



**AYLESBURY
COLLEGE**

BUCKINGHAMSHIRE
INTEGRATED
LEARNING CAMPUS

Subcontract Agreement

BETWEEN

Aylesbury College

and

Contract Reference:

-
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1 CONTRACT DETAILS

THIS AGREEMENT is made on the 01/08/2017 and shall commence on 01/08/2017 until 31/08/2017

BETWEEN

Aylesbury College of Further Education,
Oxford Road,
Aylesbury,
Bucks,
HP21 8PD

(‘the College’)

AND

(‘the Subcontractor’)

2 INTRODUCTION AND RECITAL OF INTENT

- (a) The College is a further education corporation concerned with the provision of education and training to students.
- (b) The Subcontractor is in a position to assist the College in providing education and training to students.
- (c) The College wishes to provide education and training to the students by making use of the Services of the Subcontractor.
- (d) The College and the Subcontractor have agreed that their relationship should be governed by a legally binding contract and the agreed terms of the contract are those set out in this Agreement.

3 DEFINITIONS AND TERMS OF REFERENCE

3.1 In this Agreement the following words and expressions shall have the following meanings:

‘Academic Year’ means a year running from 1st August in one calendar year to 31st July in the following calendar year;

'Achievement' means achievement of a Qualification by a student as evidenced by the provision of 'Achievement Evidence';

'Achievement Evidence' means evidence produced by the Subcontractor to the College, comprising of an awarding body certificate and the completed paperwork as identified by the College;

'Agency' means the Skills Funding Agency and/or any other relevant funding body or successor thereto relating to the students contained within this Agreement;

'Agreement' means all parts of this Agreement and includes the schedules and the Appendices incorporated within it;

'Attendance' means the attendance of a student on a programme as evidenced by the provision of the 'Attendance Certificate';

'Attendance Certificate' means a certificate which records, in relation to each enrolled student, that student's attendance on or absence from the relevant programme; or that student's withdrawal from the programme (as the case may be);

'College Charter' means the charter adopted by the College pursuant to the requirements of the Department for Education and Employment's Charter for Further Education or such other charter as the College adopts, a copy of the current charter having been provided to the Subcontractor;

'Commencement Date' means the date at the head of this Agreement;

'Confidentiality' means in relation to either party, information (whether in oral, written or electronic form) belonging or relating to that party, its business affairs or activities which is not in the public domain and which: (i) either party has marked as confidential or proprietary; (ii) either party, orally or in writing has advised the other party is of a confidential nature; or (iii) due to its character or nature, a reasonable person in a like position to the recipient of such information under this Agreement, and under like circumstances, would treat as confidential and, for the avoidance of doubt, "Confidential Information" shall include the terms of this Agreement and commercial arrangements between the parties;

'Control' means the power of a person to secure the affairs of a party are conducted in accordance with the wishes of that person:

- (a) by means of the holding of shares, or the possession of voting power, in relation to that or any other corporation;
- (b) by virtue of any powers conferred by the constitutional or corporate documents, or any other document, regulating that or any other body corporation;

'Enrolled' means, in relation to a student, a person who has been enrolled in accordance with the terms of this Agreement and in respect of whom the College has notified the Subcontractor that such student has been enrolled with the College, and 'Enrol' and 'Enrolling' will be construed accordingly;

'Fees' means payment due under the terms of this Agreement from the College to the Subcontractor in relation to the programmes delivered, which are laid down in schedule 4;

'FOIA' means the Freedom of Information Act 2000 and all regulations made from time to time or any superseding or amending enactment;

'Funded student' means a student whose education and or training is intended to be funded in part or in full by the Agency supporting the students contained within this Agreement;

'Funding' means the funding provided to the College by the Agency in accordance with the Guidelines in relation to the programme and the provisions of this Agreement;

'Funding Rules' means the procedures, rules and requirements from time to time laid down by the Agency for use by the College in applying for the Funding, currently Funding Rules 2015 2016 published March 2015;

'Intellectual Property' means any intellectual property belonging to the College including, by way of illustration only, copyright in forms, course materials, marketing materials and unregistered trade and service marks made available by the College to the Subcontractor in connection with the provision or promotion of the programme;

'ILR' means the Individualised student Record document that is required to be completed for for each student;

'Know-How' means the non-patented practical information and expertise provided by the College to the Subcontractor and including, if relevant, the contents of the Quality Manual;

'student' means a person who is enrolled or to be enrolled by the College and who receives the education and training comprised in a programme(s) as detailed in this Agreement;

'Learning Agreement' means the learning Agreement between the College and a student as specified in the Agency Rules;

'Liability' means all and any liability, costs, losses, expenses or damages suffered or incurred by the College and all and any claims made against the College;

'Maximum Contract Value' (MCV) means the maximum price payable to the College from the agency under the terms of this Agreement as set out in Schedule 1;

'Month' means a calendar month;

'Non-Profit-Making Body' means any organisation which is prohibited from making any payment or distribution to its members in money or in kind, other than any payment to reflect bona fide expenses;

'Overpaid Fees' any fees paid by the College in relation to any student who is subsequently determined by the College not to be eligible for funding of any sums of money that represent overpayment to the Subcontractor in any way;

'Payments' means the payments due under the terms of this Agreement from the College to the Subcontractor in relation to the programme(s) as detailed in this Agreement;

‘Payment Dates’ and ‘Payment Period’ refers to the frequency of payment and the dates of payment agreed with the Subcontractor;

‘Premises’ means the premises or such other premises as are agreed between the parties;

‘Price’ means the sums payable by the College to the Subcontractor in relation to the programme which sums are calculated in accordance with Schedule 4 to this Agreement;

‘programme’ means an individual learning programme provided by the Subcontractor which programme is aimed at the student achieving a qualification as identified in Schedule 4 to this Agreement;

‘Qualification’ means a qualification awarded by an external examination body to students who have completed a programme that have met an external examination body’s criteria for awarding the relevant qualification;

‘Quality Manual’ shall mean the College’s statement of quality standards and procedures to be adopted by the Subcontractor to ensure the quality of education delivered to students enrolled by the College;

‘Quality Standards’ shall mean the College’s statement of the quality expected in education delivered by the College as set out in the relevant College manuals and procedural guidelines. In the absence of any such statement Quality Standards shall mean the standard expected of a skilled and competent provider of the kind of education which makes up the programme(s);

‘ROTO’ Register of Training Organisations

‘Services’ means the provision of the programme(s) to the students by the Subcontractor in accordance with this Agreement;

‘Trade Marks’ means the registered trademarks belonging to the College or otherwise made available for use by the Subcontractor pursuant to this Agreement as notified by the College to the Subcontractor;

‘Tutors’ means the staff under the direct control of the Subcontractor as employees, engaged partly or wholly in the delivery of the programme to students;

‘Year’ means each successive 12-month period commencing on the Commencement Date, or any subsequent anniversary of it.

- 3.2.1 In this Agreement, unless the context otherwise requires references to the singular include the plural and vice versa; any reference to a person includes a body corporate and words importing one gender include both genders.
- 3.2.2 The headings in this Agreement are for ease of reference only but do not form part of the Agreement and will not be taken into account when construing it.
- 3.2.3 References to legislation include any statute, by-law, regulation, rule, subordinate or delegated legislation or order; and references to any legislation is to such legislation as amended from time to time and to any legislation replacing it or made under it and in force throughout the period of this Agreement.

3.2.4 References to “person” or “persons” shall include Subcontracting, bodies corporate and unincorporated associations of persons and vice versa (including, for the avoidance of doubt, persons, individuals, companies, firms, governments, states, regional, or local authorities, agencies of a state, joint ventures, trusts, charities, societies, funds, associations (whether or not having separate legal personality and whether incorporated or not).

3.2.5 References to Clauses and Schedules are, unless otherwise stated, to Clauses of and Schedules to this Agreement. The Schedules form part of this Agreement and shall have the same force and effect as if expressly set out in the body of this Agreement.

4 TERMS OF THE AGREEMENT

4.1 This Agreement will commence on the Commencement Date and will continue until the date at the head of this document; or on the 31/07/2016 unless terminated sooner in accordance with the terms and conditions set out in this Agreement, whichever is soonest.

4.2 Any and all variations to this Agreement must be recorded in writing and signed by authorised signatories on behalf of both parties before implementation.

5 PURPOSE OF CONTRACT

5.1 The Subcontractor shall provide a service to the College through the provision of the programme(s) to students on behalf of the College in accordance with the terms and conditions of this Agreement, any relevant Funding Rules and all applicable law;

5.2 The programme(s) will be as set out in Schedule 4.

5.3 The College will pay the Subcontractor the fees in respect of the Services due in accordance with the terms and conditions of this Agreement in relation to each student that the College has accepted with an agreed programme of learning.

6 PRINCIPAL OBLIGATIONS - SUBCONTRACTOR

6.1 The Subcontractor shall:

6.1.1 co-operate fully with the College to enable the College to comply with its obligations to, or requirements of, the relevant agency and their Funding Rules;

6.1.2 procure and ensure that all relevant forms, Agreements, applications and documents are completed and signed by the relevant authorised officer of the Subcontractor as required by the College and are supplied to the College within the time scales as specified by the College as detailed in schedule 8;

6.1.3 in respect of each student with additional support requirements, complete and submit to the College the additional support assessment forms, or any other forms, as set out in the Funding Rules, or as specified by the College, in the application for further funding for students;

6.1.4 notify the College immediately in writing if the Subcontractor becomes aware, or suspects, any impropriety or fraudulent activity with respect to Funding, students, compliance with the Funding Rules or otherwise, including (without limitation to the foregoing) notifying the College

at any time after a student has been enrolled, if the Subcontractor becomes aware, or suspects, that any student is considered, in accordance with the Funding Rules, to be funded publicly by any other source other than the Agency or to be funded by the Agency more than once in respect of the same programme;

- 6.1.5 notify the College immediately in writing if at any time after a student has been enrolled it becomes aware or suspects that such student is considered, in accordance with the Funding Rules, to be ineligible for funding; the College reserve the right to suspend all payments until a review of the complaint has been completed. Any costs incurred in this process will be subject to reclaim by the College;
- 6.1.6 notify the college immediately in writing if Ofsted have graded the leadership and management of the organisation as requiring improvement or inadequate;
- 6.1.7 have adequate financial resources available to it by way of working capital and otherwise to ensure that it is able to fulfil all the obligations on its part contained in this Agreement;
- 6.1.8 shall provide evidence of registration on the UK Register of Learning Providers (UKRLP) and that the name as detailed on this Agreement is identical to that as it appears on the UKRLP;
- 6.1.9 shall provide the College with details of all other subcontracting arrangements it currently holds, or has held in the last three years;
- 6.1.10 shall comply with the Funding Rules, which are current throughout the term of this Agreement;
- 6.1.11 Inform the College in writing on commencement of this Agreement and thereafter immediately of any current or historic financial irregularities to include but not restricted to any substantiated non delivery of training when funds have been paid.
- 6.1.12 notify the College in writing of other subcontracting arrangements or intent to subcontract
- 6.1.13 inform the College of any change or interests within 14 days of such change
- 6.2 The Subcontractor shall not:**
 - 6.2.1 do anything which would or will cause the College to be in breach of its obligations under its funding Agreement with the Agency (as those obligations are set out from time to time in the Funding Rules; or
 - 6.2.2 apply any part of the fees or funding for company, or organisation-specific, training;
 - 6.2.3 transfer any funding to employers, without first obtaining explicit written permission from the College;
 - 6.2.4 transfer any funding to students, without first obtaining explicit written permission from the College;
 - 6.2.5 do anything which would or will be a factor in causing any of the general conditions of funding as set out in the Funding Rules not to be met by the College;

- 6.2.6 use any payments made under this Agreement to make bids or claims from any source of European Funding either on their own or on behalf of the funding Agency, nor must any payments made part of this Agreement be used as match funding for any other Co-Financing Projects including ESF.

7 PRINCIPAL OBLIGATIONS - COLLEGE

- 7.1 The College shall:
- 7.1.1 ensure that the qualifications on offer are eligible for agency funding;
 - 7.1.2 be responsible for enrolling students via the ILR system in accordance with the current agency Enrolment Guidelines;
 - 7.1.3 notify the Subcontractor as to who is to be a student and to receive a programme(s);
 - 7.1.4 carry out initial guidance and assessment of students and potential students, but the College shall have the right to direct that such initial guidance and assessment to be carried out by the Subcontractor if the College so wishes;
 - 7.1.5 have the right to specify the form which such initial guidance and assessment shall take, including the form of the Learning Agreement which shall be entered into at the same time. (The terms of the Learning Agreement shall form part of the specification for all programmes(s));
 - 7.1.6 provide the Subcontractor with all relevant documentation to support the student's programme of learning and ensure that it is compliant with the Funding Rules;
 - 7.1.7 pass any relevant or updated information to subcontractors;
 - 7.1.8 carry out contract monitoring visits as determined in Schedule 5;
 - 7.1.9 carry out quality monitoring visits measuring performance against Ofsted's Common Inspection Framework as determined in Schedule 5;
 - 7.1.10 manage the student information suite as dictated by the Agency; and
 - 7.1.11 prepare regular student status reports for each student and advise the Subcontractor of such status;
 - 7.1.12 ensure all related documentation is compliant with the Funding Rules

8 CONTROL OF THE PROGRAMME

8.1 The parties acknowledge that the College shall at times be in control of all aspects of all programmes. The Subcontractor shall comply with all reasonable requests made by the College in respect of any aspect of any programmes.

9 RECRUITMENT, MARKETING AND BRANDING

- 9.1 The Subcontractor will be responsible for recruiting students up to the Maximum Contract Value as specified in Schedule 1 and will be monitored against this target. The College reserve the right to re-profile, with one months' notice the Maximum Contract Value if monthly recruitment or achievement profiles are not met;
- 9.2 All marketing material used by the Subcontractor must conform to the guidelines laid down by the Agency and College guidelines. This includes but is not limited to prospectuses, direct mail advertising, Web, TV and radio advertising, merchandising or any other literature or products.

10 ENROLMENT

- 10.1 The Subcontractor shall:
- 10.1.1 not knowingly propose for enrolment students who have been previously excluded by the College under the College's disciplinary procedure for students;
 - 10.1.2 not propose enrolment for any student who is already enrolled on the same programme with another provider;
 - 10.1.3 Carry out initial guidance and assessment of students and potential students in line with the College's procedures but the College shall have the right to direct that such initial guidance and assessment shall be carried out by such of the Subcontractor staff as the College may direct. Outcomes of which will be recorded on the specified ILR form provided by the College;
 - 10.1.4 ensure that all paperwork relating to the learning programme is compliant with both that of the College and agency requirements;
 - 10.1.5 comply with the Colleges enrolment guidelines;
 - 10.1.6 ensure that the student is registered with the appropriate awarding body in line with the relevant awarding body criteria
 - 10.1.7 acknowledge that it is not the College's agent for the purpose of enrolment and the decision as to whether a person shall be enrolled as a student is at the sole absolute discretion of the College;
 - 10.1.8 within two weeks of enrolling a student onto a programme the Subcontractor will send the completed ILR and other supporting evidence as detailed in Schedule 8 to the College.

11 PROVISION OF SERVICE

- 11.1 The Subcontractor shall:
- 11.1.1 provide the programmes as detailed in schedule 4;
 - 11.1.2 provide the Services using only tutors who are employees of the Subcontractor or who are self-employed contractors and the College shall be entitled to specify (where it reasonably believes it is necessary to do so) what qualifications tutors delivering a programme should hold;
 - 11.1.3 ensure that any Apprenticeship provision meets all of the standards required of apprenticeship delivery, including the requirements of the individual frameworks, the Statement of Apprenticeship Quality and in line with the funding rules as detailed by the agency ;
 - 11.1.4 supply to the College all information which the College reasonably requests in order for the College to decide to give such approval;
 - 11.1.5 provide the College with evidence of the employment relationship between the Subcontractor and the Tutor;
 - 11.1.6 supply the College with evidence to confirm that each Tutor has the appropriate vocational qualification and has, or is working towards a CAVA and has a registration letter from the awarding body.
 - 11.1.7 co-operate fully with the College to enable the College to communicate freely with the students and to allow the students to take advantage of the facilities (including but not limited to the programmes) offered by the College;
 - 11.1.8 give to each student on enrolment, a copy of the College's Charter and any other documentation as requested by the College;
 - 11.1.9 procure that all persons engaged in the delivery of a programme(s) carry out the directions of the College whilst so engaged;
 - 11.1.10 co-operate with and allow full access to the College or the Agency to investigate any complaint made against any person so engaged in any aspect of the delivery of this contract and to fully co-operate in any such investigation and its outcome. Following appropriate investigation, the College shall be entitled to require that the Subcontractor reprimand, or suspend or remove from providing any or all programmes, any member of the Subcontractors staff and/or other persons involved with the programmes contained within this Agreement;
 - 11.1.11 ensure that appropriate arrangements are in place for the development and training of staff involved in the delivery of the programme(s) and make such information available, to include their qualifications and arrangements for development as the College shall reasonably require;
 - 11.1.12 ensure that all staff who are engaged in any part of the delivery of this Agreement have all received an enhanced Criminal Records Bureau screening and that evidence of such is supplied to the College;
 - 11.1.13 ensure that all students and employers supported through this subcontracting arrangement are fully aware of both the Colleges and the Subcontractors roles and responsibilities.

11.1.14 notify the College immediately if any student withdraws from a programme(s) as detailed in Schedule 8;

11.1.15 ensure that all students are monitored and progress is reviewed no less than 8 weekly and the supporting documentation is forwarded to the College within two weeks of completion;

11.1.16 ensure compliance with any request made by the College to ensure that the programme(s) remains an approved programme(s);

11.1.17 ensure that there is a Learning Contract in place between the employer, student and subcontractor.

12 ASSESSMENT

12.1 The subcontractor shall ensure that all aspects of the assessment of the students shall be carried out in accordance with the directions given by the College and in line with awarding body criteria. The College shall have the right to carry out any such assessments, or any part of such assessments, itself, or to delegate such assessments or any part thereof to the subcontractor's staff.

13 COMPLETION AND ACHIEVEMENT

The subcontractor shall:

131 ensure the appropriate certification is applied for in relation to the programme(s)

The subcontractor shall send to the College evidence of completion.

13.3 Within two weeks of receipt of evidence of publication of the results of a completed programme the subcontractor shall send to the College achievement evidence in relation to each student who has obtained a Qualification.

14 QUALITY MONITORING

14.1 The subcontractor shall deliver the programme(s) in accordance with the College's quality assurance arrangements and comply at all times with the Quality Standards, the College's quality assurance processes, (as set out in the College's Policies. If at any time the subcontractor has not, in the College's reasonable opinion, met the College's or the Agencies quality assurance guidelines, the College will notify the subcontractor of the fact and give reasons for its opinion and the subcontractor will then have an opportunity to remedy the problem within a reasonable time after receiving notice from the College provided that if it has not remedied the problem to the College's reasonable satisfaction, the College will be entitled to terminate this Agreement immediately upon written notice to the subcontractor.

14.2 The College reserves the right to intervene if any student; programme or other activity as part of this Agreement gives the College any reasonable cause for concern.

14.3 Each party will have a nominated person who will liaise monthly to monitor the overall performance of this Agreement.

- 14.4 The College will undertake to carry out regular monitoring visits as detailed in Schedule 5 and the Agency and the College or their nominees may at any time (and where feasible, upon reasonable notice) and for the purposes of ensuring that the subcontractor is complying and has complied with all of its obligations under this Agreement and the Funding Rules and to carry out examinations into the economy, efficiency and effectiveness of how the subcontractor has provided the programmes will;
- (a) inspect any Premises of the Subcontractor and/or any premises used by the Subcontractor for the purposes of delivery of the programmes(s);
 - (b) examine, audit, remove or take copies of any original or copies of documents accounts, books data and records belonging to the Subcontractor or relating to provision of the programmes; and/or
 - (c) make enquiries of the Subcontractor or third parties.
- 14.5 The Subcontractor shall:
- 14.5.1 provide the College with regular reports on performance as detailed in Schedule 8;
 - 14.5.2 notify the College immediately in writing if any programme(s) or students are giving cause for concern;
 - 14.5.3 positively and actively contribute to the Colleges Self-Assessment reporting process and complete documentation and attend up to two meetings per year to support this activity;
 - 14.5.4 provide to the College copies of CV's of all staff engaged in the programme(s);
 - 14.5.5 provide to the College copies of all certificates for all staff engaged in the delivery of the programme(s);
 - 14.5.6 provide evidence of awarding body accreditation for all or part of the programmes contained in this Agreement;]
 - 14.5.7 send to the College within 10 working days of receipt copies of any Awarding Body audits and reports, and will notify the College immediately of any sanctions imposed by any awarding organisation;
 - 14.5.8 carry out observations on staff involved in the delivery of the programmes TO INCLUDE Initial assessment and guidance and document the findings, which are to be made available to the College on request;
 - 14.5.9 inform the College immediately if Ofsted grade the Subcontractor as requires improvement or inadequate;
 - 14.5.10 ensure the quality of delivery satisfies the standards of the relevant Apprenticeship Framework and the rules as laid down in the latest funding rules as determined by the Skills Funding Agency. All information can be found on the Agency's website.
 - 14.5.11 operate appropriate processes and controls, including audit checks, to demonstrate and evidence compliance with the terms of this Agreement and the requirements on risk

assessment and internal audit in the Funding Rules and such other guidance issued by the Agency and/or the College from time to time;

14.5.12 upon request provide the College with copies of its financial accounts insofar as they relate to or include the programme(s) and the on-going financial viability of the Subcontractor;

14.5.13 cooperate with the Agency's audits of the Subcontractor's use of such fees (as well as the manner in which the subcontractor processes personal data), in accordance with the requirements set out in the Funding Rules.

14.5.14 The subcontractor shall inform the College immediately it becomes aware of any irregularities in its financial or delivery activities

15 IMPROVEMENTS

15.1 The Subcontractor shall inform the College of any suggestions for improvements or enhancements to the programmes (or the way in which the Services are provided), the curriculum and the programme material. The College shall consider such suggestions and it may, if it so wishes utilise the suggestions for its own benefit, the benefit of its students of the benefit of other providers to the College.

15.2 The College shall use its reasonable endeavours to improve and develop the programme curriculum and the programme materials unless such curriculum or such programme materials were not originally developed by or in conjunction with the College. The Subcontractor shall implement any changes to the programmes, the way they are provided, the programme curriculum or the programme materials which may be necessary or desirable as a result of any improvement, enhancement or developments, as soon as possible after receiving written notice from the College specifying the changes to be made.

16 LEVEL OF RESOURCE

16.1 The Subcontractor warrants that it shall provide resource per student of not less than the greater of:

- (a) the resource per student which it has in the past; or
- (b) the resource per student which it would have devoted to such provision had it not entered in to this Agreement.

16.2 Level of additional resource (secondary arrangement): The subcontractor warrants that for secondary arrangements (as defined in the Funding Rules), it shall provide in addition to any other resource, a resource of not less than the greater of the following:

- (a) the resource per member of staff is not less than that which has in the past been devoted to such provision; or
- (b) the resource per member of staff which it would have devoted to such provision had it not entered in to this Agreement.

17 ADMINISTRATION OF RECORDS AND DOCUMENTATION

17.1 Throughout the term of this Agreement the Subcontractor will keep the following records and information and shall retain evidence of all such records and documentation including invoices, management information returns and all other relevant documentation to verify provision of Services and support all claims made to and by the College.

- (a) a record of students enrolled on College funded provision and a register of attendance of students who attend a programme, which register shall be compiled contemporaneously with every session of learning given as part of a programme;
- (b) a register of attendance for any off the job training or education;
- (c) a record of any cancelled scheduled sessions with a contemporaneous explanatory note setting out full reasons for cancellation;
- (d) a copy of the Individual Learning Plan for each student showing a record of the number of hours spent in training, supporting and assessing each student;
- (e) a record of units completed by each student, together with completion date;
- (f) a written note of each complaint made by a student in relation to any aspect of the programme (and including, without limitation, complaints made against Tutors or in respect of the quality of the programme or any part of it; the premises at which any part of the provision is or has been provided or health and safety matters) along with the original letter or other document recording or notifying that complaint. The note of complaint and other documents should be sent to the College within 10 working days, with the exception of any matters relating to Health and Safety which need to be reported to the College within 24 hours of the incident;
- (g) a record of student and employer reviews, in accordance with the College Policy;
- (h) a record of any other Subcontracting Agreements entered into by the Subcontractor (including the names and addresses of any other Subcontractors; those current and all others entered into within three years prior to the commencement of this Agreement); this record is to be updated in writing by the Subcontractor to the College on each occasion that changes are made to any Subcontracting arrangements, including the termination of any Agreement; or the onset of any new or extended Agreement; or any person who is an associate (as defined in section 435 of the Insolvency Act 2000) of the Subcontractor;
- (i) a copy of the latest audited accounts within 10 working days of receipt of such;
- (j) any other records and information specified elsewhere in this Agreement;
- (k) any other records and information as the College may, from time to time, reasonably require the Subcontractor to keep, such requirements to be notified in writing to the Subcontractor.

- 17.2 The Subcontractor shall retain all of the records and information listed in clause 17.1 for a minimum of six years from the end of the Academic Year in which the last payment is made under this Agreement.
- 17.3 The Subcontractor shall ensure that all records referred to respectively in Clause 17.1 above will be made available at all times for inspection by an authorised representative or representatives of the College and/or the Agency. These may be requested with no prior notice
- 17.4 Where any records or information are required to be sent to the College in accordance with Clause 17.1 above or any other clause of the Agreement, such records or information must (unless otherwise stated in this Agreement or by written notice from the College to the Subcontractor) be sent to the address and for the attention of the person specified in Schedule 3.
- 17.5 The Subcontractor warrants that all information provided or made available to the College and/or the Agency pursuant to this Clause 17.1 or any other clause of the Agreement will be true and accurate in all material respects.
- 17.6 The Subcontractor further warrants that all information regarding the Subcontractor's past experience and other matters which were disclosed to the College in order to enable the College to assess whether to enter into this Agreement (all of which information the Subcontractor acknowledges was relied on by the College) was true and accurate in all material respects and that nothing which would reasonably be likely to alter the College's decision to enter into this Agreement was withheld or misrepresented.
- 17.7 Where information is provided by the Subcontractor about its Subcontracting arrangements with other colleges, as required by Clause 17.1 above, the College shall confirm with the other colleges whether it has the largest Agreement with the Subcontractor, where the "largest" is defined as being the total value of the Agreement delivered with the Subcontractor. The college with the largest Agreement shall have additional responsibilities as set out in the Guidelines from the Funding Agency.

18 CONTRACT MONITORING AND COMPLIANCE

- 18.1 The Subcontractor will provide monthly progress reports on starts and achievements and will attend regular contract meetings at the request of the College to review performance (enrolments and achievement) against targets;
- 18.2 The Subcontractor will at all times allow any authorised representative of the College and the Agency:
- (a) To attend during the provision of any part of a programme(s), or during any activity relating to the provision of a programme(s); and
 - (b) Access to premises and every part of such premises where tuition is or has been provided by the subcontractor; and
 - (c) Access to facilities used in or for the provision or in connection with any part of a programme(s); and

- (d) Access to the students and staff who are part of the programme(s); and
- (e) Access to all books and records relating to the programme(s);

18.3 For the purpose of ensuring compliance with this Agreement; enabling the College to give directions to the Subcontractor under Clause 18.2 above; monitoring the standard of any part of the programme(s) and the way in which it is provided; and/or conducting an audit of the Subcontractor's management and/or financial procedures and controls.

18.4 The Subcontractor agrees to provide the programme(s) in accordance with the Quality Standards and so as to comply with any other standards and/or requirements of the College which may be notified in writing to the Subcontractor from time to time including, without limitation, those requirements set out in the College's Charter which shall apply, mutatis mutandis, to the Subcontractor as it does to the College.

19 TERMS OF PAYMENT

19.1 The College shall:

19.1.1 provided that there has been strict adherence to all clauses contained within this Agreement pay the fees to the Subcontractor within 30 days of receipt of an invoice;

19.1.2 pay the price in accordance with Schedule 4;

19.1.3 make payment in accordance with the terms set out in Schedule 4;

19.1.4 reserve the right to make deductions for non-compliance as set out in Schedule 9 in the following circumstances;

- (a) where the subcontractor has not provided the documentation detailed within this Agreement within the timescales as per Schedule 8;
- (b) where the College deems it necessary to instigate an investigation into the subcontractor and any associated activities;
- (c) where the College are required to provide extra support to the subcontractor to ensure compliance with the agency requirements;
- (d) where the Subcontractor is underperforming on contract obligations; recruitment, completions, achievements and on-going review and assessment as detailed in Schedule 9.

20 CIRCUMSTANCES WHEREBY THE COLLEGE WILL NOT PAY FEES TO THE SUBCONTRACTOR

20.1 Where all or any of the following applies:

20.1.1 the student has not been enrolled in accordance with the terms of this Agreement;

- 20.1.2 the subcontractor has failed to evidence to the College attendance and/or progress of the student, as a minimum the College require evidence of learning and progression of the student as a minimum every 8;
- 20.1.3 the documentation that is submitted to the College has omissions, inaccuracies or inconsistencies that cannot be clarified satisfactorily;
- 20.1.4 the Subcontractor has failed to supply the relevant achievement evidence within a reasonable amount of time;
- 20.1.5 the Subcontractor has exceeded the maximum contract value as detailed in Schedule 1;
- 20.1.6 the Funding Agency, if for any reason whatsoever refuses or fails to provide funding or reduces funding rates for any student;
- 20.1.7 in the case of any contravention of any clause within this Agreement;

21 OVERPAID FEES

- 21.1 The College shall have no liability to pay any part of the price to the Subcontractor, and shall be entitled to recover any funds previously paid to the Subcontractor, in the following circumstances:
 - 21.1.1 if in respect of any funded student the Agency shall for any reason whatsoever (being a reason outside the control of the College) refuse or fail to pay the fees of any funded student, the College shall be under no obligation to pay any part of the price relating to that student to the Subcontractor and any part of the price relating to the said funded student shall be fully refunded to the College by the Subcontractor in accordance with the terms of this Agreement;
 - 21.1.2 subsequent to any recovery by the Agency after audit if any claw back is due to any act or omission by the Subcontractor;
 - 21.1.3 if the Subcontractor is found to have not used the funds in the way in which they were intended;
 - 21.1.4 if the Subcontractor has falsely claimed funds;
 - 21.1.5 if the Subcontractor has claimed funding for a student who is later found to be ineligible for the programme;
 - 21.1.6 if the Subcontractor has received funding from any other source in respect of the programme(s).
 - 21.1.7 an inadequate Ofsted Grade
 - 21.1.8 sanctions that have been imposed on a subcontractor by an awarding organisation

- 21.2 Any overpaid fees will be recouped by the College by one of two methods (the choice of which method will be at the discretion of the College):
- (a) The College will invoice the Subcontractor for the overpaid amount and the Subcontractor shall pay the full amount without deduction or set off within 30 days of the date of the invoice or;
 - (b) The overpaid fees will be deducted from the fees payable by the College to the Subcontractor in the forthcoming payment month(s).
- 21.3 Notwithstanding anything else in this Agreement, the College shall only be obliged to pay the Subcontractor in respect of funding claimed, if the College receives and retains funding for those students from the Agency. This provision shall apply, even though the only reason why the College does not receive funding from the Agency is that the College has exceeded any maximum imposed by the Agency on the aggregate amount of funding which the College can claim. If such maximum is exceeded, the College may in its absolute discretion decide whether funding which it cannot claim from the Agency is funding generated by work done by the Subcontractor under this Agreement and such decision shall be binding on the Subcontractor.
- 21.4 If the Agency makes any changes to the funding rates throughout the term of this Agreement the College reserve the right to decide how these are applied, whether the Subcontractor is to benefit from them; and at what point within the terms of this Agreement they come into force. Any adjustments will be reflected in a contract amendment to be agreed and signed by both parties and in the case of any overpayments made to the Subcontractor that exceed more than 50% of the total value of the contract the College will invoice the Subcontractor and the Subcontractor will make payment of such invoice in full within 30 days of the date of the invoice.

22 TAXATION AND OTHER PAYMENTS

- 22.1 All payments to be made by the College to the Subcontractor under the terms of this Agreement are inclusive of any value added tax (or like tax of a similar nature).
- 22.2 The Subcontractor is responsible for making all relevant tax payments in relation to the students and will indemnify the College in respect of any Liability incurred or suffered by the College in relation to such payments.
- 22.3 The Subcontractor acknowledges that, for the avoidance of doubt, all Tutors are the responsibility of the Subcontractor and are employed by it and that it is responsible, inter alia, for the payment of all wages and the making of national contribution payments in respect of each Tutor. The Subcontractor shall indemnify the College against all Liability incurred or suffered by the College arising out of or in relation to any Tutor and/or any other member of the Subcontractor's staff, including but not limited to claims that the employment of the said Tutors has transferred to the College by virtue of the Transfer of Undertakings (Protection of Employment) Regulations 2006 or any similar provisions.

23 EUROPEAN FUNDING AND OTHER SOURCES OF FUNDING

- 23.1 Where notified in writing by the Agency that the funding under this Agreement is required to be used as match funding:

- (a) the Subcontractor must not use the funding paid under this Agreement to support bids or claims that will be used to secure funding from any European source, either on its own behalf or on behalf of the Agency, including but not limited to as match funding, without obtaining consent in writing from the Agency
- (b) where the College or the Subcontractor has access to other funding streams, the College or the Subcontractor will be required to demonstrate through accounting, management information systems and any other relevant evidence (in the sole discretion of the Agency or any other body undertaking the audit or monitoring), to the Agency and anybody acting on its behalf that no double funding has occurred in respect of the provision delivered under this Agreement;
- (c) where the Agency identifies double funding in respect of the provision, or any part thereof, the College will be liable to repay to the Agency any sums paid, or part thereof, by the Agency in respect of the provision for which the College has received funding from another source and the Agency reserves the right to deduct such sums from any monies owed to the College under its funding Agreement with the Agency. The College shall have the right to deduct such amounts from any sums due to the Subcontractor under this Agreement;
- (d) the Agency reserves the right to use payments made under the College's funding Agreement with the Agency as match funding for European Social Fund Co-Financing Projects. Where requested to do so in writing by the Agency, the College shall provide such information and in the form as the Agency specifies to enable the Agency to comply with the requirements of the European Social Fund and the Subcontractor shall promptly provide such information as may reasonably be requested by the College;
- (e) the College shall if requested to do so by the Agency inform students or others that the provision delivered has been financed in whole or part by the European Social Fund;
- (f) general eligibility for European Social Fund participants is set out in the ESF Operational programme for England and supporting Guidance, from the European Social Fund Division of the Department for Works and Pensions which can be found on <http://www.dwp.gov.uk/esf>. students must meet the relevant eligibility criteria.

23.2 The College and where relevant the Subcontractor will comply with written requests by the Agency to display the 2007/13 European Social Fund logos and emblems on any materials relating to funding by the ESF. The Agency will make available to the College all relevant 2007/13 European Social Fund logos and emblems.

23.3 The College must ensure that where it is agreed with the Agency that the use of logos in a document or other form of communication for promotional purposes is not practicable, the following wording is included: "This programme is part funded by the European Union through the European Social Fund" and if requested to do so by the College the Subcontractor shall include such wording.

- 23.4 The College must ensure that all students are aware of the support of the European Social Fund in respect of the provision being delivered under this Agreement and where relevant and if requested to do so by the College the Subcontractor shall so inform students.
- 23.5 The College must ensure that where the use of logos in a document or other form of communication for promotional purposes is not practicable, the following wording is included: "This programme is co-financed by the Skills Funding Agency" and if requested to do so by the College the Subcontractor shall include such wording.

24 SPECIFIC STUDENT INCIDENT REPORTING REQUIREMENTS

- 24.1 The Subcontractor shall inform the College of injuries and diseases to students within the scope of the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations (RIDDOR) 1995 and fatal road traffic accidents. This shall be done by:
- (a) in the case of fatal accidents and 'major injuries' (as defined in RIDDOR) – informing the College Principal by telephone, fax, or email immediately the Subcontractor becomes aware of the event; and
 - (b) all RIDDOR events by sending to the College a completed student Incident Record Form within 10 days of the Subcontractor becoming aware of the event.
- 24.2 The Subcontractor shall investigate or assess the circumstances of all student 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 Subcontractor shall only use persons competent to investigate/assess student incidents with a view to identifying the causes of any incident and lessons to be learned.
- 24.3 The Subcontractor shall also monitor, and act on, any other harm to students to the extent that the Subcontractor 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) other incidents that cause absence from learning, any loss to the student of any physical or mental faculty or any disfigurement, incidents of bullying and harassment.
- 24.4 The Subcontractor will notify the College immediately upon the occurrence of any of the following:
- (a) Any incident which may need to be notified by the College to its insurers to enable the College to bring a claim under any of its insurance policies;
 - (b) any injury to any person or any loss of or damage to property which occurred during the provision of any part of a programme(s) or on any premises where a programme(s) is or has been held or in circumstances where there is any possibility that the Subcontractor and/or the College may be liable, wholly or partly, for such injury, loss or damage.
- 24.5 For the avoidance of doubt, any event to be notified to the College pursuant to this clause must be notified to the College by the quickest means possible in the circumstances and must be

followed up as soon as possible by written notice to the College setting out in full all relevant details and parties.

25 STUDENT HEALTH, SAFETY AND WELFARE

- 25.1 The Subcontractor acknowledges that it is directly responsible to each Learner for compliance with health and safety legislation during delivery of a programme and agrees that it will comply with all relevant requirements relating to health and safety and safeguarding set out in this Agreement.
- 25.2 The Subcontractor shall co-operate and provide information to the College and/or the Agency, as requested, to give assurance that adequate arrangements exist for student Health and Safety, to enable a review of student incidents, and to assist in the development of policies on student Health and Safety.
- 25.3 The Subcontractor shall ensure that learning takes place in safe, healthy and supportive environments, which meet the needs of students, and in doing so shall:
- (a) Operate an effective Health and Safety management system which continually seeks to raise standards. The College will use Health and Safety Executive (HSE) publication HSG65 'Successful Health and Safety Management' as a benchmark when evaluating the arrangements of the Subcontractor. Where the Subcontractor is required to carry out self-assessment of the quality of learning provided, student Health and Safety shall be included in accordance with the requirements of the Agency and the Common Inspection Framework;
 - (b) promote good practice and, in particular, the concept of the 'Safe student', which includes students, through the quality of their learning, gaining an understanding of Health and Safety, the identification and control of risk, and developing a set of safe behaviours;
 - (c) where part of the learning takes place in an environment outside the direct control of the Subcontractor, for example, an employer's premises, the Subcontractor shall make an informed, written judgement about Health and Safety suitability prior to learning being delivered with that employer or in that environment (to be suitable, employers and/or environments that shall at least meet the Agency's Health and Safety procurement standard for student Health and Safety) and the Subcontractor shall periodically review suitability as an integral part of the quality of the learning being delivered;
 - (d) the Subcontractor shall ensure it has access to persons sufficiently competent in Health and Safety and the occupational area to meet its obligations in respect of student Health, Safety and Welfare and in particular to be able to make the informed judgement of Health and Safety suitability under paragraph (c) above;
 - (e) maintain adequate records in relation to student Health and Safety including (without limitation): assessments of employer/environment suitability; Agreements or commitments on Health and Safety with employers and students; information relating to harm to students; and records of assessments,

monitoring and reviews of student Health and Safety understanding and capabilities;

- (f) take account of relevant Health and Safety Executive guidance and other sources of good practice;
- (g) ensure students receive effective and timely information, instruction and training and effective supervision based on an assessment of risk, and in the cases of students below the minimum school leaving age, students under 18 and/or students with special needs, the environment in which the learning is delivered should be such that risks have been reduced to the lowest level practicable;
- (h) ensure that students' Health and Safety understanding and practical capabilities are periodically assessed based on an assessment of risk.

26. SAFEGUARDING

26.1 The Subcontractor will adopt and work within the Colleges Safeguarding policy and shall comply with the requirements of the Safeguarding Vulnerable Groups Act 2006, as amended or replaced ("the SVGA"). Prior to delivering the programme/s, Subcontractor shall ensure that, at its own expense, it conducts all appropriate checks required of it under the SVGA (including SVGA s11) in relation to employees, agents, independent contractors and/or other personnel to be engaged by it to deliver the programme/s and who as a result are engaged in any "Regulated Activity" or "Controlled Activity" (as defined by the SVGA) and shall ensure that no person who is prohibited or barred from working with children (persons under 18 years of age) and/or "Vulnerable Adults" (as defined by the SVGA) shall be permitted to be engaged in the delivery of the programme. In addition, the Subcontractor shall:

- (a) prior to delivering the programme, provide to the College a list of all Subcontractor staff and other persons engaged in the provision of the programmes and written confirmation that it has conducted all required Criminal Records Bureau Checks in accordance with the SVGA together with a list of those checks;
- (b) provide written confirmation that it has no reason to believe that the individuals to be engaged in or who are engaged in a "Regulated Activity" are barred from those activities;
- (c) inform the College immediately if there is a change in the status of any individual engaged in a "Regulated Activity" in particular where since the most recent relevant check an individual has become barred from working with children and/or Vulnerable Adults;
- (d) prior to delivering the programme provide to the College written evidence that Subcontractors have complied with their obligations under the SVGA and under this clause;

- (e) shall refrain from doing anything that may cause the College to breach its obligations to safeguard and promote the welfare of children and/or to comply with the SVGA.

27 EQUAL OPPORTUNITIES

- 27.1 The Subcontractor shall comply with all equality legislation in force from time to time including the Equality Act 2010 ("Equality Legislation"). The Subcontractor shall not and shall ensure that in discharging its obligations to the College under the Agreement, its contractors and/or agents shall not engage in discrimination and/or harassment and/or victimisation including on the grounds of sex, race, disability, sexual orientation, age, religion or belief, gender reassignment and pregnancy and/or maternity. In addition, the Subcontractor shall comply with all reasonable requests of the College to enable the College to discharge its positive equality duties as prescribed under Equality Legislation, including but not limited to the duties to promote equality of opportunity between persons who share a relevant characteristic protected by Equality Legislation and those who do not share it, to eliminate unlawful discrimination, harassment, victimisation and any other conduct prohibited by Equality Legislation and to foster good relations with those who share a relevant characteristic protected by Equality Legislation.
- 27.2 The provision of the programmes under this Agreement by the Subcontractor shall comply with the principles set out in the Skills Funding Agency's National Single Equality Scheme

28 CO –OPERATION AND REPUTATION

- 28.1 The College and the Subcontractor agree to use their respective best endeavours to meet frequently and regularly throughout the contract term in order to discuss any matters arising from this Agreement and the provision of the programme(s).
- 28.2 The Subcontractor acknowledges that as students will be enrolled with the College, the College's reputation is at stake and, accordingly, the Subcontractor agrees that:
- (a) it will not do anything which brings the reputation of the College into disrepute or which is calculated or is reasonably likely to bring the reputation of the College into disrepute;
 - (b) it will provide the programme(s) in accordance with current best working practice subject always to the College's right to direct how the programme(s) will be provided;
 - (c) it will do everything it reasonably can to promote the name and reputation of the College;
 - (d) it will comply with all requirements of the College notified to it from time to time in relation to the provision of the programme(s) or any part of it;
 - (e) it will not assign or purport to assign any of its rights under this Agreement or sub-contract to any third party any part of the provision of the programme;

- (f) it will not do or fail to do anything which materially prejudices or is likely materially to prejudice the ability of the Subcontractor to comply with the terms of this Agreement.
- 28.3 In return for the Subcontractor providing the programme(s) in accordance with the terms of this Agreement the College agrees that it will provide the Subcontractor with such reasonable support and assistance as the Subcontractor reasonably requests from time to time provided that, for the avoidance of doubt, the College will not be obliged to the Subcontractor to provide staff to run or to assist in the provision of any part of the programme(s) due to the unavailability of tutors or any other reason.
- 28.4 Each student will be issued with information, provided by the College, to confirm that the College is funding the programme and to outline the benefits of being enrolled at the College.
- 28.5 The Subcontractor shall, upon termination of the Agreement for any reason, forthwith cease using the name of the College in any material publicising the business of the Subcontractor.
- 28.6 The Subcontractor will appoint a named person to manage all aspects of the day-to-day running of the programme(s) and will inform the College of that person.
- 28.7 The College will also appoint a nominated person who will act as the contact for the Subcontractor and will monitor all aspects of the day-to-day running of the programme(s).
- 28.8 Any changes in management personnel shall be notified in writing as soon as possible, on either side.

29 INSURANCE AND LIABILITY

- 29.1 Third party and liability insurance: The Subcontractor shall maintain adequate Employer, Third Party and Occupier's Liability Insurance, with a minimum cover per claim as specified in Schedule 7.
- 29.2 Other risk insurance: The Subcontractor shall maintain adequate insurance for all possible insurance risks [unless the Subcontractor has appended to this Agreement a document detailing limited risks, which document has been initialled and agreed by the College.] Such insurance shall have a minimum cover per claim as specified in Schedule 7.
- 29.3 Evidence of Insurance: The Subcontractor shall, upon request by the College, immediately produce to the College;
 - (a) a certified copy of all insurance policies taken out covering risks under this Agreement; and
 - (b) satisfactory evidence that all premiums under such policies are paid to date.
- 29.4 Indemnity: The Subcontractor shall indemnify the College fully in respect of any Liability which arises as a result of any act of omission on the part of the Subcontractor (including any non-compliance with Health and Safety legislation) except to the extent that such Liability is due to negligent act or omission on the part of the College.

30 EMPLOYEES

- 30.1 Provision for employees: The Subcontractor acknowledges that it is responsible for their entire staff and with respect to any employees comprised within the Subcontractor Staff that such employees are employed by the Subcontractor and not the College. Accordingly, the Subcontractor is responsible for the payment of all wages and the making of National Insurance Contribution payments in respect of the Subcontractor Staff.
- 30.2 Indemnity: The Subcontractor hereby indemnifies the College against all Liability with respect to arising out of or connected to the Subcontractor's Staff, including but not limited to claims that the employment of the Subcontractor staff has transferred to the College by virtue of the Transfer of Undertaking (Protection of Employment) Regulations 2006 or any other legislation or by operation of law.

31 CONTRACTING, ASSIGNMENT OR CHANGE OF CONTROL

- 31.1 The Subcontractor may not:
- (a) assign, give, bargain, transfer, sell, charge or otherwise encumber, create any trust over or deal in any manner with this Agreement or any right, benefit or interest under it nor transfer, or otherwise dispose of any of its rights and/or duties under this Agreement (or this Agreement itself) ("Assignment") or;
 - (b) vest its Control in any party or parties other than the party or parties in which such control is vested at the Commencement Date; in any of the foregoing cases without the prior written consent of the College (such consent not to be unreasonably withheld or delayed).
- 31.2 In the event that, in breach of the foregoing provision, any such Assignment or change of Control occurs (either without such consent being granted for whatever reason or without such consent being sought) then the College shall have the right to terminate this Agreement forthwith or at the end of the Academic Year for convenience by notice served at any time during the two calendar months after the fact of such Assignment or change of Control becomes known to it.

32 TERMINATION

The Colleges right to terminate:

- 32.1 The College may terminate this Agreement forthwith by written notice to the Subcontractor if any of the events specified in any of the clauses within this Agreement occur. Such termination may take effect either immediately or at the end of the Academic Year in which the event entitling the College to terminate this Agreement occurs, as the College shall at its discretion determine. Such events are, but not restricted to:
- (a) there is a material adverse change in the amount or nature of the Agency's funding of the College;
 - (b) funding is no longer available in respect of a programme(s);

- (c) there is a material breach by the Subcontractor of the terms of this Agreement which breach is not capable of remedy;
- (d) there is a material breach by the Subcontractor of the terms of this Agreement which breach is capable of remedy but which is not remedied to the reasonable satisfaction of the College within 14 days after the College has given written notice of the breach to the Subcontractor requiring it to be remedied;
- (e) the Subcontractor is unable to pay its debts within the meaning of the Insolvency Act 1986, if the Subcontractor becomes bankrupt (or is the subject of a bankruptcy petition or has a bankruptcy order made against it or is the subject of an application order or appointment under section 253, 273 or 286 of the Insolvency Act 1986 or is unable to pay or has no reasonable prospect of being able to pay its debts within the meaning of section 267 and 268 of the Insolvency Act 1986), insolvent, enters into liquidation, whether voluntary or compulsory, passes a resolution for its winding up or an order is made or a resolution is passed for the winding-up of the Subcontractor or an administration order is made or an administrator is appointed to manage the affairs, business and property of the Subcontractor or a receiver and/or manager and/or administrative receiver is appointed in respect of all or any of the Subcontractor's assets or undertaking or circumstances arise which entitle the court or a creditor to appoint a receiver and/or manager and/or administrative receiver or administrator which entitle the court to make a winding-up or bankruptcy order or administration order; or the Subcontractor takes or suffers any similar or analogous action to forgoing in consequence of debt;
- (f) the Subcontractor is a company and a notice relating to the striking off of the company is published pursuant to the Companies Acts; or
- (g) the Subcontractor is a company and an encumbrancer takes possession or exercises or attempts to exercise any power of sale or a receiver is appointed for the undertaking of assets or revenues of the Subcontractor.

32.2 In the case of 32.1 (e) it is the responsibility of the Subcontractor to inform the Chief Executive of the Funding Agency and provide details of the liquidator or administrator and that he is notified of any creditor meetings.

The Subcontractor's Right to Terminate:

32.3 The Subcontractor may terminate this Agreement by written notice to the College forthwith:

- (a) if there is a repudiatory breach by the College of the terms of this Agreement which breach is not capable of remedy;
- (b) if there is a material breach by the College of the terms of this Agreement which breach is capable of remedy but which is not remedied to the reasonable satisfaction of the Subcontractor within one month after the Subcontractor has given written notice of the breach to the College requiring it to be remedied; or
- (c) at the end of the current Academic Year, if the College stops payment or agrees to declare a moratorium or becomes or is deemed to be insolvent or unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986) when they fall due.

- 32.4 Neither party shall have any remedy against the other based on or arising out of termination of this Agreement, but termination shall be without prejudice to the rights of either party accrued at the date of such termination.
- 32.5 Where this Agreement is terminated early by either party for whatever reason, the Subcontractor shall co-operate with the College and provide all reasonable assistance in relation to the programme(s) commenced but not completed at the date of termination to ensure that the students experience minimal disruption and the Subcontractor shall provide all relevant documentation to the College as set out elsewhere in this Agreement for the purpose of fulfilling the Agency's requirements as required by the Funding Rules and/or other relevant Agency documentation.
- 32.6 Any termination of this Agreement will be without prejudice to any right of either party against the other in respect of any antecedent breach of this Agreement.
- 32.7 Any rights of termination set out above are in addition to any other rights for termination, which may be set out elsewhere in this Agreement.

33 CONFIDENTIALITY

- 33.1 **Duty:** During the term of this Agreement and for two years thereafter, each party shall maintain confidentiality of the other party's Confidential Information and shall not, without prior written consent of the other, use, disclose, copy or modify the other party's Confidential Information (or permit others to do so) other than as necessary for the performance or its rights and obligations under this Agreement.
- 33.2 **Limited Disclosure:** Each party undertakes to disclose the other party's Confidential Information only to those of its officer, agents and contractors to whom, and to the extent to which, such disclosure is necessary for the purposes contemplated under this Agreement and to its professional advisors; and in each case to procure that such persons are made aware of an agree to observe the obligations within this Agreement. Notwithstanding the forgoing, the College may disclose Confidential Information to the Agency and any other person having jurisdiction over the College.
- 33.3 Each party shall give notice to the other of any unauthorised misuse, disclosure theft or other loss of the party's Confidential Information immediately upon becoming aware of the same.
- 33.4 **Carve-outs:** The provision of this Clause 33 shall not apply to the information which:
- (a) is or comes into the public domain through no fault of the recipient, its officers, employees, agents or contractors;
 - (b) is lawfully received from a third party free of any obligation of confidence at the time of its disclosure; or
 - (c) is demonstrably independently developed by the recipient, its officers, employees, agents or contractors.

- 33.5 Further Carve-outs: In the event a party is required by law, stock exchange, regulatory body, court or governmental order to disclose Confidential Information, then the party so required shall, prior to disclosure, notify the other party and at that other party's request and cost, assist that other party in opposing any such disclosure. The Subcontractor shall not make any public statement, issue any press release or make or release any other type of announcement or statement relating to the existence of this Agreement without prior written approval of the College.
- 33.6 Standards: Each party shall administer and protect the other party's Confidential Information with at least the same degree of care used to administer and protect its own Confidential Information, and in any event, with no less than reasonable care.

34 DATA PROTECTION

- 34.1 The Subcontractor shall comply with the Data Protection Act 1998 in relation to personal data relating to the students and/or the programme(s) and processed by it under this Agreement.
- 34.2 The Subcontractor shall ensure that appropriate technical and organisational measures are taken against unauthorised or unlawful Processing of Personal Data and against loss or destruction of, or damage to, Personal Data Processed by the Subcontractor on behalf of the College.
- 34.3 The Subcontractor shall only Process Personal Data on behalf of the College in accordance with this Agreement and in accordance with the written instructions issued by the College and for no other purpose whatsoever. In particular, the Subcontractor will process Personal Data relating to the students for the purpose of delivering the programme(s).
- 34.5 The Subcontractor shall adopt and maintain a written security policy in relation to Personal Data processed by it and shall procure that all of its employees are aware of and abide by all of the provisions of such policy and the provisions of this Agreement in particular in relation to this clause and shall make such policy available for inspection on request by the College.
- 34.6 On termination of this Agreement the Subcontractor shall return all Personal Data provided to it by the College and/or otherwise acquired by it for the purposes of the provision of the programmes under this Agreement by the Subcontractor.

35 FREEDOM OF INFORMATION

- 35.1 The Subcontractor acknowledges that the College is subject to the requirements of the Freedom of Information Act 2000 ("FOIA") and the Environmental Information Regulations 2004 ("EIR).
- 35.2 The College may, at its discretion, notify the Subcontractor that a request under the FOIA and/or the EIR for information concerning this Agreement has been submitted.
- 35.3 The Subcontractor shall assist and cooperate with the College at the Subcontractor's expense to enable the College to comply with the disclosure requirements concerning information held by the College and relating to the Subcontractor and/or or this Agreement and within the time for compliance set out in FOIA and/or the EIR.

- 35.4 Subject to any prior determination of the Information Commissioner and/or the Information Tribunal and/or the courts, the College shall be responsible for determining at its absolute discretion whether:-
- (a) the information relating to this Agreement is exempt from disclosure under the FOIA and/or the EIR;
 - (b) the information is to be disclosed in response to a request for information under the FOIA and/or the EIR.
- 35.5 The Subcontractor acknowledges that it is not a public authority under the FOIA and shall not respond directly to a request for information under the FOIA and/or EIR concerning information relating to the College or to this Agreement unless expressly authorised to do so by the College and shall notify the College if any such request is received by the Subcontractor.
- 35.6 The Subcontractor acknowledges that the College may, acting in accordance with the FOIA, and/or the EIR, disclose Information:-
- (a) without consulting with the Subcontractor, or
 - (b) following consultation with the Subcontractor and having taken its views into account, but without any obligation on the College to comply with those views.

The Link to the Freedom of Information act

<https://ico.org.uk/for-organisations/guide-to-freedom-of-information/what-is-the-foi-act/>

36 ANTI BRIBERY

The Subcontractor shall:

- 36.1 comply with all Relevant Requirements;
- 36.2 not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act (2010) if such activity, practice or conduct had been carried out in the UK;
- 36.3 comply with the College's anti-bribery and anti-corruption policies notified in writing to the Subcontractor from time to time by or on behalf of the College and the Subcontractor shall ensure that all of its employees engaged in any way in relation to the Services are fully aware of the College's anti-bribery and anti-corruption policies and that all the Subcontractors and agents (of whatever tier) are engaged upon terms which contain provisions in relation to prevention of bribery and corruption no less onerous than this Clause 36;
- 36.4 have and shall maintain in place throughout the term of this Agreement its own policies and procedures, including adequate procedures to ensure compliance with the Relevant Requirements, the College's anti-bribery and anti-corruption policies and Clause 36.2 and will enforce them where appropriate;

- 36.5 promptly report to the College any request or demand for any undue financial or other advantage of any kind received by the Subcontractor in connection with the performance of this Agreement;
- 36.6 procure and ensure that all Associated Persons of the Subcontractor and/or other persons who are performing Services and/or providing goods in connection with this Agreement comply with this Clause 36; and
- 36.7 within 14 days of the date of this Agreement, and annually thereafter, certify to the College in writing signed by an officer of the Subcontractor, compliance with this clause by the Subcontractor and all associated persons and all other persons for whom the Subcontractor is responsible. The Subcontractor shall provide such supporting evidence of compliance as the College may reasonably request.
- 36.8 Without prejudice to any other rights or remedies the College may terminate this Agreement on written notice to the Subcontractor specifying the date on which this Agreement will terminate in the event of a breach of this Clause 36. Breach of this clause shall be deemed a material breach which is not capable of remedy.
- 36.9 Without prejudice to any other rights or remedies the Subcontractor shall indemnify the College in full and on demand against any losses, liabilities, damages, costs (including but not limited to legal fees), claims and expenses incurred by, or awarded against, the College as a result of any breach of this clause by the Subcontractor (which shall include the acts or omissions of any associated person) and/or any breach of provisions equivalent to this Clause 36 in any sub-contract by any sub-contractor.

37 FORCE MAJEURE

- 37.1 Force Majeure: Neither party shall be liable for any loss or damage suffered or incurred by the other party arising from the first party's delay in performing or failure to perform its obligations hereunder to extend that and for so long as such delay or failure results from any cause or circumstance whatsoever beyond the effected party's reasonable control, including any act of God, civil disturbance, computer virus, third party equipment failure or power failure ("Force Majeure Event"), provided the same arises without the fault or negligence of the affected party and the affected party notifies the other party as soon as reasonably practicable after becoming aware of the same of such Force Majeure Event and the manner and extent to which its obligations are likely to be prevented or delayed.
- 37.2 Timings: If any Force Majeure Events occurs, the dates for performance of the obligations of the party affected by the Force Majeure shall be postponed for so long as is made necessary by the Force Majeure Event provided that if any Force Majeure Event continues for a period of or exceeding 2 months, the College shall have the right to terminate this Agreement forthwith or at the end of the academic year on written notice to the Subcontractor.
- 37.3 Minimise effects: Each party shall use its reasonable endeavours to minimise the effect of any Force Majeure Event.
- 37.4 In the event that the Subcontractor is unable to provide the programme(s), the College may either provide programme(s) itself or engage a third party to do so and the College shall be under no obligation to make payments to the Subcontractor for the period within which the Subcontractor has not provided the programme(s) and the Subcontractor shall repay to the College any payments already made by the College in respect of the programme(s) or any part

of it (them) not delivered by the Subcontractor. The College also reserve the right to invoice the Subcontractor for any costs incurred in so providing or procuring the provision of the programme(s).

38 GENERAL PROVISIONS

- 38.1 This Agreement does not constitute a partnership, contract of employment or joint venture arrangement between the College and the subcontractor and the subcontractor must not act or purport to act as an agent of the College.
- 38.2 This Agreement contains all the terms agreed between the parties regarding its subject matter and supersedes and excludes any prior Agreement, understanding or arrangement between the parties, whether oral or in writing.
- 38.3 No representation, undertaking or promise shall be taken to have been given or implied from anything said or written in negotiations between the parties prior to this Agreement except as expressly stated in this Agreement.
- 38.4 No party shall have any remedy in respect of any untrue statement made by the other party upon which that party relied on entering into this Agreement (unless such untrue statement was made fraudulently) and that party's only remedies shall be for breach of contract as provided in this Agreement.
- 38.5 No waiver by either party of any violation or default in performance of the provisions of this Agreement shall be deemed a waiver of such provisions or the right of such party thereafter enforce such provisions or any other provisions of this Agreement.
- 38.6 If, for any reason, one or more provisions of this Agreement shall be held unenforceable or invalid by any court of competent jurisdiction, its invalidity will not affect the remainder of this Agreement, which will remain valid and enforceable in all respects.
- 38.7 This Agreement may be signed in any number of counterparts, all of which taken together shall constitute one and the same Agreement. Either party may enter into this Agreement by signing any such Agreement.
- 38.8 Those provisions of this Agreement that either are expressed to survive its termination or from their nature or context it is contemplated that they are to survive such termination, shall survive termination of this Agreement.
- 38.9 This Agreement is and is intended to be, a binding Agreement and enforceable between the Parties.
- 38.10 No term of this Agreement shall be enforceable under the contracts (Right of Third Parties) Act 1999 by a third party other than the Agency.

39 INTELLECTUAL PROPERTY AND TRADEMARKS

- 39.1 Licence: Subject to the provisions of this Clause 37, the College hereby grants to the Subcontractor a non-exclusive licence to use such of its Intellectual Property rights to the extent necessary for the Subcontractor to perform its obligations under this Agreement.

39.2 Use of marks: The Subcontractor shall use in the form and manner specified by the College the name of the College, and any other name, mark, device or logo identifying or associated with the College which the College may from time to time specify, on:

- (a) any advertisements or prospectuses relating to the provision
- (b) all programme materials and shall not use any other name, trade mark, device or logo on or in relation thereto without the prior written consent of the College.

39.3 Rules for use of Intellectual Property: the Subcontractor shall:

39.3.1 use the Intellectual Property solely as specified by the College;

39.3.2 give notice to the College of any unauthorised misuse, disclosure, theft or other loss or breach of the College's Intellectual Property immediately upon becoming aware of the same;

39.3.3 shall enter into any formal trade mark licence or any other necessary Agreement with respect to Intellectual Property if, and as asked to do so by the College;

39.3.4 not infringe on any Intellectual Property; and

39.3.5 not use the Intellectual Property or anything confusingly similar to any part of it for anything other than providing the Services in accordance with this Agreement.

Ownership:

39.4 The Subcontractor confirms that any goodwill arising out of the use of the Intellectual Property belongs, as between the Subcontractor and the College, to the College.

39.5 No Warranty: anything in this Agreement constitutes any warranty or assurance as to the validity or subsistence of any of the Intellectual Property.

39.6 All copyright or intellectual property in any deliverable item produced or created by the Subcontractor connected to, arising from or in relation to the Services and/or the provision of the programme(s), shall be the property of the College (but for the avoidance of doubt shall not include deliverables on other aspects of the Subcontractor's business, unrelated to this Agreement or the Services) and the Subcontractor hereby assigns the same to the College by way of present and future assignment and the Subcontractor hereby agrees to do such further things and execute all such further deeds documents (as directed by the College) to give effect to the same.

40 NOTICES

40.1 Any notice served pursuant to this Agreement shall be properly served if sent by recorded delivery post to:

- (a) (in the case of the College) the College at the address shown in Schedule 3 and marked for the attention of the Contracts Manager; and

(b) (in the case of the Subcontractor) the address at the start of this Agreement.

41 JURISDICTION

41.1 This Agreement is governed by and should be construed in accordance with English Law. The Parties to this Agreement submit to the exclusive jurisdiction of the English Courts.

Contract Reference:
UKPRN

Maximum Contract Value £
No of Learning Aims

42 AUTHORISED SIGNATORIES

Authorised to sign for and on behalf of the Subcontractor:

Signature:

Name (Block Capitals):

Position in Organisation: Director

Full name

Registered Address

Company/Charity Registration Number:

Date: 01/08/2017

Authorised to sign for and on behalf of the College:

Signature:

Name (Block Capitals): Karen Mitchell

Position in Organisation: Principal and CEO

Date: 01/08/2017

Approved by Governors.....Date:.....