



dated 2018

**Aylesbury College trading as
Buckinghamshire College Group**

and

[Subcontractor]

**Subcontract for
Training Services**

SUBCONTRACT PARTICULARS

THIS AGREEMENT is dated

2018

SUBCONTRACTOR DETAILS	
Subcontractor	[SUBCONTRACTOR'S COMPANY NAME]
Subcontractor's address	[SUBCONTRACTOR'S REGISTERED ADDRESS]
Subcontractor's company no.	[SUBCONTRACTOR'S COMPANY NUMBER]
Subcontractor's UKPRN	[SUBCONTRACTOR'S UKPRN]
Subcontractor's VAT no.	[SUBCONTRACTOR'S VAT NUMBER]
TRAINING PROVIDER DETAILS	
Training Provider	Aylesbury College t/a Buckinghamshire College Group
Training Provider's address	Oxford Road, Aylesbury, Bucks, HP21 8PD
Training Provider's UKPRN	10000473
Training Provider's VAT no.	596448484
SPECIFIC TERMS	
Expiry Date	31 July 2019
SCHEDULES	
Schedule 1:	Programme of service(s) including learning aims, course titles, number of students, value of funding and fees and any other applicable information.
Schedule 2:	Mandatory Policies of Training Provider that the Subcontractor shall abide by.

This agreement is entered into on the date set out above and is made up of these Subcontract Particulars, the Contract Terms and the Schedules stated above.

SIGNED on behalf of the **TRAINING PROVIDER:**

.....
Signature

.....
Print Name

SIGNED on behalf of the **SUBCONTRACTOR:**

.....
Signature

.....
Print Name

Contract Terms

1. Definitions and Interpretation

1.1 The definitions and rules of interpretation in this clause apply to this agreement:

Bribery Act the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation;

Contract Terms means these contract terms from clause 1 to 20 (inclusive);

Data Controller has the meaning set out under the Data Protection Legislation;

Data Processor has the meaning set out under the Data Protection Legislation;

Data Protection Legislation means (i) the Data Protection Act 1998 and, for the periods when they are in force, (ii) the General Data Protection Regulation (Regulation (EU) 2016/679) and the Law Enforcement Directive (Directive (EU) 2016/680) and any applicable national implementing laws as amended from time to time, and (iii) the Data Protection Act 2018 (subject to royal assent);

Data Subject has the meaning set out in the Data Protection Legislation;

ESFA means the Secretary of State for Education, acting through the Education and Skills Funding Agency, an executive agency of the Department for Education, whose principal address is at Cheylesmore House, Quinton Road, Coventry, CV1 2WT;

ESFA Contingency means the action following change in employer or provider circumstances set out in the Funding Rules (on page 33 after paragraph P238 in Version 6 of the Funding Rules);

ESFA Contingency Event means each scenario described in each ESFA Contingency;

Expiry Date means the date stated as being the expiry date in the Subcontract Particulars;

Fees means the amounts payable by the Training Provider to the Subcontractor in respect of the Subcontracted Services as set out in the relevant programme and defined in Schedule 1 and additional costs pursuant to clause 19.2;

Funding Rules means the Conditions of Funding and Performance Management Rules for Training Providers as revised and amended from time to time and available at: <https://www.gov.uk/government/publications/>;

Good Industry Practice means the exercise of such degree of skill, diligence and care which would reasonably and ordinarily be expected from a skilled and experienced provider engaged in the discharge of their usual business (as the context so dictates) under the same or similar circumstances as those applicable to this Agreement;

Funding Year means the period between 1 May 2017 and 31 March 2018 and thereafter any 12 month period ending 31 March or such other relevant funding period as set out in the Funding Rules;

Intellectual Property Rights means any and all intellectual property rights of any nature anywhere in the world whether registered, registerable or otherwise, including patents, utility models, trademarks, registered designs and domain names, applications for any of the foregoing, trade or business names, goodwill, copyright and rights in the nature of copyright, design rights, rights in databases, moral rights, know-how and any other intellectual property rights which subsist in computer software, computer programs, websites, documents, information, techniques, business methods, drawings, logos,

instruction manuals, lists and procedures and particulars of customers, marketing methods and procedures and advertising literature, including the “look and feel” of any websites;

Law means all statutes, statutory instruments, regulations, byelaws, rules, judicial rulings and orders made under any statute, directive or by any competent legislative or judicial body in England and Wales;

Mandatory Policies means the policies of the Training Provider set out in Schedule 2 or made known to the Subcontractor from time to time;

OfS means the Office for Students or such other statutory or non-statutory body responsible for regulating the higher education sector from time to time and all matters currently assigned to the OfS under the Accountability Statement;

Ofsted means the Office for Standards in Education, Children’s Services and Skills Piccadilly Gate, Store Street, Manchester, M1 2WD or such other statutory or non-statutory body responsible for carrying out its functions from time to time (including but not limited to the regulation of the further education sector, teacher training in the higher education sector and all matters assigned to it under the Accountability Statement);

Personal Data has the meaning set out the Data Protection Legislation;

QAA UK Quality Code means the code published by the QAA which sets out the expectations that all providers of UK higher education are required to meet.

Quality Assurance Agency for Higher Education (QAA) means the Quality Assurance Agency for Higher Education, company number 03344784 with registered office Southgate House, Southgate Street, Gloucester, Gloucestershire, GL1 1UB or such other statutory or non-statutory body responsible for carrying out its functions from time to time (including but not limited to monitoring and improving quality in the higher education sector and all matters assigned to it under the Accountability Statement);

Student means a person who is enrolled to the Training Provider’s Individualised Learner Record (ILR) and for the benefit of whom the Subcontractor will provide the Subcontracted Services;

Subcontracted Services the provision of training services to be delivered by the Subcontractor, as further detailed in the Learning Programme in Schedule 1 or agreed pursuant to Clause 5;

Subcontract Particulars means the particulars of this agreement as set out and attached to this agreement above;

Subcontractor’s Representative means the person stated as the Subcontractor’s representative in the Subcontract Particulars or notified to the Training Provider from time to time;

Training Provider’s Representative means the person stated as the Training Provider’s representative in the Subcontract Particulars or notified to the Subcontractor from time to time;

VAT means value added tax at the rate prevailing at the time of the relevant supply charged in accordance with the provisions of the Value Added Tax Act 1994;

- 1.2 Clause and Schedule headings do not affect the interpretation of this agreement.
- 1.3 References to clauses and Schedules are (unless otherwise provided) references to the clauses and Schedules of this agreement.

- 1.4 If there is an inconsistency between any of the provisions in the main body of this agreement and the Schedules, the provisions in the main body of this agreement shall prevail.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.
- 1.6 A reference to a statute or statutory provision or the Funding Rules is a reference to it as amended, extended or re-enacted from time to time.
- 1.7 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time.
- 1.8 Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.9 Words or phrases defined in the Funding Rules shall have the same meaning in this agreement.
- 1.10 A reference to a person includes firms, partnerships and corporations and their successors and permitted assignees or transferees.

2. Commencement and Duration

- 2.1 This agreement shall commence on the date stated in the Subcontract Particulars and shall continue until the later of:
 - 2.1.1 the Expiry Date; or
 - 2.1.2 the latest date required to complete the delivery of the Services provided that the Services had commenced prior to the Expiry Date.
- 2.2 The Expiry Date may be amended by agreement between the parties in writing.

3. Training Provider Obligations

- 3.1 The Training Provider shall manage the delivery of Training to Students:
 - 3.1.1 in accordance with and for the duration of the relevant Programme;
 - 3.1.2 using reasonable skill and care;
 - 3.1.3 in compliance with the Funding Rules;
 - 3.1.4 in compliance with the Law and associated codes and guidance from time to time in force.
- 3.2 Subject to the Subcontractor fulfilling the obligations set out in clause 4, the Training Provider shall use its reasonable endeavours to recover sums in respect of the Fees from the ESFA.

4. Subcontractor Obligations

- 4.1 The Subcontractor shall deliver the Subcontracted Services:
 - 4.1.1 in accordance with and for the duration of the relevant Learning Programme;
 - 4.1.2 using reasonable skill and care;
 - 4.1.3 in compliance with the Funding Rules;

- 4.1.4 in compliance with the Law and associated codes and guidance from time to time in force
- 4.1.5 in compliance with the quality codes, guidance and requirements issued by the OfS, QAA and/or Ofsted (as the case may be).
- 4.2 The Subcontractor shall:
 - 4.2.1 promptly do all acts and not omit to do anything reasonably requested of the Subcontractor by the Training Provider for the purposes of the Training Provider's:
 - (a) compliance with the Funding Rules;
 - (b) obtaining any payment to which it may be entitled under the Funding Rules;
 - 4.2.2 comply with the Mandatory Policies
 - 4.2.3 provide the Training Provider with ILR data so that its data returns to the ESFA accurately reflect delivery information;
 - 4.2.4 provide the Training Provider with sufficient evidence to allow it to:
 - (a) assess the Subcontractor's performance against Ofsted's common inspection framework or the requirements of the QAA Quality Code; and
 - (b) prepare its self-assessment report in accordance with the Funding Rules and including appropriate evidence;
 - 4.2.5 always have suitably qualified staff available to provide the Subcontracted Services
 - 4.2.6 immediately inform the Training Provider if evidence of irregular financial or delivery issues arises, including but not limited to non-delivery of training when funds have been paid, sanctions imposed by an awarding organisation, allegations of fraud, an inadequate Ofsted grade, not meeting relevant QAA Quality Code indicators, allegations or complaints by Students, staff members or other relevant parties.
 - 4.2.7 be bound by European Social Fund (ESF) clauses, even if the provision itself is not funded by the ESF;
 - 4.2.8 not use the Funding to make bids for, or claims from, any European funding on their own behalf or on behalf of the ESFA or the Training Provider; and
 - 4.2.9 not use payments made as match funding for ESF projects.
- 4.3 To secure an efficient working relationship between the Training Provider and the Subcontractor and to protect the interests of the Student, the Subcontractor shall:
 - 4.3.1 cooperate in good faith with the Training Provider and any relevant organisation to enable the successful delivery and completion of training to each Student;
 - 4.3.2 allow the Training Provider and/or the ESFA (including their staff, auditors, contractors or agents) access to the Student, the Subcontractor's premises and any relevant records or documents, including health and safety records, to allow the Training Provider to comply with the Training Provider's obligations under the Funding Rules. Such access shall be as reasonably agreed between the parties or on reasonable notice from the Training Provider;
 - 4.3.3 promptly notify the Training Provider in writing when it becomes aware or develops a reasonable suspicion that the Student wishes to withdraw from the Learning Programme;

- 4.3.4 appoint a Subcontractor's Representative and promptly notify the Training Provider of any change of the Subcontractor's Representative from time to time.

5. Ordering Additional Subcontracted Services

Where indicated in the Subcontract Particulars, this clause 5 shall have effect.

- 5.1 The Training Provider may prior to the Expiry Date request that additional Subcontracted Services be delivered by the Subcontractor in accordance with this clause 5.
- 5.2 The Training Provider and the Subcontractor shall discuss the nature and content of the additional Subcontracted Services and such a discussion shall result in the Training Provider requesting either:
- 5.2.1 the provision of all or part of the Subcontracted Services set out in Schedule 1 (a **Repeat Services Request**) in accordance with clause 5.3; or
- 5.2.2 the development of a new programme of training 5.4 (a **New Services Request**).

5.3 Repeat Subcontracted Services

- 5.3.1 The Training Provider shall notify the Subcontractor in a written Repeat Services Request which of the Subcontracted Services set out in Schedule 1 that it wants to be repeated and shall provide the Subcontractor with sufficient information (in the opinion of the Training Provider acting reasonably) to allow the Subcontractor to prepare an updated programme of Subcontracted Services (a **UPSS**).
- 5.3.2 Within ten (10) Business Days of receipt of the Repeat Services Request, the Subcontractor shall:
- (a) notify the Training Provider that it declines to repeat the requested Subcontracted Services; or
- (b) provided that the Training Provider has provided sufficient information pursuant to clause 5.3.1, provide the Training Provider with a UPSS containing all relevant information in respect of Training to be delivered by the Subcontractor as required by the Funding Rules.
- 5.3.3 The parties shall negotiate the contents of the UPSS provided pursuant to clause 5.3.2(b) and once agreed between the parties the Subcontractor and the Training Provider shall each indicate such agreement by executing the UPSS under hand.
- 5.3.4 A UPSS that has been executed by both parties pursuant to clause 5.3.3 shall be deemed to form part of the Subcontracted Services for the purposes of this agreement and shall be incorporated into Schedule 1 accordingly.

5.4 New Subcontracted Services

- 5.4.1 The Training Provider shall notify the Subcontractor in a written New Services Request that it request the development of a new programme of training (an **NPT**) to be developed and delivered. The New Services Request shall contain sufficient information (in the opinion of the Training Provider acting reasonably) for the Subcontractor to develop an NPT setting out the Training required.
- 5.4.2 Within twenty (20) Business Days of receipt of the New Services Request, the Subcontractor shall:
- (a) notify the Training Provider that it declines to offer the requested Training; or

(b) provided that the Training Provider has provided sufficient information pursuant to clause 5.4.1, provide the Training Provider with an NPT containing all relevant information in respect of Training to be delivered by the Subcontractor as required by the Funding Rules.

5.4.3 The parties shall negotiate the contents of the NPT provided pursuant to clause 5.4.2(b) and once agreed between the parties the Subcontractor and the Training Provider shall each indicate such agreement by executing the NPT under hand.

5.4.4 An NPT that has been executed by both parties pursuant to clause 5.4.3 shall be deemed to form part of the Subcontracted Services for the purposes of this agreement and shall be incorporated into Schedule 1 accordingly.

6. Fees and Payment

6.1 In consideration of the Subcontractor fulfilling its obligations under this agreement, the Training Provider shall pay the Fees to the Subcontractor to the extent that payment has been recovered by the Training Provider from the ESFA.

6.2 The Subcontractor shall send invoices in respect of the Fees to the Training Provider at such intervals as may be agreed between the parties from time to time (or if not agreed, on a monthly basis). Subject to clause 6.1, the Training Provider shall pay such invoices within thirty (30) days of receipt or such longer period as may be agreed.

6.3 The Fees stated in this agreement are exclusive of VAT. In the case of any VAT payable in respect of the Subcontracted Services, the VAT shall be due and payable by the Training Provider thirty (30) days after receipt of a valid VAT invoice.

6.4 Without prejudice to the rights of either party under this agreement, any sums that remain unpaid after their due date shall bear interest at the rate of four per cent (4%) above the Bank of England base rate from time to time.

7. Dispute Resolution

7.1 In the event of a dispute arising between the parties in relation to this agreement, either party may serve written notice on the other stating the nature of the dispute (a **Dispute Notice**).

7.2 After service of the Dispute Notice, the following procedure shall be followed by the parties (all periods specified in this clause 7.2 shall be extendable by mutual agreement):

7.2.1 within five (5) days, the Training Provider's Representative and the Subcontractor's Representative shall meet to attempt to settle the dispute (each party acting in good faith);

7.2.2 if the Training Provider's Representative and the Subcontractor's Representative are unable to reach a settlement within twentyone (21) days from the date of service of the Dispute Notice, the chief executive officers of each of the parties shall meet within the following fourteen (14) days to attempt to settle the dispute; and

7.2.3 if no settlement results from the meeting specified in clause 7.2.2, for the following fifty six (56) days the parties shall attempt to settle the dispute by mediation (in accordance with the CEDR Model Mediation Procedure) by an independent mediator appointed by CEDR unless otherwise agreed between the parties, with costs to be shared equally between the parties.

7.3 If no settlement is reached under clause 7.2 the dispute shall be determined by the English High Court and the parties submit to the exclusive jurisdiction of such court for such purposes.

8. Termination

8.1 Without prejudice to any rights that have accrued under this agreement or any of its rights or remedies, either party may at any time terminate this agreement or any part of it with immediate effect by giving written notice to the other party if:

8.1.1 the other party commits a material breach of any term of this agreement and (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;

8.1.2 the other party repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement;

8.1.3 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;

8.1.4 the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

8.1.5 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or on connection with the winding up of that other party;

8.1.6 an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party;

8.1.7 the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;

8.1.8 a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;

8.1.9 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;

8.1.10 any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 8.1.3 to clause 8.1.9 (inclusive);

8.1.11 the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business;

8.1.12 any of the provisions of Regulation 73(1) of the Public Contracts Regulations 2015 apply;

8.1.13 the Training Provider's funding agreement with the ESFA is terminated;

8.1.14 the Subcontractor ceases to be in compliance with clause 4.4.

8.2 The Training Provider may terminate this agreement at any time by giving not less than three (3) months' written notice to the Subcontractor.

9. Consequences of Termination

9.1 Other than as set out in this agreement, neither party shall have any further obligation to the other under this agreement after its termination.

9.2 Any provision of this agreement which expressly or by implication is intended to come into or continue in force on or after termination of this agreement, including clause 1, clause 4.2.1, clause 4.3.2, clause 7, clause 9, clause 10, clause 12, clause 15, clause 16, clause 17 and clause 20 shall remain in full force and effect.

9.3 Termination or expiry of this agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry.

9.4 On termination (for any reason) or expiry of this agreement:

9.4.1 each party shall promptly return to the other any equipment, documents, information or materials owned by the other party (or a third party) and used in connection with the Subcontracted Services; and;

9.4.2 each party shall cooperate in good faith to ensure that there is continuity of learning such that no Student is materially disadvantaged by the termination of this agreement.

9.5 If this agreement is terminated pursuant to clause 8.1.15, the Subcontractor shall use all reasonable endeavours to assist all Student who have or would have received the Subcontracted Services pursuant to this Agreement in their transition to another training provider.

10. ESFA Contingencies

The parties shall take all necessary steps to give effect to the ESFA Contingencies in the event of an ESFA Contingency Event occurring. For the avoidance of doubt, giving effect to the ESFA Contingencies (including but not limited to the withholding of Fees) shall not constitute a breach of this agreement.

11. Force Majeure

Neither party shall be in breach of this agreement nor liable for delay in performing, or failure to perform, any of its obligations under this agreement if such delay or failure results from events, circumstances or causes beyond its reasonable control. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for ninety (90) days or more, the party not affected may terminate this agreement by giving thirty (30) days' written notice to the other party.

12. Liabilities and Insurance

12.1 Neither party excludes or limits liability to the other party for:

12.1.1 fraud or fraudulent misrepresentation;

12.1.2 death or personal injury caused by negligence;

- 12.1.3 a 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
- 12.1.4 any matter for which it would be unlawful for the parties to exclude liability.
- 12.2 Subject to clause 12.1, neither party shall in any circumstances be liable to the other whether in contract, tort (including for negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, for:
 - 12.2.1 any loss (whether direct or indirect) of profits, business, business opportunities, revenue, turnover, reputation or goodwill;
 - 12.2.2 loss (whether direct or indirect) of anticipated savings or wasted expenditure (including management time); or
 - 12.2.3 any loss or liability (whether direct or indirect) under or in relation to any other contract with the exception of an Employer Agreement.
- 12.3 Subject to clause 12.1 and except in relation to the indemnity contained in clauses 16.3 and/or 17, the parties' total aggregate liability in contract, tort (including negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of this agreement shall be limited to the total Fees payable during the 12 months immediately preceding the date on which the claim arose or, if the claim arose during the first twelve months of this agreement being in force, the Fees payable during the first twelve months of this agreement.

12.4 Insurance

Each party shall at its own cost effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by that party, arising out of its performance of the agreement, including death or personal injury, loss of or damage to property or any other loss.

- 12.5 The terms of any insurance or the amount of cover shall not relieve the insured party of any liabilities under this agreement.

13. Safeguarding

- 13.1 The Subcontractor acknowledges that the Training Provider has a statutory duty to safeguard and promote the welfare of individuals under the age of 18 years old and vulnerable adults over the age of eighteen (18) years old pursuant to the Children Act 2004 and the Safeguarding Vulnerable Groups Act 2006.
- 13.2 The Subcontractor shall and shall ensure that the Subcontractor's employees, contractors and agents:
 - 13.2.1 comply with the requirements of the Children Act 2004 and the Safeguarding Vulnerable Groups Act 2006 to the extent that they apply to the Subcontractor; and
 - 13.2.2 confidentially report to the Training Provider's designated senior person from time to time, any concerns relating to an Student enrolled with the Training Provider, employee, agent or contractor of the Training Provider.
- 13.3 The Subcontractor shall by signing this agreement, be deemed to have read the Training Provider's policy and guidance relating to safeguarding and will comply with its contents at all times.

14. Health and Safety

14.1 The parties shall perform their obligations under this agreement (including those in relation to the Subcontracted Services) in accordance with:

14.1.1 all applicable Law regarding health and safety; and

14.1.2 the health and safety policy of the other party whilst at the other party's premises (to the extent it has been made known by one party to the other party).

14.2 Each Party shall notify the other as soon as practicable of any health and safety incidents or material health and safety hazards at either party's premises of which it becomes aware and which relate to or arise in connection with the performance of this agreement. Each party shall adopt any necessary associated safety measures in order to manage any such material health and safety hazards.

15. Confidentiality

15.1 Subject to Clause 15.2, the parties shall keep confidential all matters relating to this agreement and shall use all reasonable endeavours to prevent their employees, contractors, agents and other personnel from making any disclosure to any person of any matters relating to it.

15.2 Clause 15.1 shall not apply to any disclosure of information:

15.2.1 required by any applicable law, provided that Clause 17 shall apply to any disclosures required under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004;

15.2.2 that is reasonably required by persons engaged by a party in the performance of such party's obligations under this agreement;

15.2.3 where a party can demonstrate that such information is already generally available and in the public domain otherwise than as a result of a breach of Clause 15.1;

15.2.4 of any document which the parties to this agreement have agreed contains no commercially sensitive information;

15.2.5 which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party; and

15.2.6 by the Training Provider to any other department, office or agency of the Government.

16. Intellectual Property

16.1 Each party shall retain ownership of all Intellectual Property Rights in any materials:

16.1.1 created prior to this agreement; or

16.1.2 generated other than solely for the purpose of delivering the Subcontracted Services,

by that party and used for the delivery of a Learning Programme (the **Project Materials**). Intellectual Property Rights generated by either party solely for the purpose of delivering the Subcontracted Services shall belong to the Training Provider.

16.2 Each party shall make available to the other and to each Employer free of charge and hereby grants to the other party and to each Employer a non-exclusive, non-transferable, royalty free licence to use their Project Materials in relation to this Agreement for the duration of the relevant Learning Programme.

16.3 Each party shall indemnify the other against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Right in the performance of a party's obligations under this agreement, except to the extent that they have been caused by or contributed to by the indemnified party's acts or omissions.

17. Data Protection and Freedom of Information

17.1 The Subcontractor acknowledges that the Training Provider is subject to the requirements of the Data Protection Legislation, the Freedom of Information Act 2000 and the Environmental Information Regulations 2004, all as amended or replaced from time to time. The Training Provider acknowledges that the Subcontractor is subject to the requirements of the Data Protection Legislation as amended or replaced from time to time.

17.2 The Subcontractor shall offer such prompt and reasonable assistance to the Training Provider as the Training Provider may request from time to time, to assist it in complying with its information disclosure obligations under the legislation at Clause 17.1.

17.3 The Training Provider and the Subcontractor acknowledge that each Party is individually a Data Controller in respect of any Personal Data processed by it and each agrees to comply with its obligations under the Data Protection Legislation.

17.4 In the event that one Party wishes to exchange Personal Data with the other Party then that Party (the requesting Party) shall make a written request to the other Party setting out why it considers such a transfer to be compliant with the Data Protection Legislation. It shall be for the other Party to determine whether it is willing to exchange such data in accordance with its obligations under the Data Protection Legislation. The Parties will where possible in order to facilitate the exchange of information anonymise or aggregate such information to the degree that it does not identify any individual. The Parties may agree additional terms or conditions upon which such data is to be shared.

17.5 The Parties shall and shall procure that any of their staff and agents involved in the provision of this agreement and any sub-contractor shall comply with their obligations under Data Protection Legislation and shall enter into appropriate arrangements with third parties.

17.6 Upon the termination or expiry of this agreement each Party shall ensure that all Personal Data held by it shall be up-to-date and accurate. Where it is necessary in order for the efficient transition of services to the other Party or to a third party to be achieved then the transferring Party shall, having first satisfied itself that such transfer is compliant with all laws, transfer current and required Personal Data to the other party or to the third party in a secure manner and shall take all reasonable steps, at its own cost, to provide the Personal Data in a usable and compatible format.

17.7 Historical personal data shall be retained by the Parties in accordance with legal retention requirements. Personal Data which cannot be lawfully retained shall be securely deleted in accordance with Data Protection Legislation and Good Industry Practice.

17.8 For the avoidance of doubt, it is stated here that neither Party is a Data Processor on behalf of the other Party in furtherance of their obligations under this agreement. In the event it is established at any time during this agreement that Personal Data is to be processed by the one party on behalf of the other, the parties shall:

17.8.1 immediately enter into a data processing agreement on reasonable terms to be determined by the Training Provider to ensure full compliance with Data Protection Legislation; and

- 17.8.2 indemnify and keep the other party indemnified in full for any and all consequences (including a Personal Data breach) arising as a result of that party's failure to comply with any of its obligations under this clause 17.
- 17.9 Failure by the Subcontractor to enter into a data processing agreement in accordance with clause 17.8.1 shall be deemed a material/serious breach which shall entitle the Training Provider to immediately terminate the agreement without consequence or any liability under this agreement;
- 17.10 Any clause in this Contract limiting a party's liability in respect of any obligations, claims, losses, damages or otherwise under the Data Protection Legislation shall not apply
- 17.11 Each Party (the indemnifying Party) agrees to fully indemnify and keep indemnified and defend at its own expense the other Party against all costs, claims, damages or expenses incurred by the other Party or for which the other Party may become liable due to any failure by the indemnifying Party or its employees or agents or sub-contractors to comply with their obligations under this Clause 17.
- 17.12 Where the Subcontractor receives a request for information under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004 relating to the operation of this agreement, the Subcontractor shall promptly pass the request to the Training Provider and shall not respond directly to any such request without the Training Provider's prior written consent.

18. Equality Legislation

- 18.1 Each party shall (and shall procure that its employees, contractors, agents and other personnel shall):
- 18.1.1 perform its obligations under this agreement (including those in relation to the Subcontracted Services) in accordance with all applicable equality law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);
- 18.1.2 at all times comply with the provisions of the Human Rights Act 1998 in the performance of this agreement.

19. Contract Variation

- 19.1 No variation to this agreement other than pursuant to clause 19.3 shall have effect unless agreed in writing and signed by both parties pursuant to clause 19.2.

19.2 Change Protocol

- 19.2.1 In the event either party (acting reasonably) requires a change (**Change**) to this agreement, the parties shall discuss any such Change proposed by the other and such discussion shall result in a written request for a Change being submitted by the requesting party to the other party.
- 19.2.2 The parties shall work together in good faith to assist the requesting party in preparing a written recommendation for a Change which shall set out:
- (a) the title of the Change;
 - (b) the originator and the date of the request;
 - (c) the reason for the Change;
 - (d) the full details of the Change, including any specification or service standards;

- (e) the price, if any, of or associated with the Change;
- (f) a timetable for implementation;
- (g) the impact, if any, of the Change on other aspects of this agreement, including contractual documentation and resources;
- (h) provision for signature of the request by all parties to signal acceptance of the Change; and
- (i) any other relevant information reasonably requested by any party.

19.2.3 If approved, each party shall sign the written recommendation. The signing of the written recommendation shall signify acceptance of a Change by the parties.

19.2.4 Once signed by both parties, the Change shall be immediately effective and the parties shall perform their respective obligations on the basis of the agreed amendment.

19.3 Where in the reasonable opinion of the Training Provider a change to one or more of the Subcontracted Services is required in order to comply with rules, guidance or instructions issued from time to time by the ESFA, the OfS, QAA or Ofsted (a **Regulator Change**), the Training Provider shall notify the Subcontractor in writing of the Regulator Change and the Regulator Change shall have effect from such date as may be stated in such notice. Any additional costs reasonably incurred by the Subcontractor arising from the Regulator Change shall, subject to the provisions of clause 6.1, be incorporated into the Fees and be payable by the Training Provider.

20. General

20.1 Assignment and subcontracting

20.1.1 No party shall otherwise novate, assign or transfer its rights or obligations under this agreement without the prior written consent of the other party.

20.1.2 The Subcontractor shall under no circumstances subcontract its obligations under this agreement.

20.2 Provisions to Remain in Force

If any term, condition or provision of this agreement shall be held to be invalid, unlawful or unenforceable to any extent, such term, condition or provision shall not affect the validity, legality and enforceability of the other provisions of or any other documents referred to in this agreement.

20.3 Entire Agreement

This agreement and the documents referred to in this agreement contain all the terms which the parties have agreed in relation to the subject matter of this agreement.

20.4 Waiver

No term or provision of this agreement shall be considered as waived by a party to this agreement unless a waiver is given in writing by that party. No waiver 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 agreement unless (and only to the extent) expressly stated in that waiver.

20.5 Counterparts

This agreement may be executed and delivered in any number of counterparts, each of which so executed will be an original, but together will constitute one and the same instrument.

20.6 No Agency

Nothing in this agreement shall be construed as creating a partnership or as a contract of employment between the parties and neither party shall be, or be deemed to be, an agent of the other party and neither party shall hold itself out as having authority or power to bind the other in any way.

20.7 No Double Recovery

Notwithstanding any other provisions of this agreement, no party shall be entitled to recover compensation or to make a claim under this agreement in respect of any loss that it has incurred to the extent that it has already been compensated in respect of that loss pursuant to this agreement or otherwise.

20.8 Further Assurance

Each party shall do all things and execute all further documents necessary to give full effect to this agreement.

20.9 Governing Law

This agreement and any non-contractual obligation arising out of it is subject to the laws of England and the parties agree that any disputes between the parties shall be subject to the exclusive jurisdiction of the courts of England.

20.10 Third Party Rights

No term of this agreement is intended to give any entitlement as against any party to any person who is not a party to this agreement and no term of this agreement may be enforced by any person other than a party to this agreement under the Contracts (Rights of Third Parties) Act 1999.

Schedule 1

Learning Programmes

Inserted overleaf are the Learning Programmes to be delivered pursuant to the relevant Subcontracted Services as described:

Learning Programme (to be completed as appropriate)		
1.	Name/Level of qualification	[Insert name/level of qualification]
2.	Entry Requirements	[Insert requirements]
3.	Start Date	[Insert start date]
4.	End Date	[Insert end date]
5.	Location of training	[State details of training location]
Number of Student undertaking Learning Programme		
6.	Number of Students	[Insert number of students where known]
Training Provider Actions		
7.	Training to be delivered by Training Provider	[Insert details of training to be delivered by Training Provider]
8.	Training Provider Equipment	[Insert details of Training Provider Equipment to be used in the training]
Subcontracting		
9.	Name of Subcontractor	[Insert name of subcontractor]

10.	Training to be delivered by Subcontractor	<p>[Insert details of training to be delivered by training contractor</p> <p>[If subcontractor is delivering functional skills training, complete the below]</p> <table border="1" data-bbox="625 763 1385 1137"> <tr> <td data-bbox="625 763 879 898">Maths Provision</td> <td data-bbox="879 763 1385 898">[Insert details of maths provision to be provided]</td> </tr> <tr> <td data-bbox="625 898 879 1032">English Provision</td> <td data-bbox="879 898 1385 1032">[Insert details of English provision to be provided]</td> </tr> <tr> <td data-bbox="625 1032 879 1137">Other functional skills</td> <td data-bbox="879 1032 1385 1137">[Insert details of other functional skills provision]</td> </tr> </table>	Maths Provision	[Insert details of maths provision to be provided]	English Provision	[Insert details of English provision to be provided]	Other functional skills	[Insert details of other functional skills provision]
Maths Provision	[Insert details of maths provision to be provided]							
English Provision	[Insert details of English provision to be provided]							
Other functional skills	[Insert details of other functional skills provision]							
11.	Training Provider monitoring of Subcontractor	[Insert details of how the Training Provider proposes to support and/or monitor the Subcontractor's delivery of training]						
12.	Conflicts of interest between Training Provider and Subcontractor	[Disclose any conflicts of interest between Training Provider and Subcontractor]						
Functional Skills Provision								
13.	Maths Provision	[Insert details of maths provision to be provided]						
14.	English Provision	[Insert details of English provision to be provided]						
15.	Other functional skills	[Insert details of other functional skills provision]						
Non-Funded Items								

	Detail of items not eligible for ESFA funding	Cost
1.		
2.		
3.		

Fees

The agreed Fees (excluding VAT) for the training of each Student under this Agreement is as follows:

Cost Allocation	Price per Student (£)
Subcontracted Services Costs	[]
Cost of Functional Skills Delivered by Subcontractor	[]
Total	[]

Schedule 2

Mandatory Policies

Inserted overleaf are the Mandatory Policies set out in the Subcontract Particulars.