed when no longer required, using either a cross-cut shredder or a professional secure disposal organisation.
- 1.12 When necessary to hand carry removable media and/or hardcopy paper documents containing Department Data, the media or documents being carried will 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.
- 1.13 At the end of the contract or in the event of equipment failure or obsolescence, all Department Data, in either hardcopy or electronic format, that is physically held or logically stored on the Contractor's ICT infrastructure must be securely sanitised or destroyed and accounted for in accordance with the current HMG policy using a NCSC approved product or method. Where sanitisation or destruction is not possible for legal, regulatory or technical reasons, such as a Storage Area Network (SAN) or shared backup tapes, then the Contractor or sub-contractor will protect the Department Data until the time, which may be long after the end of the contract, when it can be securely cleansed or destroyed.
- 1.14 Access by Contractor or sub-contractor staff to Department Data will 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). All Contractor or sub-contractor staff must complete this process before access to Department Data is permitted.
- 1.15 All Contractor or sub-contractor employees who handle Department Data must have annual awareness training in protecting information.
- 1.16 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 supplier 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 12 months and produced a written report of the outcome, including required actions.

- 1.17 Any suspected or actual breach of the confidentiality, integrity or availability of Department Data being handled in the course of providing this Service, or any non-compliance with these Departmental Security Standards for Contractors, or other Security Standards pertaining to the solution, will be investigated immediately and escalated to the Department. The Contractor will inform their Contract Manager in writing as soon a breach is identified.
- 1.18 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.
- 1.19 The Contractor or sub-contractors providing the Service will provide the Department with full details of any storage of Department Data outside of the UK or any future intention to host Department Data outside the UK or to perform any form of ICT management, support or development function from outside the UK. The Contractor or sub-contractor will not go ahead with any such proposal without the prior written agreement from the Department.
- 1.20 The Department reserves the right to audit the Contractor or sub-contractors providing the Service within a mutually agreed timeframe but always within seven 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 subcontractors, compliance with the clauses contained in this Section.
- 1.21 The Contractor will contractually enforce all the clauses in this Schedule onto any third-party suppliers, sub-contractors or partners who could potentially access Department Data in the course of providing this Service.
- 1.22 The Contractor and sub-contractors will undergo appropriate security assurance activities as determined by the Department. Contractor and subcontractors will support the provision of appropriate evidence of assurance and the production of the necessary security documentation on request.

## **Part B: Department Policies**

The following code outlines the standards and behaviors expected from suppliers and grant recipients, and reiterate the government's approach to working with suppliers.

<https://www.gov.uk/government/publications/supplier-code-of-conduct>

## **SCHEDULE 8: EXIT ARRANGEMENTS**

### **1 DEFINITIONS**

**"Exit Manager"**

the person appointed by each party pursuant to paragraph 3.3 of this Schedule 8 (Exit Arrangements) for managing the Contractor's obligations under Schedule 8 (Exit Arrangements);

**"Exit Plan"**

the plan produced and updated by the Contractor during the Contract Period in accordance with paragraph 5 of this Schedule 8 (Exit Arrangements);

### **2 OVERVIEW**

2.1 The Contractor is required to ensure it performs its obligations to assist in the orderly transition of the Services from the Contractor to the Department and/or any Successor Contractor in the event of termination (including partial termination) or expiry of this Contract. This will include the transition of the Services to a follow-on contract with the same Contractor if applicable. This schedule sets out the principles of the exit and service transfer arrangements that are intended to achieve such orderly transition. For the avoidance of doubt, the Contractor will be responsible for the overall management of the exit and service transfer arrangements.

### **3 CONTRACT LIFE OBLIGATIONS**

3.1 The Contractor will draw up an Exit Plan in accordance with Paragraph 5.1.

3.2 The Contractor will (unless otherwise agreed by the Department in writing) procure that all Sub-Contracts and other agreements with third parties used exclusively to deliver the Services to the Department, which are necessary to enable the Department and/or any Successor Contractor to perform the Services in accordance with this Contract or to enable re-provision of the Services, will be assignable and/or capable of novation at the request of the Department to the Department (and/or its nominee) and/or any Successor Contractor upon the Contractor ceasing to provide the Services (or part of them) without restriction (including any need to obtain any consent or approval) or payment by the Department. Where the Contractor uses Sub-Contracts and other agreements to deliver the Services and these agreements are part of framework agreements that the Contractor has with its third party suppliers, the Contractor will provide sufficient information and assistance to enable the Successor Contractor or the Department to enter into an agreement with such supplier directly.

3.3 The Contractor will appoint an Exit Manager. The Contractor's Exit Manager will be responsible for ensuring that the Contractor and its personnel,

agents and sub-contractors comply with this schedule. The Contractor will ensure that its Exit Manager has the requisite authority to arrange and procure any resources of the Contractor as are reasonably necessary to enable the Contractor to comply with the requirements set out in this schedule.

#### **4 OBLIGATIONS TO ASSIST ON RE-PROVISION OF SERVICES OR TRANSFER BACK TO THE DEPARTMENT**

4.1 On reasonable notice, the Contractor will on request provide to the Department and/or to its potential Successor Contractor, the following material and information in order to facilitate the preparation by the Department of any invitation to tender and/or to facilitate any potential Successor Contractor undertaking due diligence:

- 4.1.1 details of the Services;
- 4.1.2 an inventory of Department Data (including but not limited to eportfolios and any other Learner Files) in the Contractor's possession or control; and
- 4.1.3 all information relating to Transferring Employees required to be provided by the Contractor under this Contract.

#### **5 EXIT PLAN**

5.1 The Contractor will within six (6) months after the Services Start Date maintain an Exit Plan which sets out the Contractor's proposed methodology for achieving an orderly transition of Services from the Contractor to the Department and/or its Successor Contractor on the expiry or termination of this Contract and which complies with the requirements set out in paragraphs 5.2 and 5.3 below.

5.2 The Exit Plan will:

- 5.2.1 document how the Services will transfer to the Successor Contractor (which will need to be agreed between the Contractor and the Successor Contractor) and/or the Department, including details of the processes to transfer documentation, Department Data (including e-portfolios and other Learner records), systems migration, security and the segregation of the Department's technology components from any technology components operated by the Contractor or its sub-contractors (where applicable);
- 5.2.2 set out procedures to deal with requests made by the Department and/or a Successor Contractor for staffing information pursuant to Clause 29 (Re-Provision of the Services) of the Contract;

5.2.3 address each of the issues set out in this schedule to facilitate the transition of the Services from the Contractor to the Successor Contractor and/or the Department with the aim of ensuring that there is no disruption to or degradation of the Services;

5.2.4 list software agreements and licence agreements required to deliver the Services.

5.3 The Contractor will review and (if appropriate) update the Exit Plan each year to reflect changes in the Services.

## **6 TERMINATION OBLIGATIONS**

6.1 In addition to the obligations as set out in Clauses 40 (Termination) and 41 (Consequences of Termination and Expiry) of the Contract, the Contractor will comply with all of its obligations contained in the Exit Plan.

6.2 Within six (6) months of the Expiry Date (except where the Service will be rolled over to the following Funding Year) or Termination Date:

6.2.1 the Contractor will, subject to the requirement to retain one copy for the purpose of compliance with Clause 57 (Continuing Obligations) and the retention requirements of this Contract, erase from any computers, storage devices and storage media that are to be retained by the Contractor, all Department Data;

6.2.2 the Contractor will return or make available for the Successor Contractor or the Department to use such of the following as is in the Contractor's possession or control:

6.2.2.1 all materials created by the Contractor under this Contract, the IPRs in which are owned by the Department;

6.2.2.2 details of work volumes and staffing requirements over the twelve (12) month period immediately prior;

6.2.3 the Contractor will:

6.2.3.1 with respect to learning or training in progress, document the current status and stabilising for continuity during transition;

6.2.3.2 provide assistance and expertise as necessary to examine all governance and reports in place for the provision of the Services;

6.2.3.3 answer all reasonable questions from the Department and/or its Successor Contractor regarding the Services;

6.2.3.4 agree with the Department and/or the Successor Contractor a plan for the migration of the Department Data to the Department and/or the Successor Contractor. The Contractor will fully co-

operate in the execution of the agreed plan, providing skills and expertise of a reasonably acceptable standard; and

6.2.4 each party will return to the other party all Confidential Information of the other party and will certify that it does not retain the other party's Confidential Information save to the extent (and for the limited period) that such information needs to be retained by the party in question for the purposes of providing or receiving any Services.

6.3 Except where this Contract provides otherwise, all licences, leases and authorisations granted by one party to the other in relation to the Services will be terminated with effect from the Expiry Date or Termination Date.

## **7 KNOWLEDGE TRANSFER**

7.1 Three (3) months prior to the Expiry Date of the Contract (or where the Contract is terminated within the timescale notified by the Department) the Contractor will upon request:

7.1.1 provide for transfer to the Department and/or the Successor Contractor of all knowledge reasonably required for the provision of the Services which may, as appropriate, include information, records and documents including that relating to configuration of software; and

7.1.2 provide the Department and/or Successor Contractor with reasonable access to such members of the Contractor's or its sub-contractors' personnel as have been involved in the, development, provision or management of the Services and who are still employed or engaged by the Contractor or its subcontractors.

7.2 To facilitate the transfer of knowledge from the Contractor to the Department and/or its Successor Contractor, the Contractor will provide, upon request, a detailed written explanation of the procedures and operations used to provide the Services, the change management process and other standards and procedures to the operations personnel of the Department and/or the Successor Contractor.

7.3 The information which the Contractor will provide, at its own cost, to the Department and/or its Successor Contractor pursuant to paragraph 7.1 above will include:

7.3.1 copies of up-to-date procedures and manuals;

7.3.2 agreements with third party suppliers of goods and services which are to be transferred to the Department/Successor Contractor;

- 7.3.3 key support contact details for third party supplier personnel under contracts which are to be assigned or novated to the Department/Successor Contractor pursuant to this schedule;
- 7.3.4 any relevant interface information.

## **8 ASSETS, SUB-CONTRACTS AND SOFTWARE**

- 8.1 Following notice of termination of this Contract, the Contractor will not, without the Department's prior written consent:
  - 8.1.1 enter into or vary any Sub-Contract;
  - 8.1.2 enter into or vary any licence for software in connection with the Services.

## **9 CONTRACTOR PERSONNEL**

- 9.1 The Department and Contractor agree and acknowledge that in the event of the Contractor ceasing to provide the Services or part of them for any reason, Clause 29 (Re-Provision of the Services) of the Contract will apply.

## **10 PAYMENT**

- 10.1 The provisions of Clause 41 (Consequences of Termination and Expiry) of the Contract apply.



**SCHEDULE 9 CONTRACTOR'S RESPONSE/PROPOSALS**

