

DATED 1st August 2016

Borough of Poole (Skills & Learning Bournemouth, Dorset and Poole) (1)

- and -

PROVIDER HERE

AGREEMENT for the delivery of
Skills Funding Agency and/or Education Funding Agency provision

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THIS AGREEMENT is made the 1st August 2016

BETWEEN

- (1) **BOROUGH OF POOLE (SKILLS & LEARNING BOURNEMOUTH, DORSET & POOLE)** of Oakdale Centre, Wimborne Road, Oakdale, Poole BH15 3DL (“the Council”) and
- (2) **PROVIDER HERE** of PROVIDER ADDRESS HERE (“the Provider”).

WHEREAS:

- (A) The Council wishes to engage the Provider to provide the Learning Plan set out in Schedule 2 and in accordance with the Contract Requirements set out in Schedule 1.
- (B) The Provider has in accordance with the terms of this Agreement agreed to provide the Services in accordance with the Agreement and accompanying Schedules.
- (C) The funding requirements for the Services are set out in the Chief Executive’s Skills Funding Agency Funding Rules 2016/17 <https://www.gov.uk/government/publications/sfa-funding-rules> and/or the Education Funding Agency Funding Rules 2016/17 <https://www.gov.uk/government/publications/advice-funding-regulations-for-post-16-provision> as amended and updated from time to time and which form part of the terms and conditions of this Agreement. The Provider agrees to adhere to these funding rules.
- (D) **The Chief Executives of the Skills Funding Agency or Education Funding Agency have the right to enforce the terms and conditions of this Agreement.**
- (E) The Provider agrees to fully co-operate with the Council to make sure there is continuity of learning if the subcontract ends for any reason.

NOW IT IS AGREED as follows:

1. **DEFINITIONS AND INTERPRETATION**

- 1.1 In this Agreement unless the context otherwise requires the following expressions shall have the meanings hereby assigned to them:
- 1.1.1 “Agreement” means this Agreement and accompanying Schedules made between the Council and the Provider for the supply of the Services:
- 1.1.2 “Charges” means the payments to be made by the Council to the Provider as set out in Schedule 2.

- 1.1.3 "Clause" means a clause in this Agreement unless the context shows a contrary meaning;
- 1.1.4 "Commencement Date" means 1st August 2016
- 1.1.5 "Data Returns" means the information to be submitted by the Provider to the Council as set out in Schedules 1 and 2;
- 1.1.6 "Parties" means the Council and the Provider;
- 1.1.7 "Plan" means the Learning Plan set out in Schedule 2;
- 1.1.8 "Schedule" means a schedule to this Agreement unless the context shows a contrary meaning;
- 1.1.9 "Services" means the Contract Requirements set out and described in Schedule 1 to be supplied by the Provider under this Agreement in accordance with the Learning Plan;
- 1.1.10 "Termination Date" means 31st July 2017.
- 1.2 The headings to Clauses are inserted for convenience only and shall not affect the construction of this Agreement.
- 1.3 In this Agreement references to statutory provisions shall be construed as references to those provisions as amended or re-enacted or as their application is modified by other provisions (whether before or after the date of this Agreement) from time to time and shall include references to any provisions of which they are re-enactments (whether with or without modification).
- 1.4 Words expressed in any gender shall where the context so requires or permits include any other gender.
- 1.5 Words expressed in the singular shall where the context so requires or permits include the plural and *vice versa*.
- 1.6 Where any party is more than one person:
 - 1.6.1 that party's obligations in this Agreement shall take effect as joint and several obligations,
 - 1.6.2 anything in this Agreement which applies to that party shall apply to all of those persons collectively and each of them separately, and
 - 1.6.3 the benefits contained in this Agreement in favour of that party shall take effect as conferred in favour of all of those persons collectively and each of them separately.

1.7 References in this Agreement to anything which any party is required to do or not to do shall include its acts, defaults and omissions, whether:

1.7.1 direct or indirect;

1.7.2 on its own account;

1.7.3 for or through any other person, or

1.7.4 those which it permits or suffers to be done or not done by any other person.

1.8 The obligations and restrictions imposed by this Agreement are in addition to and not in substitution for the obligations and restrictions imposed or implied by law.

2. **ENGAGEMENT AND DUTIES**

2.1 The Provider shall provide the Services in accordance with the Plan in an expeditious manner taking into account the nature of service required by the Council under the Plan except where prevented from doing so by the direct actions of the Council or by matters outside of the direct control or influence of the Provider.

2.2 The Provider's engagement under this Agreement starts on the Commencement Date and (unless terminated as provided for in this Agreement) shall continue from that date until the Termination Date.

2.3 Any termination of this Agreement shall not affect the continued operation of Clause 9.

3. **THE SERVICES**

In consideration of the payment of the Charges by the Council the Provider agrees it shall provide the Services in accordance with the Learning Plan.

4. **PROVIDER'S OBLIGATIONS**

4.1 The Provider undertakes with the Council:

4.1.1 To provide the Services in a proper skilful and workmanlike manner with reasonable care and to undertake an agreed system of monitoring with the Council to ensure that the Services are provided to an acceptable standard.

4.1.1 To ensure as far as reasonably practicable that the Services are provided in compliance with any budgetary or time constraints that have been previously agreed in writing with the Council and to inform the Council as soon as practicably possible if any such budgetary or time constraint will be or is likely to be exceeded.

- 4.1.2 To devote so much of its time and attention as is necessary to provide the Services in accordance with the Plan as and when reasonably required by the Council.
- 4.1.3 To comply with all applicable legal requirements, and in particular, to comply with the requirements of the Data Protection Act 1998.
- 4.1.4 NOT to do anything that is harmful to the Council.
- 4.1.5 To provide a designated representative whose role will be to co-ordinate activities with the Council to facilitate the provision of the Services by the Provider and to act as a point of contact between the Provider and the Council. In the event that the identity of the Provider's designated representative changes during this Agreement the Provider shall within 24 hours notify the Council in writing of such change and provide the name and contact details of the new designated representative.
- 4.1.6 It will provide to the Council all information within a reasonable timeframe and in an acceptable format in order to allow the Parties to comply with the terms of this Agreement.
- 4.1.7 It will notify the Council immediately of any matter affecting or which may affect the terms and obligations of the Parties created by this Agreement. If there is any evidence of current or historic irregular financial or delivery activity the Provider must inform the Council. Irregular or delivery activity could include, but is not restricted to;
- Substantial non-delivery of training when funds have been paid
- Sanctions imposed on the Provider by awarding organizations
- Inadequate grade for the provider by Ofsted
- Serious complaints and/or allegations by individuals working for the Provider and/or learners and/or other relevant parties.
- 4.1.8 The Provider will use the funding from the Charges payable by the Council wholly and exclusively for the provision of the Services in accordance with the Plan unless otherwise agreed in writing by the nominated representative of the Council.
- 4.1.9 The Provider shall at no time during this Agreement promote or oppose any political party.
- 4.1.10 The Provider shall submit Data Returns containing the information set out in Schedules 1 and 2 in accordance with the provisions of Schedule 2.

- 4.1.11 The Provider must comply with the appropriate retention of documentation.
- 4.1.12 The Provider shall at all times have and maintain a complaints procedure which shall set out clearly the procedure for the recording and resolution of complaints by recipients of the Services about the provision of the services by the Provider. The Provider shall at all times maintain an up to date record of any such complaints and their outcomes in a format agreed by the Council which shall be available for inspection by the Council at any time upon request.
- 4.1.13 The Provider will tell the Council immediately of any allegations of fraud.
- 4.1.14 That without limiting its liability under this Agreement it will effect and maintain with a reputable insurance company the following minimum insurance arrangements:
- Employers Liability: £5,000,000 or such greater amount as may be required by law
- Professional Indemnity: £5,000,000
- Public Liability: £5,000,000 in the aggregate in any one year
- 4.1.15 It will upon the request of the Council immediately provide such evidence of the insurance required under Clause 4.1.14 as the Council may deem appropriate.
- 4.1.16 To provide timely data to enable the Council to submit monthly ILR returns that accurately reflect your delivery information.
- 4.1.17 To give the Skills Funding Agency and/or Education Funding Agency, or persons nominated by them, access to your premises and all documentation relating to education and training funded under this Agreement.
- 4.1.18 To give the Council sufficient evidence to assess your performance against the Ofsted Common Inspection Framework, incorporate evidence you provide into the Council's self-assessment report and guide the judgements and grades within this report.
- 4.1.19 To always have suitably qualified staff available to provide the education and training funded under this Agreement.
- 4.1.20 To co-operate with the Council to make sure there is continuity of learning if the Agreement ends for any reason.

5 COUNCILS OBLIGATIONS

5.1 The Council undertakes with the Provider that:

5.1.1 It will provide a designated representative whose role will be to co-ordinate activities within the Council's organisation to facilitate the provision of the Services by the Provider and to act as a point of contact between the Provider and the Council. In the event that the identity of the Council's designated representative changes during this Agreement the Council shall within 24 hours notify the Provider in writing of such change and provide the name and contact details of the new designated representative.

5.1.1 It will provide to the Provider all information within a reasonable timeframe and in an acceptable format in order to allow the Parties to comply with the terms of this Agreement

5.1.2 It will notify the Provider immediately of any matter affecting or which may affect the terms and obligations of the Parties created by this Agreement.

5.1.4 It will in consideration for the provision of the Services pay the Provider the Charges in accordance with the terms of Schedule 2.

6 MUTUAL OBLIGATIONS

The Parties agree that both shall:

6.1 Acknowledge correspondence within 3 working days and provide a substantive reply within 5 working days except where the exigencies of the case require an urgent response.

6.2 Return telephone calls the same day as far as possible.

6.3 Write all letters in a plain and succinct language.

6.4 Ensure that their response times when dealing with an emergency will be without delay.

7 REVIEW AND AUDIT

7.1 The nominated representatives of the Parties will meet once per term to consider the operation of this Agreement. The Provider shall supply such information as the Council may require for discussion at these meetings. If the Council is dissatisfied with the quality of the Services in any way it may at its discretion issue a notice of dissatisfaction under Clause 12, terminate the Agreement in accordance with Clause 16.2 or require a mutually agreed action plan to be drawn up setting out improvement targets to be met by the time of the next review meeting or by any other agreed date. If the Provider has failed to meet any such target within the agreed timescales the Council will be entitled to withdraw such proportion of the funding payable to the Provider by way of the Charges under this Agreement as it may deem appropriate.

- 7.2 The nominated representative of the Provider will attend such reasonable periodic meetings of the Parties as arranged by the Council.
- 7.3 Any actions agreed at such meetings shall be implemented promptly by the Party identified as responsible for such actions at the meeting concerned.
- 7.4 The Provider will co-operate with the Council in the auditing of the Provider's use of the funding payable by way of Charges under this Agreement in whatever way the Council reasonably requests. In this context the Council shall require amongst other matters:
- 7.4.1 access at all reasonable times for the Council's representatives to all accounting records relating to the provision of the Services and to all supporting information;
 - 7.4.2 copies of all information relating to the provision of the Services and the Provider and its servants agents employees and contractors including those documents relating to the financial management and governance of those parties as are engaged in the provision of the Services;
 - 7.4.3 details of any circumstances that occur that have a material and adverse effect on the Provider's ability to deliver the Services and fulfill its obligations under this Agreement;
 - 7.4.4 explanations for any queries arising from audit activity.

8 VARIATION OF CONTRACT

No deletion from, addition to, or variation of the terms of this Agreement shall be valid or of any effect unless agreed in writing and signed by the duly authorised representative of each of the Parties.

9 CONFIDENTIALITY

- 9.1 Except as authorised or required by its duties hereunder or a court of competent jurisdiction the Parties shall keep secret and shall not use or disclose and shall use all reasonable endeavours to prevent the use or disclosure by or to any person, firm or organisation (except in the course of that party properly performing its duties or with the written consent of the other party or as required by a court of competent jurisdiction) of any information contained in any material provided to it by the other party pursuant to this Agreement (including without limitation) all confidential information relating to the business, organisation, transactions, finances, technology, processes, specifications, methods, designs, formulae, technology and concerning the other party which comes to its knowledge during this Agreement.
- 9.2 The restriction in Clause 9.1 shall apply during and after the termination of this Agreement without any time limit but shall cease to apply to information or knowledge

which the other Party establishes has in its entirety become public knowledge otherwise than through any unauthorised disclosure or other breach on it's part of that restriction.

9.3 The Parties shall co-operate with the each other so as to ensure compliance with the Freedom of Information Act 2000 ("the Act"). In the event that either Party is required to provide information to any person as a result of a request made to it under the Act:

9.3.1 the other Party shall respond in a timely manner to a request from the other for such information; and

9.3.2 subject to the operation of the exemptions specified in the Act, the other Party shall have the right to disclose information relating to this Agreement and the other Party.

10 **COPYRIGHT AND INTELLECTUAL PROPERTY RIGHTS**

10.1 The Council shall have exclusive rights to any materials that it provides to the Provider for the purposes of delivering the Services and the Provider shall not acquire any copyright or other rights in respect of such material.

10.2 The whole of the copyright and other intellectual property rights throughout the world (including all rights arising out of the exploitation of such rights) for the whole of the term thereof in each country and all renewals and extensions thereof in all material which are prepared by the Provider and in all the products in connection with the provision of the Services shall belong to and remain vested in the Provider SUBJECT TO the Provider hereby granting to the Council for the term of this Agreement the non-exclusive right to use all such materials prepared and provided by the Provider to the recipients of the Services in connection with the provision of the Services under this Agreement.

10.3 Should the Provider use any material in which the copyright or any other intellectual property right is owned by a third party, then such usage shall be in accordance with the rights of such third party and the Provider shall indemnify the Council against all losses, damages and costs sustained by the Council arising out of any breach of such third party rights.

10.4 The Provider shall not use any material provided by the Council or any other material produced by the Council in the course of providing the Services for any other purpose other than delivering the Services.

10.5 The Council in connection with its use of the Services will not cause or permit anything to be done which may damage or endanger the Intellectual Property or other Intellectual Property of the Provider or the Provider's title to it.

11 **PROVIDER'S EMPLOYEES**

The Provider shall employ in and about the provision of the Services only such persons as are careful, skilled, honest, experienced and suitably qualified in the work that they are to perform.

12 FAILURE TO PROVIDE THE SERVICES

12.1 Without prejudice to the Council's right to terminate this Agreement pursuant to Clause 16, if the Provider shall fail to provide the Services in accordance with this Agreement then the Council may issue a Notice of Dissatisfaction to the Provider and may require the Provider to take such action as may be specified in the Notice within such reasonable time as is specified in the Notice to remedy that failure. For the avoidance of doubt such a Notice shall only be raised where there is in the Council's reasonable opinion a clear failure on the part of the Provider to deliver the Services and where such failure is one that prevents the recipients of the Services under the Plan from receiving the substantive benefit of the use of the Services in whole or in part.

12.2 If the Provider shall fail to comply with the terms of a Notice of Dissatisfaction then without prejudice to any other right of action the Council may have the Council may terminate this Agreement in accordance with the provisions of Clause 16.

13 ASSIGNMENT AND SUB-CONTRACTING

13.1 The Provider shall not without the previous written consent of the Council have the right to:

13.1.1 Assign this Agreement or any part thereof or the benefit or advantage of this Agreement or any part thereof;

13.1.2 Sub-contract the provision of the Services or any part thereof to any person, but such sub-contracting shall not relieve the Provider from any liability or obligation under this Agreement and the Provider shall be responsible for the acts, defaults or negligence of any sub-contractor or its agents, or employees in all respects as if they were the acts, defaults or negligence of the Provider or its agents, or employees.

13.1.3 Recipients of the Services under the Plan shall have the right to enforce the obligations of the Provider under Clause 15 of this Agreement in accordance with the Contracts (Rights of Third Parties) Act 1999. The terms and conditions of this Agreement may be rescinded or varied without the consent of any person benefiting from this Clause.

14 EUROPEAN FUNDING AND OTHER SOURCES OF FUNDING

- 14.1.1 The Provider 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 Council, including but not limited to as match funding, without obtaining consent in writing from the Council, that it may do so (such consent not to be unreasonably withheld).
- 14.1.2 Where the Provider has access to other funding streams, the Provider will be required to demonstrate through accounting, management information systems and any other relevant evidence (at the sole discretion of the Council or any other body undertaking the audit or monitoring), to the Council and anybody acting on its behalf that no double funding has occurred in respect of the Provision delivered under the Agreement.
- 14.1.3 Where the Council identifies double funding in respect of the Provision, or any part thereof, the Provider will be liable to repay to the Council any sums paid, or part thereof, by the Council in respect of the Provision for which the Provider has received funding from another source and the Council reserves the right to deduct such sums from any monies owed to the Provider under the Agreement or any subsequent agreement
- 14.1.4 The Council reserves the right to use payments made under the Agreement as match funding for European Social Fund Co-Financing Projects. Where requested to do so in writing by the Council, the Provider shall provide such information and in the form as the Council specifies to enable the Council to comply with the requirements of the European Social Fund.
- 14.1.5 The Provider shall inform learners or others that the Provision delivered has been financed in whole or part by the European Social Fund.
- 14.2 The Provider will comply with written requests by the Council to display any European Social Fund logos and emblems on any materials relating to funding by the ESF. The Council will make available to the Provider all relevant European Social Fund logos and emblems.
- 14.3 The Provider must ensure that where it is agreed with the Council 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".

14.4 The Provider must ensure that all learners are aware of the support of the European Social Fund in respect of the Provision being delivered under this Agreement.

14.5 The Provider 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 European Social Fund".

15 **LIABILITY**

15.1 The Provider shall in connection with the provision of the Services indemnify the Council and keep it indemnified against liability for injury to or death of any persons or loss of or damage to any property which may arise out of the act default or negligence of the Provider its employees, agents, volunteers or sub-contractors in relation to the subject matter of this Agreement and against all actions claims demands proceedings damages costs charges and expenses whatsoever in respect thereof including all administrative and professional expenses incurred in connection therewith PROVIDED that the Provider shall not be liable or be required to indemnify the Council to the extent that any such injury loss or damage results from the act default or negligence of the Council, its employees or agents. This Clause shall be without prejudice to any other right of the Council.

15.2 The Provider shall indemnify and keep indemnified the Council from and against all loss damage or liability suffered (and legal fees and costs incurred) by the Council resulting from a breach of this Agreement by the Provider including any breach resulting in a claim by a third party.

15.3 Unless stated elsewhere in this Agreement neither party shall be liable to the other for consequential loss or damage.

16 **TERMINATION**

16.1 Termination for corruption

16.1.1 Either party may terminate this Agreement with immediate effect and recover from the other any resulting losses if the other party or its employees servants or agents whether with or without that Party's knowledge:

16.1.1.1 does or has done anything improper to influence the other Party to enter into this Agreement; or

16.1.1.2 commits an offence under the Prevention of Corruption Act 1916 (repealed) or Section 117(2) of the Local Government Act 1972.

16.2 Termination for breach

The Council may, without prejudice to any accrued rights or remedies under this Agreement:

16.2.1 Terminate this Agreement in part or in whole by one month's notice in writing to expire at any time where the Provider in the reasonable opinion of the Council fails to perform the Services in accordance with the terms of this Agreement PROVIDED that such notice shall detail in writing the service failures of the Provider and affords the Provider one month in which to remedy such service failures. If such service failures have not been remedied by the end of that one month period then the Council may immediately terminate the Provider's engagement.

16.2.2 Terminate this Agreement with immediate effect in the event that the Provider:

16.2.2.1 has a bankruptcy order made against him or being a company enters into either compulsory or voluntary liquidation;

16.2.2.2 knowingly or recklessly provides inaccurate information required under this Agreement;

16.2.2.3 engages in or permits improper or fraudulent accounting methods.

16.3 Provider's right to terminate

The Provider shall have the right to terminate this Agreement with immediate effect if the Council fails to pay the Charges in accordance with its obligations contained in this Agreement.

16.4 Mutual right to terminate

Either Party may terminate this Agreement at any time on giving a minimum of sixty days notice in writing to the other. During the period of notice both Parties shall cooperate to ensure that the interests of the recipients of the Services shall continue to be met until whatever new arrangements that may be proposed are put in place.

16.5 Effect and consequences of termination

16.5.1 If due to the Provider being at fault this Agreement is terminated as provided for in Clauses 16.1 or 16.2 the Provider shall repay to the Council on a pro rata basis the Charges already paid by the Council and the Council shall:

16.5.1.1 cease to be under any obligation to make further payment of the Charges until the costs, loss and/or damage resulting from or arising

out of such termination shall have been calculated and provided such calculation shows a sum or sums due from the Council;

16.5.1.2 be entitled to deduct from any sum or sums which would but for Clause 16.1 or 16.2 have been due from the Council to the Provider under this Agreement any loss or damage to the Council resulting from or arising out of the termination of this Agreement. Such loss or damage shall include the reasonable cost to the Council of the time spent by its officers in terminating the Agreement and in making alternative arrangements for the provision of the Services or any part thereof, including ensuring the continuity of learning for any individuals in learning at that time.

16.6 Council property and records

16.6.1 All records in any medium (whether written, computer readable or otherwise) including accounts, documents and drawings about the Council and all copies and extracts of them made or acquired by the Provider in the course of its engagement shall be:

16.6.1.1 the property of the Council;

16.6.1.2 used for the purpose of providing the Services by the Provider only;

16.6.1.3 returned to the Council immediately on demand at any time, and

16.6.1.4 returned to the Council without demand on the termination of the Provider's engagement.

16.6.2 The Provider shall return to the Council on or before the termination of this Agreement in good repair and condition all other property belonging to the Council in the Provider's possession or control.

16.7 The rights of the Council under Clause 16 are in addition to and without prejudice to any other rights the Council may have whether against the Provider directly or pursuant to any guarantee, indemnity or bond.

17 RECOVERY OF SUMS DUE FROM THE PROVIDER

Whenever under this Agreement any sum of money shall be recoverable from or payable by the Provider to the Council the same may be deducted from any sum then due or which at any time thereafter may become due to the Council under this or any other Contract/Agreement with the Provider.

18 VAT

18.1 All sums payable under this Agreement unless otherwise stated are exclusive of VAT and other duties or taxes.

18.2 Any VAT or other duties or taxes payable in respect of such sums shall be payable in addition to such sums

19 **NOTICES**

Any demand, notice, or other communication required to be given hereunder shall be sufficiently served if served personally on the addressee at the address given at the start of this Agreement and marked for the attention of the nominated representative, or if sent by prepaid first class recorded delivery post, email or facsimile transmission to the registered office or last known address of the Party to be served therewith and if so sent shall, subject to proof to the contrary, be deemed to have been received by the addressee on the second business day after the date of posting or on successful transmission, as the case may be.

20 **HUMAN RIGHTS ACT 1998**

20.1 The Provider acknowledges that in relation to its obligations under this Agreement it may be subject to the provisions of the Human rights Act 1998 and the Provider agrees that it will:

20.1.1 at all times act in accordance with the Human Rights Act in relation to its obligations under this Agreement, and;

20.1.2 take such action as the council may reasonably require for the purpose of ensuring compliance with the Act.

21 **WARRANTY**

Each of the Parties warrants its power to enter into this Agreement and has obtained all necessary approvals to do so.

22 **CHANGE OF ADDRESS**

Each of the Parties shall give notice to the other of the change or acquisition of any address, email address or telephone or similar number at the earliest possible opportunity but in any event within 48 hours of such change or acquisition.

23 **WAIVER**

Failure by either Party at any time to enforce the provisions of this Agreement or to require performance by the other of any of the provisions of this Agreement shall not be construed as a waiver of any such provision and shall not affect the validity of this Agreement or any part thereof or the right of the other Party to enforce any provision in accordance with its terms.

24 **SEVERANCE**

If any provision of this Agreement shall become or shall be declared by any court of competent jurisdiction to be invalid or unenforceable in any way, such invalidity or unenforceability shall in no way impair or affect any other provision all of which shall remain in full force and effect.

25 **DISPUTES**

In the event of a dispute between the Parties arising out of or connected with this Agreement both Parties shall use all reasonable endeavors to resolve the dispute before the provisions of Clause 26 are invoked. In the event that the duly authorised representatives of each of the Parties cannot reach amicable agreement in relation to the matter in dispute such matter will be referred to the Chief Executives of both Parties to act as mediators. In the event that agreement in relation to the matter in dispute still cannot be reached then Clause 26 shall be invoked.

26 **ARBITRATION**

Any dispute which cannot be resolved in accordance with Clause 25 shall, unless the Parties agree otherwise be referred to an Arbitrator to be agreed upon by the Parties or in default of such agreement to be nominated by the President for the time being of the Chartered Institute of Arbitrators or a person appointed by him.

27 **OBSERVANCE OF STATUTORY REQUIREMENTS**

27.1 The Provider shall comply in all respects with all statutory requirements applicable to the provision of the Services including without limitation the Disability Discrimination Act, the Health and Safety at Work Act and the Data Protection Act

28 **EQUAL OPPORTUNITIES**

28.1 The Provider shall not unlawfully discriminate within the meaning and scope of the provisions of the Equality Act 2010, or any statutory modification or re-enactment thereof or any other statutory provision relating to discrimination in employment or the provision of services. The Provider shall take all reasonable steps to ensure the observance of these provisions by all servants, employees or agents of the Provider

in the execution of the Agreement. The Provider will comply with the detailed requirements in relation to equality of opportunity set out in clauses 28.2 to 28.4.

28.2 The Provider will, in delivering the Provision under this Agreement, demonstrate that it has had regard to the duties placed on the SFA/EFA and the Council by relevant equality legislation. The Provider will take all reasonable steps to ensure the observance of these provisions by all servants, employees or agents of the Provider.

28.3 The Provider shall ensure that equality of opportunity is built into all aspects of the Provision; the business planning process; and the self assessment process. The Provider shall use analysis of data to inform future planning to improve the representation, participation and success of underrepresented and underachieving groups and challenge stereotyping. The Provider shall use appropriate, specific and measurable objectives. These will be proportionate, relevant and aligned to the provision the Provider is funded to deliver.

28.4 The SFA/EFA and/or Council shall use a variety of equality information and data to support judgements about quality and eligibility for funding. These may include, but are not limited to: inspection judgements for equality and diversity, judgements from the Equality and Human Rights Commission, and the success and participation rates of different groups of learners.

29 **ENTIRE AGREEMENT**

29.1 The Parties agree that:

29.1.1 this Agreement together with the documents referred to herein or any additional agreement between the Parties which is stated to form part of this Agreement constitutes the entire Agreement between the Parties relating to the subject matter hereof and this Agreement supersedes any prior agreement between the Parties whether written or oral and any such prior agreements are cancelled as at the Commencement Date but without prejudice to any rights which may have already accrued to either of the Parties thereunder; and

29.1.2 the Parties acknowledge that in entering into this Agreement they have not relied on any other statement warranty representation or undertaking given by or on behalf of the other party and the Parties have no remedy for claims arising in respect of the same; and

29.1.3 that the remedies available to the Parties are exclusively those set out in this Agreement; and

29.1.4 that with the exception of liability for fraud all other terms in relation to any aspect of this Agreement whether statutory or otherwise are excluded.

30 **THIRD PARTY RIGHTS**

The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement except to the extent that any provision of this Agreement expressly provide to the contrary.

31 **FORCE MAJEURE**

Neither Party shall be liable for any failure to fulfil its obligations under this Agreement to the extent that such failure results from any event or circumstance beyond its reasonable control including (without limitation) war, insurrection, civil commotion, riot, act of national or local government, perils of the sea or air, weather (including earthquake, drought or flood), fire, explosion, sabotage or embargo.

32 **PROPER LAW AND JURISDICTION**

This Agreement shall be governed by English law and the Parties consent to the exclusive jurisdiction of the English courts in all matters regarding it.

33 **LEARNER HEALTH, SAFETY & WELFARE**

33.1 The Provider shall ensure, so far as reasonably practicable that learning takes place in safe, healthy and supportive environments, which meet the needs of learners. The Provider shall provide information to the SFA and/or the Council, as and when specifically requested, to give assurance that adequate arrangements exist for learner health safety and welfare.

33.2 Where part of the learning takes place in an environment outside the direct control of the Provider, the Provider shall take all reasonable steps to ensure that adequate arrangements are in place to ensure the health and safety of learners.

33.3 The Provider shall adopt recruitment processes that comply with the law and will ensure that children and vulnerable adult learners are protected. The Provider will take all necessary actions to comply with current legal safeguarding requirements. The Provider must make the necessary checks to ensure that employment that involves regular contact with young people under the age of 18, or other vulnerable learners, is not offered to or held by anyone who has been convicted of certain specified offences, or whose name is included on lists of people considered unsuitable for such work held by the Department for Education and the Department of Health. Information should also be sought from the Disclosure and

Barring Service. The Provider must undertake an adequate risk assessment to establish what action is required where their employees have regular contact with learners under 18 or other vulnerable learners.

- 33.4 The Provider will carry out criminal records bureau checks on all overseas applicants for employment and seek additional information about an applicant's conduct. The Provider must review its records and be able to demonstrate it has robust record-keeping procedures in relation to the checks it has undertaken and the staff it employs.
- 33.5 In working with other organisations/bodies, the Provider shall make arrangements to co-ordinate and co-operate effectively for reasons of learner health, safety and welfare. In particular, respective responsibilities shall be clearly identified and documented as appropriate, to ensure understanding.
- 33.6 The Provider shall inform the Council of the death of any Learner which is as a result of work undertaken whilst in employment and who is undertaking a related Learning Programme. This shall be done by:
- 33.6.1 informing the Council's representative by telephone or email immediately the Provider becomes aware of the event.
- 33.7 The Provider shall report all RIDDOR reportable incidents in line with the Regulations, and shall investigate or assess the circumstances of all learner incidents within the scope of RIDDOR and follow HSE guidance 'Investigating Accidents and Incidents: A Workbook for Employers, Unions, Safety Representatives and Safety Professionals' (HSG245) ISBN 0717628272. The Provider shall only use persons competent to investigate/assess learner incidents with a view to identifying the causes of any incident and lessons to be learned.

The Provider shall also monitor, and act on, any other harm to learners to the extent that the Provider 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 learner of any physical or mental faculty or any disfigurement, incidents of bullying and harassment.

- 33.8 The Provider shall co-operate with Council, the SFA's representatives and Department for Work and Pensions (DWP) for the purposes of the Industrial Injuries Disablement Benefit (IIDB) in respect to those learners to which it

applies.

33.9 The Provider shall ensure that it complies with its duty to have due regard to the need to prevent Learners from being drawn into terrorism in accordance with s26 of the Counter-Terrorism and Security Act 2015 and the guidance published by the Secretary of State.

34 DATA PROTECTION AND PROTECTION OF PERSONAL DATA

34.1 The Provider shall ensure that information acquired by the Provider under the delivery of this funding agreement will at all times comply with the provisions and obligations imposed by the Data Protection Act 1998 and the Data Protection Principles together with any subsequent re-enactment or amendment thereof in storing and processing personal data, and all personal data acquired by either party from the other shall be returned to the disclosing party on request. Both parties hereby acknowledge that performance of a duty imposed by the Act shall not constitute a breach of any obligation in respect of confidentiality which may be owed to the other party. The clause shall not affect the Council's ability to make a search with a credit reference agency.

34.2 With respect to the parties' rights and obligations under this Agreement the parties agree that the Council is the Data Controller and the Provider is the Data Processor within the meaning of the Data Protection Act.

34.3 The Provider shall:

34.3.1 process Personal Data only in accordance with the instructions from the Council (which may be specific instructions or instructions of a general nature as set out in the Agreement or otherwise notified by the Council to the Provider during the term of the Agreement);

34.3.2 process the Personal Data only to the extent and in such manner as is necessary for the delivery of the Provision or as is required by Law or any Regulatory Body;

34.3.3 implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful

processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;

34.3.4 take reasonable steps to ensure the reliability of any contractor personnel who have access to the Personal Data;

34.3.5 obtain prior written consent from the Council in order to transfer the Personal Data to other third parties for the delivery of the Provision;

34.3.6 ensure that all Personnel do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Council;

34.3.7 notify the Council within 5 working days if it receives:

34.3.7.1 a request from a Data Subject to have access to that person's Personal Data; or

34.3.7.2 a complaint or request relating to the Council's obligations under the Data Protection Legislation;

34.3.8 provide the Council with full co-operation and assistance in relation to any complaint or request made, including by:

34.3.8.1 providing the Council with full details of the complaint or request;

34.3.8.2 complying with a data access request within the relevant timescales set out in the Data Protection Legislation and in accordance with the Council's instructions;

34.3.8.3 providing the Council with any Personal Data it holds in relation to a Data Subject (within the timescales required by the Council); and

34.3.8.4 providing the Council with any information requested by the Council;

34.3.9 permit the Council or the Council's representative (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit the Provider's data processing activities (and/or those of its agents, subsidiaries, and sub-contractors) and comply with all reasonable requests or directions by the Council to enable the Council to verify and/or procure that the Provider is in full compliance with its obligations under this Agreement;

34.3.10 provide a written description of the technical and organisational methods employed by the Provider for processing Personal Data (within the timescales required by the Council); and

34.3.11 not Process Personal Data outside the European Economic Area without the prior written consent of the Council and, where

the Council consents to a transfer, to comply with:

34.3.11.1 the obligations of a Data Controller under the Eighth Data Protection Principle set out in Schedule 1 of the Data Protection Act 1998 by providing an adequate level of protection to any Personal Data that is transferred; and

34.3.11.2 any reasonable instructions notified to it by the Council.

34.4 Where the Provider is delivering the provision to learners claiming out of work benefits, the Secretary of State with responsibility for unemployment is the Data Controller in relation to Personal Data, which the Provider is required to provide to the Secretary of State under any enactment. This clause 34.4 will be enforceable by the appropriate Secretary of State in relation to any Personal Data processed by the Provider on their behalf. Failure to transmit complete and accurate data under this clause 34.4 will constitute a breach of the conditions of funding set out in this Agreement and may result in payments for this Provision to be delayed or withheld.

34.5 Where the Provider is providing the provision to learners who are subject to active management by the Offender Manager in respect of an order or licence, the Secretary of State for Justice (or their successor) is the Data Controller in relation to Personal Data which the Provider is required to provide to the Secretary of State for Justice.

AS WITNESS the hands of the Parties the day and year first before written.

Signed on behalf of the Council

Name.....

Position

Date

Signed on behalf of the Provider

Name.....

Position

Date