

**GATESHEAD
COLLEGE**
EDUCATION
WITH
EMPLOYMENT
EDGE



Dated: 1 August 2025

Training and Education Agreement

Between

Gateshead College Further Education Corporation

And

For the Academic Year 2025/2026

Contract No SORASB2526NECA

NON-APPRENTICE SUB-CONTRACTED PROVISION



Contents

1.	Definitions	1
2.	Commencement and Duration	9
3.	Contract Managers	9
4.	The Provider's Principal Obligations	10
5.	The College's Principal Obligations	11
6.	Learner Eligibility and Information, Advice and Guidance	12
7.	Enrolment, Registration and Certification	13
8.	Tutors, Provision of Services and Delivery of the Programme	14
9.	Learners and Employers	17
10.	Assessment	18
11.	No Assignment or Sub-Contracting	18
12.	Freedom of Information	19
13.	Confidentiality	20
14.	Equality of Opportunity and Human Rights	21
15.	Health & Safety	22
16.	Liability	24
17.	Insurance	25
18.	Intellectual Property	26
19.	Branding	27
20.	Access and Monitoring	27
21.	Provision of Records and Information	28
22.	Significance of Records	31
23.	Funding	31
24.	Price, Payment and Claw Back	32
25.	Taxation and Other Payments	35
26.	Prohibited Activities	35

27.	Data Protection	37
28.	Quality Assurance.....	38
29.	European Funding, Other Sources of Funding and State Aid	40
30.	Additionality.....	41
31.	Disposal of Assets and Change of Use	42
32.	Breach.....	43
33.	Termination.....	43
34.	Consequences of Termination.....	46
35.	Force Majeure.....	47
36.	Public Reputations of the Parties/Press Releases.....	48
37.	Non-Solicitation	48
38.	Status of Agreement	49
39.	Waiver.....	49
40.	Third Party Rights.....	49
41.	Notices.....	49
42.	Dispute Resolution.....	50
43.	Entire Agreement..	50
44.	Change Control Procedure.....	50
45.	Governing Law and Jurisdiction.....	52
	Schedule1 (The Services).....	54
	Schedule2 (Price, Profile, Payment Schedule, Claim Dates, Payment Procedure, Qualification, Premises and College Targets).....	55
	Schedule3(Programme(s)).....	57

This Agreement is made on 1st August 2025.

BETWEEN

- A. SORA Services Ltd of 3 Merchant Court, Monkton Business Park South, Hebburn, Tyne and Wear NE31 2EX ("the Provider"); and
- B. **Gateshead College Further Education Corporation**, a further education corporation whose principal address is Baltic Campus, Quarryfield Road, Baltic Business Quarter, Gateshead, NE8 3BE ("the College").

Each a "Party" and together "the Parties".

Background

- 1. The College has entered into a contract with the Funding Agency to supply or procure the supply of Programmes.
- 2. The College is a further education corporation concerned with the provision of education to learners.
- 3. The purpose of the parties entering into this Agreement is to enable the College to ensure high quality education, training and support is provided to learners, partly through the Provider's provision of the Services. This Agreement complies with the College's delivery subcontracting policy, which can be found at:

<https://www.gateshead.ac.uk/wp-content/uploads/2025/07/GC-POL-010-Subcontracting-Delivery-Policy-25-26-03.pdf>

- 4. The College has overall responsibility for the training, assessment, quality assurance, financial health and audit compliance conducted by subcontractors it contracts with to deliver training services or manage delivery by any subcontractors, in line with the NECA funding rules 1 August 2025 to 31 July 2026

[file:///C:/Users/Shared/AEB/2.%20NECA%20\(NTCA%20pre%2024-25\)/2025-26%20\(NECA\)/Funding%20Rules%20and%20Guidance/Schedule%201%20-%20North%20East%20CA%20ASF%20Funding%20Rules%202025-2026.pdf](file:///C:/Users/Shared/AEB/2.%20NECA%20(NTCA%20pre%2024-25)/2025-26%20(NECA)/Funding%20Rules%20and%20Guidance/Schedule%201%20-%20North%20East%20CA%20ASF%20Funding%20Rules%202025-2026.pdf)

- 5. The College and the Provider have agreed that their relationship should be governed by a legally binding contract and that the agreed terms of the contract are those set out in this Agreement.

Operative Provisions

1. Definitions

- 1.1 In this Agreement the following expressions have the following meanings:

Academic Term	means each of the academic terms ending on 31 December, 30 April and 31 July during the term of this Agreement
Achievement	means achievement of a Qualification by a Learner as evidenced by the provision of Achievement Evidence

Achievement Evidence

means evidence produced by the Provider to the College in a form satisfactory to the College and comprising either:

- (a) a copy of the list produced by an external examination body (certified as true and accurate by an authorised representative of the Provider) setting out the names of Learners who have attained a Qualification together with all associated certificates; or
- (b) where the Programme is such that there is no external examination body involved in assessing Learners a copy (certified as true and accurate by an authorised representative of the Provider) of the certificate awarded by the Provider to Learners who have attained a Qualification

Agreement

means all parts of this document including its Schedules and schedule and any variations to the same as agreed in writing and signed by duly authorised representatives of the Provider and the College

Attendance

means the attendance of a Learner on a Programme as evidenced by the provision of the Attendance Evidence

Attendance Evidence

means a certificate which records, in relation to each Enrolled Learner, that Enrolled Learner's attendance on or absence from the relevant Programme or that Enrolled Learner's withdrawal from the Programme (as the case may be) together with any associated attendance evidence requested by the College

Bribery Act

means 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

Claim Date

means, subject to clause 22.1 and schedule2, each date in respect of which the College notifies the Provider that a claim for payment may be made which shall in the absence of any contrary notification be such dates as are set out in schedule 2

Claim Period

means the period between each Claim Date during the term of this Agreement or, in the case of the first Claim Period, the period between the Commencement Date and the first Claim Date

College Intellectual Property

means any intellectual property rights belonging to the College including but not limited to copyright in forms, course materials and marketing materials and unregistered trade and service marks made available for

use by the College to the Provider in connection with the provision or promotion of the Programme and also including the Trade Marks and the Know-How

College's Charter

means the charter adopted by the College pursuant to the requirements of the relevant Government department from time to time, or such other charter as the College adopts from time to time

College Targets

means the College's target rates in respect of Learners as set out in schedule 2

Commencement Date

means 1 August 2025

Confidential Information

means all confidential information (however recorded or preserved) disclosed by a Party or its employees, officers, representatives or advisers (together its 'Representatives') to the other Party and that Party's Representatives concerning:

- (a) any information that would be regarded as confidential by a reasonable business person relating to:
 - (i) the business, affairs, customers, clients, suppliers, plans, intentions, or market opportunities of the disclosing Party; and
 - (ii) the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing Party (or of any member of the group of companies to which the disclosing Party belongs)
- (b) any information developed by the Parties in the course of carrying out this Agreement,

but excluding any information that:

- (I) is or becomes generally available to the public (other than as a result of its disclosure by the receiving Party or its Representatives in breach of clause 13); or
- (II) was available to the receiving Party on a non-confidential basis before disclosure by the disclosing Party; or
- (III) was, is or becomes available to the receiving Party on a non-confidential basis from a person who, to the receiving Party's knowledge, is not bound by a confidentiality agreement with the disclosing Party or otherwise prohibited from disclosing the

information to the receiving Party; or

- (IV) was known to the receiving Party before the information was disclosed to it by the disclosing Party; or
- (V) the Parties agree in writing is not confidential or may be disclosed; or
- (VI) is developed by or for the receiving Party independently of the information disclosed by the disclosing Party

Counter-Terrorism Legislation

means the Counter-Terrorism and Security Act 2015 as may be amended from time to time, and any subordinate legislation made under that Act from time to time, together with any applicable guidance and/or codes of practice issued by the relevant Government department in relation to such legislation

Data Protection Legislation

means the Data Protection Act 2018, (DPA 2018), and the UK General Data Protection Regulation (UK GDPR) and all other laws and regulations from time to time relating to the processing of personal data, including any which implement the GDPR or create broadly equivalent law in the United Kingdom

Data Subject

as defined in the Data Protection Legislation

Employer

means, in relation to a Learner, a person or organisation by whom that Learner is employed or engaged (including any such person or organisation who employs or engages a Learner who has previously been made redundant by a previous Employer; Employer-providers and Flexi-Job Apprenticeship Agencies (FJAA); Companies or charities whose PAYE scheme the employer has connected to their apprenticeship service account in accordance with HMRC's definition of connected companies and charities)

Employer Agreement

means any contract between the College and the Employer for the delivery by the College of the Programme(s) to certain employee(s) of the Employer

End Date

means 31 July 2026

Enrolled

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

Enrolment Guidelines	means the College's guidelines for enrolment in the form set out in the Provider Guidance or such other enrolment guidelines as the College notifies in writing to the Provider from time to time
Environmental Information Regulations	means the Environmental Information Regulations 2004 as may be amended from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such regulations
ESIF	means the European Structural and Investment Fund
FOIA	means the Freedom of Information Act 2000 as may be amended from time to time, and any subordinate legislation made under the Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation
Funded Learner	means a Learner whose education is intended to be funded in part or in full by the Funding Agency
Funding	means the funding provided to the College in relation to the Programme by the Funding Agency in accordance with the Funding Rules and the provisions of this Agreement (excluding any employer incentive payments provided by the Funding Agency to the College in connection with the Employer Agreement)
Funding Agency	means the North of Tyne Combined Authority the Student Loans Company, and such other funding agency or agencies as the College notifies from time to time
Funding Rules	means the procedures, rules and requirements from time to time laid down by the Funding Agency in relation to the application of the Funding including without limitation the Conditions of Funding (Colleges) between the College and the Chief Executive of Funding Agency (as may be varied from time to time), the College Financial Planning Handbook 2018 as may be updated from time to time and all documents issued by the Funding Agency which are referred to as Provider Guidance in each case as may be amended from time to time
Incoming Supplier	means a supplier who provides the Services or services substantially similar to the Services, following the date on which this Agreement terminates or expires
Information	has the meaning given under section 84 of FOIA
Inspectorates	means any inspectorates which the College notifies to the Provider from time to time as being permitted to inspect the Parties' compliance with the terms of this

	Agreement, the Funding Rules and legislation, including without limitation the Office for Standards in Education (OFSTED) and any relevant ESIF Managing Authority
Know-How	means the non-patented practical information and expertise provided by the College to the Provider and including the contents of the Quality Documentation
LARS Price	means the price calculated on a Learner-by-Learner basis by the LARS
LARS	means the Learning Aim Reference Service
Learner	means a person who is Enrolled or to be Enrolled and who receives the education and training comprised in a Programme
Learning Agreement	means the learning agreement between the College and a Learner in accordance with and including the requirements in the Funding Rules from time to time
Minor Breach	means a delay or non-performance by either Party of its obligations under this Agreement which in the College's reasonable opinion does not materially, adversely or substantially affect the performance or delivery of the Services (or any of them) or the provision of a safe, healthy and supportive learning environment
Monitoring Body	means any person, firm, company or other organisation which the College may appoint from time to time to act on its behalf under this Agreement to monitor the Provider's compliance with the terms of this Agreement
Month	means a calendar month
NECA	North East Combined Authority
Parties	means the College and the Provider and 'Party' shall be construed accordingly
Payment Schedule	means the schedule of payment as specified in schedule 2 setting out the basis on which payments will be made in accordance with clause 24
Personal Data	as defined in the Data Protection Legislation.
Premises	means the premises specified in schedule 2 or such other premises as are agreed between the Parties from time to time
Price	means the sums payable by the College to the Provider in relation to the provision of the Services which sums are calculated in accordance with schedule 2, and are

payable in accordance with this Agreement

Process

has the meaning given to it under the Data Protection Legislation but, for the purposes of this Agreement, it shall include both manual and automatic processing

Profile

means the profile set out in schedule 2, being the number and type of Learners which the College intends to consider for Enrolment pursuant to clause 7 or such other profile as the College specifies from time to time in writing

Programme

means an individual learning programme or programmes to be provided by the Provider aimed at the Learner achieving the Qualification and other achievements set out in schedule 3 as may be varied in accordance with clause 8.8

Programme Support

means the support required to satisfy the special needs requirements of the Learner and other items set out in the Provider Guidance

Prohibited Act

means any of the following:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the College a financial or other advantage to:
 - (i) induce that person to perform improperly a relevant function or activity; or
 - (ii) reward that person for improper performance of a relevant function or activity;
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement;
- (c) to fund, whether deliberately or inadvertently, an extremist organisation; and
- (d) committing any offence:
 - (i) under the Bribery Act;
 - (ii) under legislation creating offences concerning fraudulent acts;
 - (iii) at common law concerning fraudulent acts relating to this Agreement or any other

contract with the College; or

- (iv) defrauding, attempting to defraud or conspiring to defraud the College

Provider Guidance

means the procedures, rules, updates/e mail instructions entitled 'Provider Guidance' and requirements for Providers issued by the College from time to time

Qualification

means the qualification set out in A schedule 2 or:

- (a) a qualification awarded by an external examination body to Learners who have completed a Programme and met that external examination body's criteria for awarding the relevant qualification; or
- (b) where there is no external examination body involved in assessing Learners, a qualification awarded by the Provider to Learners who have completed a Programme and who have met the Provider's criteria for awarding such a qualification, which criteria are those approved by the College from time to time

Quality Documentation

shall mean the College's statement of quality standards and procedures to be adopted to ensure quality in education delivered to Learners as set out in the Provider Guidance or as otherwise notified to the Provider by the College from time to time

Quality Standards

shall mean the College's statement of the quality expected in education delivered by the Provider as set out in the Quality Documentation, which shall in any event require the Provider to provide the Services to a standard which is not less than the standard expected of a skilled and competent provider of the type of education that makes up the Programme

Request for Information

means a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations

Serious Breach

means any breach defined in this Agreement as a Serious Breach or any breach which in the College's reasonable opinion adversely, materially and substantially affects the performance or delivery of the Services (or any of them) or the provision of a safe, healthy and supportive learning environment. Failure to comply with legislation, or actions or omissions by the Provider that endanger the health or safety of Learners, shall constitute a Serious Breach

Services	means the services to be provided by the Provider under this Agreement including without limitation those services specified in schedule 1 as may be varied in accordance with clause 8.8 and in the Provider Guidance
Training	means the delivery of training and on-programme assessment by the College to the Learner
Trade Marks	means the registered and unregistered trade marks belonging to the College or otherwise made available for use by the Provider pursuant to this Agreement as notified by the College to the Provider from time to time
Tutors	means the staff of the Provider or people who are under the direct control of the Provider as employees including volunteers, engaged partly or wholly in the provision of the Programme to, and assessment of, Learners and internal verification procedures
UKRLP	UK Register of Learning Providers

- 1.2 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.
- 1.3 The headings in this Agreement are for ease of reference only but do not form part of this Agreement and will not be taken into account when construing it.
- 1.4 References to Schedules or clauses are references to schedules to, or clauses of, this Agreement.
- 1.5 Reference to any statute or statutory provision includes a reference to that statute or statutory provision as from time to time amended, extended or re-enacted.

2. Commencement and Duration

This Agreement will commence on the Commencement Date and continue until the End Date unless terminated earlier in accordance with its terms.

3. Contract Managers

- 3.1 For the purpose of managing this Agreement both Parties shall appoint a contract manager and shall notify the other Party in writing of the name of their contract manager.
- 3.2 The Provider shall procure that its contract manager co-operates with the College's contract manager to ensure that the Services are delivered as specified in this Agreement, that the quality of the Services is maintained at least to the minimum standards and performance levels prescribed in this Agreement, and that all management and other information requested by the College from time to time is provided without delay.
- 3.3 The Provider shall promptly comply with all reasonable requests and directions of the College's contract manager and shall procure that the Provider's contract manager shall, unless the College specifies otherwise from time to time, meet (or, if the College agrees, attend a conference call or video call) with the College's contract manager not less than once every Academic Term.

4. The Provider's Principal Obligations

- 4.1 The Provider shall provide the Programme to Learners as the College directs from time to time, carry out the Services with such reasonable skill, care and diligence as would be expected from a skilled and experienced provider of services of the nature of the Services in accordance with this Agreement, and shall comply with the Quality Standards, the Funding Rules and the Provider Guidance and all applicable legislation at all times.
- 4.2 The Provider shall be solely responsible for the acts and omissions of its employees, agents, associates and (notwithstanding clause 11.1) sub-contractors.
- 4.3 The Provider acknowledges and agrees that the College is at all times to be in control of all aspects of the Programme and the Provider hereby undertakes to comply with the College's requirements from time to time in respect of any aspect of the Programme.
- 4.4 The Provider shall ensure that the Premises are under the Provider's or the Employer's ownership or control at all times during the continuance of this Agreement.
- 4.5 The Programme shall be delivered at the Premises unless written consent is given otherwise by the College.
- 4.6 The Provider shall attend at the Premises and at any of the College's premises involved in the delivery of the Programme such review meetings and other meetings as are reasonably requested by the College from time to time, and in any event at least once every Academic Term, provided that the College may, at its sole discretion, agree for any such meeting to be held via conference call or video call instead of a face-to-face meeting.
- 4.6 The Provider undertakes:
 - 4.6.1 to promote positively the name and reputation of the College;
 - 4.6.2 not to do or fail to do anything which detrimentally affects or is likely to detrimentally affect the reputation or interests of the College, the Funding Agency, Learners or the Programme;
 - 4.6.3 to promptly notify the College of all enquiries and complaints the Provider receives or becomes aware of in respect of the Services or the Programme;
 - 4.6.4 to meet any performance dates specified by the College in relation to the provision of the Services, and shall immediately notify the College if for any reason the Provider is or is likely to be delayed in the performance of the Services or is unable to perform the Services;
 - 4.6.5 not to do or fail to do anything which would prejudice or be likely to prejudice the ability of the Provider to perform the Services or otherwise comply with the terms of this Agreement;
 - 4.6.6 not to do or fail to do anything which causes or is likely to cause the College to be in breach of the Funding Rules or any Employer Agreement;
 - 4.6.7 to achieve all of the College Targets;
 - 4.6.8 to comply with:
 - i. the College's sustainable development policy and related implementation plan notified by the College to the Provider from time to time;

- ii. the College's equal opportunities policy and related implementation plan notified by the College to the Provider from time to time; and
- iii. all relevant procurement legislation and any ESIF procurement guidance notified by the College to the Provider from time to time,
- iv. in each case in connection with the Provider's performance of its obligations under this Agreement.

4.7 Unless otherwise specified by the College, the Provider undertakes that it shall have and maintain Approved Accredited Centre status granted by the appropriate awarding bodies in respect of areas associated with the Programme, that it shall provide to the College immediately on request evidence of Approved Accredited Centre status and copies of all reports relating to the Provider issued by or on behalf of the awarding bodies, including but not limited to external verification reports, and that it shall allow the College to observe any meetings between the Provider and the appropriate awarding body. The Provider shall notify the College as soon as practicable and in any event within five working days if the Provider's Approved Accredited Centre status is suspended, amended or expires.

4.9 The Provider hereby warrants that the Programme is eligible for the Funding, including but not limited to that the Programme satisfies all relevant eligibility requirements set out in or referred to in the Funding Rules.

4.10 The Provider shall:

4.10.1 at all times when performing its obligations pursuant to this Agreement, have due regard to the need to prevent people from being drawn into terrorism, and shall comply with all applicable statutory requirements, in each case as set out in the Counter-Terrorism Legislation (including but not limited to s.26(1) of the Counter-Terrorism and Security Act 2015);

4.10.2 comply with all applicable guidance documents and policies relating to the Counter-Terrorism Legislation which are issued by the Government or otherwise notified by the College from time to time; and

4.10.3 ensure that each Tutor and employee involved in the delivery of the Programme or the Services has attended any training sessions relating to the Counter-Terrorism Legislation as are required by the College from time to time,

and the Provider acknowledges and agrees that a breach by the Provider of this clause 4.10 shall constitute a Serious Breach under clause 32 of this Agreement which is not capable of remedy.

4.11 The Provider hereby warrants that it is registered on the UKRLP and, where required by the Funding Agency, the Register of Training Organisations, and that when submitting information to any of the College, the Funding Agency or the Inspectorates the Provider shall ensure that all written representations of its name shall be its legal name and shall be identical as to how its name appears on the UKRLP and (if applicable) the Register of Training Organisations. In any event, the Provider shall comply with any requirements of the Funding Agency relating to the Register of Training Organisations.

5. The College's Principal Obligations

5.1 During the continuance of this Agreement the College will:

- 5.1.1 monitor the Provider's compliance with the Quality Standards;
- 5.1.2 offer advice and guidance to Learners on request in accordance with the College's procedures from time to time;
- 5.1.3 provide the Provider with such information as the Provider shall in the reasonable opinion of the College reasonably require to perform the Services; and
- 5.1.4 subject to the Provider complying with its obligations under this Agreement, pay to the Provider such amounts as shall be due to the Provider pursuant to clause 24 and the remaining terms of this Agreement.

6. Learner Eligibility and Information, Advice and Guidance

- 6.1 The Provider shall undertake initial needs assessments for all Learners to identify existing skills, knowledge and experience to ensure that Learners are provided with clear pre-entry advice and guidance, and made aware of a qualification appropriate to the needs of the individual and any relevant third party including without limitation any relevant Employer. The Provider will ensure that each Programme duration is not too short or excessive having regard to the needs identified and the Funding Rules.
- 6.2 The Provider will carry out eligibility checks to ensure that only Learners who satisfy the conditions set out in the Funding Rules (including in both cases in relation to any relevant Employer eligibility and the Provider Guidance and Enrolments Guidelines and all relevant ESIF eligibility criteria) are proposed to the College by the Provider for Enrolment on the Programme and the Provider shall notify the College of any changes to eligibility information provided by the Learner immediately upon becoming aware of the same. The Provider must make available either clear records or actual copies of the documentation being used to support the eligibility of the Learners.
- 6.3 The Provider agrees, and agrees to procure that each Learner agrees, that the College shall be entitled to make such enquiries and disclose such information to such third parties as the College shall reasonably determine in order to ascertain the Learner's eligibility for Enrolment or entitlement to receive the Programme, and the Provider shall reasonably assist the College in responding to any such enquiries.
- 6.4 The Provider acknowledges and agrees that:
 - 6.4.1 unless the College otherwise agrees or specifies, the Provider will be primarily responsible for providing information, advice and guidance to Learners to assist Learners in understanding the opportunities and support available to them concerning education, training, employment and connected matters;
 - 6.4.2 the Provider shall refer to the College any Learner requiring additional information, advice and guidance and shall provide such assistance as the College shall reasonably require to enable the College to provide the same to a high standard; and
 - 6.4.3 unless the College otherwise agrees, the Provider is required under this Agreement to have, and shall maintain throughout the duration of this Agreement, Matrix accreditation. The Provider shall notify the College immediately in the event that it loses its Matrix accreditation. The Provider acknowledges that loss of Matrix accreditation constitutes a Serious Breach of this Agreement.

- 6.5 Subject to clause 6.4.3, as part of their accreditation, the College is required to successfully demonstrate their continuous improvement activities to their Matrix Assessor through the use of the online Self Reflection Tool on an annual basis.
- 6.6 The Provider shall ensure that learning takes place in safe, healthy and supportive environments, which meet the needs of Learners. The Provider shall provide information to the Funding Agency, as and when specifically requested, to give assurance that adequate arrangements exist for learner health, safety and welfare. Failure to do so may constitute a Serious Breach of this Funding Agreement.
- 6.7 The Provider shall make arrangements for ensuring that the Programme(s) and Services are provided with a view to safeguarding and promoting the welfare of Learners. In doing so, the Provider shall have regard to any guidance published, from time to time, by the Secretary of State for Education which sets out the expectations in relation to safeguarding practice within further education institutions. Failure to do so may constitute a Serious Breach of this Agreement.

7. Enrolment, Registration and Certification

- 7.1 The Provider acknowledges that the College shall be solely responsible for Enrolling Learners and agrees to submit to the College Learners it wishes to be considered for Enrolment on the Programme in accordance with the Enrolment Guidelines.
- 7.2 Any Learner which the College agrees to Enrol will be Enrolled as a learner of the College.
- 7.3 The College shall from time to time direct the Provider as to who is to be a Learner and to receive a Programme. The Provider acknowledges and agrees that it is not the College's agent for the purpose of Enrolment, the decision as to whether a person shall be Enrolled as a Learner is for the College alone, and the College may direct the Provider at any time not to propose any particular Learner or any Learners for Enrolment.
- 7.4 Subject to clause 7.3, the College may, in its absolute discretion, from time to time allow the Provider to propose persons for the College to Enrol as Learners from a class or classes of person indicated to the Provider by the College, provided that should the College exercise this right it shall be without prejudice to the College's right to accept or reject persons for Enrolment as Learners as the College sees fit, and provided it is in accordance with the recruitment provisions in the Funding Rules.
- 7.5 The Provider shall procure that an appropriate number of appropriate Learners are proposed to the College for Enrolment so as to enable the College, should it wish, to Enrol sufficient Learners to enable the Provider to achieve the Profile. The Provider hereby agrees to adhere to the Profile and for the avoidance of doubt the College shall not be obliged to make any payment to the Provider other than in accordance with the Profile. A breach by the Provider of this clause 7.5 shall constitute a Serious Breach of this Agreement.
- 7.6 The College reserves the right to require the Provider to obtain a contribution towards the cost of the Services delivered under this Agreement from the Employer and/or any Learner. In the event that a Learner or an Employer is required to pay any fee to the Provider in connection with the Learner's or Employer's participation in a Programme, the Provider shall adhere to the College's policy on Learner and Employer fees as notified by the College from time to time, provide evidence that the contribution has been received and shall (unless the College specifies otherwise in writing) enter into an agreement with the Learner or the Employer (as the case may be) which shall specify:
- 7.6.1 that the Learner or Employer shall make such payment to the Provider in the event that the Learner is Enrolled by the College;

- 7.6.2 the extent to which the Programme is being funded by the Funding Agency through the College; and
- 7.6.3 that the College is not a party to that agreement and the fee shall be retained by the Provider.
- 7.7 Any Learner Enrolled as a student of the College will enter into a Learning Agreement reflecting the outcome of the initial advice and guidance and assessment of the Learner by the Provider. The contents of the Learning Agreement shall insofar as they are relevant form part of the specification of the Programme provided that the College notifies the Provider of such contents, including without limitation the Provider Guidance.
- 7.8 For the avoidance of doubt nothing in this Agreement obliges the College to Enrol any specific Learner or any Learners. The College can enrol or reject Learners as it would do if the Learners were to be taught on its own site.
- 7.9 The Provider will (unless the College specifies otherwise in writing):
- 7.9.1 promptly following Enrolment of a Learner as a student of the College, register the Learner with the relevant examination body;
- 7.9.2 promptly following achievement of a Qualification by a Learner, arrange for certification of the Learner including but not limited to the provision of a certificate to the Learner within the period specified by the College or the examination body or, in the absence of any such specified period, within a reasonable period; and
- 7.9.3 pay all fees associated with the registration and certification of each Learner.
- 7.10 Enrolment forms will be supplied by the College. The Provider shall procure that each Learner correctly completes their Enrolment form not less than seven days before the commencement of their Programme (or by such alternative deadline agreed by the College in writing).

8. Tutors, Provision of Services and Delivery of the Programme

- 8.1 Unless the College agrees or specifies otherwise, the Provider will only employ Tutors in the delivery of the Programme who have previously been approved in writing by the College (such approval not to be unreasonably withheld) and will supply to the College all information which the College requests (including without limitation curriculum vitae) in order for the College to decide whether to grant such approval.
- 8.2 The Provider will provide to the College evidence of the employment relationship between the Provider and the Tutors. For the avoidance of doubt the Provider may not engage Tutors who are not employees or volunteers under the direct control of the Provider in relation to the delivery of the Programme or the delivery of the Services and shall use its best endeavours to ensure continuity of personnel and to ensure that its turnover rate (including Tutors) is at least as good as the prevailing industry norm for similar services.
- 8.3 The Provider shall procure that its employees act in accordance with any reasonable instructions given by the College in relation to the delivery and administration of the Programme and the performance of the Services. The Provider shall investigate any complaint made by the College or a Learner against any Tutor or other employee of the Provider so engaged and shall co-operate in any such investigation and its outcome. The Provider shall ensure there is an adequate number of the Provider's personnel engaged in the delivery or administration of the Programme(s) to deliver the Programme(s) properly and in accordance with the Quality Standards.

8.4.1 The College shall in its reasonable discretion be entitled to require from time to time that the Provider does not use any particular employee of the Provider in connection with the delivery of the Programme or the Services. In any event the Provider shall notify the College of any material changes in the number of Tutors and other staff of the Provider and shall not without the College's prior written consent permit any changes in the identities of Tutors, the Provider's contract manager or any senior personnel of the Provider involved in the performance or administration of the Provider's obligations under this Agreement.

8.5 The Provider shall ensure that each Tutor and employee involved in the delivery of the Programme or the Services:

8.5.1 is appropriately trained and qualified (which shall include that each such Tutor or employee is appropriately trained in equality and diversity and the safeguarding of young people and vulnerable adults in line with all statutory requirements and, in the case of a Tutor, is registered with any professional organisation required by the College from time to time and holds the appropriate teaching and vocational qualifications);

8.5.2 is medically fit having regard to the duties which the Tutor or employee will undertake;

8.5.3 has undergone the required checks including enhanced background checks with the Disclosure and Barring Service, the results of which the Provider agrees to provide to the College with the Tutor's or employee's consent prior to the Tutor or employee being involved in the delivery of the Programme or the Services, and is not prevented from employment as a teacher whether by operation of law or pursuant to the College's policies which are communicated to the Provider from time to time; and

8.5.4 has attended any training sessions which the College designates from time to time as being mandatory, and complies with the College's safeguarding policy as set out in the Provider Guidance or as otherwise notified by the College from time to time,

and the Parties acknowledge and agree that any breach by the Provider of this clause 8.5 shall constitute a Serious Breach under clause 32 of this Agreement which is not capable of remedy.

8.6 The Provider shall ensure that there is an adequate number of the Provider's personnel involved in the delivery of the Services to deliver the Programme(s) properly and shall ensure that appropriate arrangements are made for the personal and professional development and training of Tutors and shall make such information available concerning the Tutors' qualifications and arrangements for development and training set out in the Provider Guidance and as the College shall reasonably require from time to time.

8.7 Where appropriate, the College is responsible for ensuring that the Programme is a programme approved by the relevant Secretary of State for Education (or any successor) and the Provider shall comply with any requirements of the College which are reasonably necessary to ensure that the Programme is and remains an approved programme.

8.8 The Provider agrees that the College may acting reasonably vary the specification of the Programme or the scope of the Services from time to time.

8.9 The Provider shall inform the College of any suggestions for improvements or enhancements to the Programme, the manner in which the Programme is provided, the curriculum or materials associated with the Programme. The College will consider such suggestions and may if it so wishes make use of the suggestions for its own benefit, the benefit of its Learners, the Funding Agency and any other organisation with whom the College enters into contracts.

- 8.10 The Provider agrees to implement any changes to the Programme, the way it is 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.
- 8.11 The Provider shall ensure that learning takes place in safe, healthy and supportive environments, which meet the needs of Learners. The Provider shall provide information to the Funding Agency, as and when specifically requested, to give assurance that adequate arrangements exist for learner health, safety and welfare. Failure to do so may constitute a Serious Breach of this Agreement.
- 8.12 The Provider shall make arrangements for ensuring that the Programme(s) and Services are provided with a view to safeguarding and promoting the welfare of Learners. In doing so, the Provider shall have regard to any guidance published, from time to time, by the Secretary of State which sets out the expectations in relation to safeguarding practice within further education institutions. Failure to do so may constitute a Serious Breach of this Agreement.
- 8.13 In promoting the Programme(s) the Providers shall ensure it actively promotes the fundamental British values of democracy, rules of law, individual liberty, and mutual respect and tolerance of those with different faith paths and beliefs and promote principles that support equality of opportunity for all.
- 8.14 The College must carry out appropriate Disclosure and Barring Service checks on all overseas applicants for employment where such applicants would be employed to work in a Regulated Activity and must seek additional information about the applicant's conduct.
- 8.15 The Provider shall not employ or engage or continue to employ or engage anyone who is subject to a prohibition order made under Section 141B of the Education Act 2002 to carry out teaching work (as defined in regulation 3 of the Teachers' Disciplinary (England) Regulations 2012, or an interim order made under regulation 14 of the Teacher's Disciplinary (England) Regulations 2012 in respect of any Learners under the age of 19 and High Needs Learners aged 19-25 (as if those learners were pupils for the purposes of the definition of teaching work in regulation 3 of the Teachers' Disciplinary (England) Regulations 2012).
- 8.16 Before employing a person to carry out teaching work in respect of any Learners under the age of 19 and High Needs Students aged 19 to 25 (as if those Learners were pupils for the purposes of the definition of teaching work in regulation 3 of the Teachers' Disciplinary (England) Regulations 2012), the Provider shall take reasonable steps to ascertain whether that person is subject to a prohibition order made under section 141B of the Education Act 2002, or an interim prohibition order made under regulation 14 of the Teachers' Disciplinary (England) Regulations 2012.
- 8.17 Where the Provider refers a safeguarding concern related to sexual violence to Local Authority children's social care/adult social care and/or the police or an allegation of abuse made against a teacher or other member of staff to the designated officer(s) (at the Local Authority), the Provider must, promptly, inform the College to enable it to meet its reporting obligations to the Funding Agency. Such notification must include a high level summary of the nature of the incident and confirmation of whether it is, or is scheduled to be, investigated by the Local Authority and/or the police. The Provider will provide such assistance as the College may require to meet any reporting requirements.
- 8.18 The Provider shall ensure that any payments from the funding provided by the College under this Agreement made in respect of termination of employment are regular, secure value for money and are not made where disciplinary action would be justified. Prior to making any termination payment, the Provider shall inform the College so that the College can determine if the payment is reasonable and appropriate.

8.19 The Provider must ensure that it in place an effective policy of risk management and shall provide it to the College on request.

8.15 Notwithstanding any other provisions in this Agreement, the Parties agree that nothing in this Agreement shall oblige either Party to do anything or perform any act, the doing or performing of which would require that Party to breach any part of the Funding Rules.

9. Learners and Employers

9.1 The Provider agrees to co-operate fully with the College to enable the College to communicate freely with Learners indirectly via the Provider or directly and to allow Learners to take advantage of the facilities (including but not limited to other programmes) offered by the College. In particular, the Provider must make each Learner aware as soon as he/she Enrols that information relating to the Learner's place, a copy of Learner File, as issued from time to time.

9.2 The Provider acknowledges that Learners are subject to the rules of the College whilst they are students of the College, including the College's disciplinary rules, and that Learners are entitled to use certain facilities and benefits provided by the College.

9.3 The Provider shall ensure that all Learners are aware of:

9.3.1 their status as students of the College, and the Provider shall procure that the College is named in the Learning Agreement (in such form as the College shall specify from time to time) in addition to the Provider;

9.3.2 the fact that the College maintains a Learner File for them, that they are subject to the terms of the College's Enrolment Conditions;

9.3.3 the fact that (if applicable) their Programme is partly funded by the Funding Agency through the College and that they are subject to the rules of the College including the College's disciplinary rules and procedures as set out in the Provider Guidance;

9.3.4 the fact that they are subject to the terms of the Learning Agreement and the College's Enrolment conditions, and the Provider shall procure that the College is named in the Learner File (in such form as the College shall specify from time to time) in addition to the name of the Provider;

9.3.5 their right to complain to the College about any aspect of a Programme and how such a complaint may be made;

9.3.6 the fact that such complaint cannot lead to action being taken against the Learner by the Provider; and

9.3.7 the possibility that the College may contact any Learner or Employer for any reason connected with this Agreement, their status as a student of the College or any other matter associated with their education and training.

9.4 The Provider undertakes that no Learner who makes a complaint to the College relating to the Provider, Tutors or a Programme shall suffer any disadvantage or be the subject of any action or omission as a result.

9.5 The Provider shall have primary responsibility for receiving feedback and investigating Learners' complaints promptly and thoroughly in respect of the Services. The Provider shall have procedures in place, which must be confirmed by the College as being acceptable, to gather and act upon

feedback and complaints from Learners, their representatives and relevant Employers and the wider community.

- 9.6 The College may issue guidance for the Provider on dealing with feedback and handling complaints, and will set out the minimum standards with which the College expects the Provider to comply.
- 9.7 The Provider shall be responsible for resolving complaints in accordance with its own procedures and any guidance issued by the College and the Funding Agency provided that the College may at any time instruct the Provider as to how the complaint must be resolved. The Provider shall notify the College of all complaints that it is unable to resolve within 7 days of the complaint being made.
- 9.8 The College may review the actions taken by the Provider in response to any complaint and may require further action to be taken by the Provider. The College reserves the right to carry out any other enquiries it deems necessary in order to resolve the complaint.
- 9.9 The Provider acknowledges that the College shall be entitled to expel, suspend or otherwise discipline any Learner in accordance with the College's applicable rules.
- 9.10 The Provider shall provide the Programme Support (including pastoral support) to the standards required by the College in accordance with current College policies and procedures from time to time throughout the continuance of this Agreement.
- 9.11 The Provider shall procure that each Employer agrees that the College may contact the Employer in respect of the Learner, the Provider, the Provider's performance and any other matter associated with this Agreement.
- 9.12 The Provider shall undertake such Employer and Learner satisfaction and evaluation exercises as the College requires from time to time and shall provide to the College all documentation associated with such exercises immediately upon their completion.
- 9.13 The Provider shall verify that the Employer complies with all legislation relating to paying the Learner and shall notify the College immediately upon becoming aware of any failure to comply.
- 9.14 In the event that any Learner is made redundant by the Employer, the Provider shall use reasonable efforts to find a replacement Employer for that Learner.

10. Assessment

All aspects of the assessment of Learners shall be carried out by the Provider in accordance with the directions given from time to time by the College. The College shall have the right to carry out any such assessments, or any part of such assessments, itself, or to require such assessments or any part of them to be carried out by the Tutors.

11. No Assignment or Sub-contracting

11.1 The Provider shall not:

- 11.1.1 unless the College otherwise agrees in writing, and subject to clause 11.1.2, assign, transfer, charge, dispose of or deal in any other manner with this Agreement or any of the Provider's rights or beneficial interests under it or purport to do any of the same or sub-contract any or all of its duties or obligations arising out of this Agreement; or
- 11.1.2 novate this Agreement or any of the Provider's rights or beneficial interests under it or purport to do the same without the College's prior written consent, provided that in the event

that the College provides such consent, the Provider shall reimburse the College in respect of all costs and expenses incurred by the College in connection with such consent.

12. Freedom of Information

- 12.1 The Provider acknowledges that the College is subject to the requirements of FOIA and the Environmental Information Regulations (including without limitation in relation to disclosure of Information) and shall assist and co-operate with the College (at the Provider's expense) to enable the College to comply with these requirements.
- 12.2 The Provider shall:
- 12.2.1 transfer any Request for Information relating to this Agreement or to the College, to the College as soon as practicable after receipt and in any event within two days of receiving the relevant Request for Information;
 - 12.2.2 provide the College with a copy of all Information in its possession or power in the form that the College requires within five days (or such other period as the College may specify) of the College requesting that Information; and
 - 12.2.3 provide all assistance reasonably requested by the College to enable the College to respond to a Request for Information within the time for compliance set out in section 10 of FOIA or regulation 5 of the Environmental Information Regulations.
- 12.3 The College shall be responsible for determining in its absolute discretion whether any Information:
- 12.3.1 is exempt from disclosure in accordance with the provisions of FOIA or the Environmental Information Regulations; or
 - 12.3.2 is to be disclosed in response to a Request for Information.
- 12.4 In no event shall the Provider respond directly to a Request for Information unless expressly authorised to do so by the College.
- 12.5 The Provider acknowledges that the College may disclose Information:
- 12.5.1 without consulting with the Provider; or
 - 12.5.2 following consultation with the Provider and having taken its views into account,
- provided always that where clause 12.5.2 applies the College shall take reasonable steps, where appropriate, to give the Provider advance notice, or failing that, to draw the disclosure to the Provider's attention after any such disclosure.
- 12.6 The Provider shall ensure that all Information produced in the course of this Agreement or relating to this Agreement is retained for disclosure through the period of this Agreement and shall permit the College to inspect such records as requested from time to time.
- 12.7 The Provider acknowledges that the College may be obliged to disclose Confidential Information pursuant to FOIA and the Environmental Information Regulations in accordance with this clause 12.
- 12.8 If the Provider requests that any Information should be exempt from disclosure under FOIA or the Environmental Information Regulations the Provider shall indemnify and hold harmless the College

for any and all costs (including legal fees), expenses, claims, losses, liabilities and damages suffered or incurred by the College, including but not limited to in connection with the College:

- 12.8.1 assessing the application of any exemption under FOIA or the Environmental Information Regulations;
- 12.8.2 responding to any Request for Information in respect of such Information;
- 12.8.3 liaising with the party requesting such Information and the Information Commissioner; and
- 12.8.4 lodging any appeal against a decision of the Information Commissioner in relation to disclosure,

where such costs (including legal fees), expenses, claims, losses, liabilities and damages are suffered or incurred in connection with any efforts by the College to withhold such Information.

- 12.9 The Provider acknowledges and agrees that, in accordance with the Funding Rules, the College may disclose information relating to this Agreement to the Funding Agency, other third parties and the public at large.
- 12.10 The College shall in no event be liable for any loss, damage, harm or detriment, howsoever caused, arising from or in connection with the disclosure under FOIA or the Environmental Information Regulations, or otherwise in accordance with this Agreement, of any Information or other information whether relating to this Agreement or otherwise.

13. Confidentiality

- 13.1 The Provider acknowledges and agrees that the College may share information about the Provider and the Provider's performance under this Agreement with Tutors, the Funding Agency, the Department for Education and any other Government department, Government agency or other public body, and may disclose Confidential Information pursuant to FOIA and the Environmental Information Regulations.
- 13.2 Each Party shall keep the other Party's Confidential Information confidential and shall not:
 - 13.2.1 use such Confidential Information except for the purpose of exercising or performing its rights and obligations under this Agreement; or
 - 13.2.2 disclose such Confidential Information in whole or in part to any third party, except as expressly permitted by this clause 13.
- 13.3 A Party may disclose the other Party's Confidential Information to those of its Representatives who need to know such Confidential Information for the purpose of this Agreement, provided that:
 - 13.3.1 it informs such Representatives of the confidential nature of the Confidential Information before disclosure; and
 - 13.3.2 at all times, it is responsible for such Representatives' compliance with the confidentiality obligations set out in this clause 13.
- 13.4 A Party may disclose Confidential Information to the extent such Confidential Information is to be disclosed pursuant to clause 12 or by law, by any Governmental or other regulatory authority (including without limitation the Funding Agency) or by a court or other authority of competent jurisdiction.

- 13.5 A Party may, provided that it has reasonable grounds to believe that the other Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010, disclose Confidential Information to the Serious Fraud Office or any other relevant Government agency without first informing the other Party of such disclosure.
- 13.6 Each Party reserves all rights in its Confidential Information. No rights or obligations in respect of a Party's Confidential Information other than those expressly stated in this Agreement are granted to the other Party. The Provider acknowledges and agrees that the Know-How, the Quality Manual and all information relating to Learners and Employers are (notwithstanding anything to the contrary in this Agreement or within the definition of Confidential Information at the beginning of this Agreement) Confidential Information of the College.
- 13.7 The Provider acknowledges and agrees that, in accordance with the Funding Rules, the College may disclose information relating to this Agreement to the Funding Agency, other third parties and the public at large.
- 13.8 On termination of this Agreement the Provider shall, unless the College specifies otherwise in writing, return to the College all documents and materials (and any copies) containing, reflecting, incorporating or based on the College's Confidential Information and erase all the College's Confidential Information from the Provider's computer systems (to the extent possible) once such Confidential Information has been provided to the College.
- 13.9 Notwithstanding the provisions of this clause 13 the Provider shall retain original invoices and management information returns and all other documents necessary to verify the Services provided by the Provider or otherwise required to be kept and maintained under this Agreement for not less than 6 years following expiry or termination for any reason of this Agreement or for such other period as the College notifies from time to time, save that where any of the Services are paid for using monies from the ESIF (which includes the European Social Fund, the European Regional Development Fund and the European Agricultural Fund for Rural Development) or any payments made under this Agreement for the Services have been used as match-funding for an ESIF Co-Financing Project, the Provider will be required to retain relevant documents for such longer period as set out in the Funding Rules or as the College otherwise notifies to the Provider from time to time.
- 13.10 The Provider shall repay to the College an amount equal to any sum which the College is required to pay to the Funding Agency as a result of any failure of the Provider to comply with clause 13.8 above.
- 13.11 Except as expressly stated in this Agreement, no Party makes any express or implied warranty or representation concerning its Confidential Information.
- 13.12 The provisions of this clause 13 will apply for the duration of the Agreement and after its termination.
- 14. Equality of Opportunity and Human Rights**
- 14.1 The Provider shall comply with the Human Rights Act 1998 and shall not unlawfully discriminate within the meaning and scope of any law, enactment, order, or regulation relating to discrimination (whether in age, race, gender, religion, disability, sexual orientation or otherwise) including but not limited to the Equality Act 2010.
- 14.2 The Provider shall have in place a detailed written policy on equality and diversity and shall procure that Tutors shall adhere to the Funding Agency's Equality and Diversity Strategy and OFSTED's Education Inspection Framework relating to equality and diversity and shall ensure that equality of opportunity is built into all aspects of the provision of the Services and the Provider's business

planning and self-assessment processes and that the Provider's strategic plan identifies relevant priorities.

14.3 The Provider shall secure the observance of this clause 14 by all Tutors, servants, employees and agents of the Provider at all times and shall evidence its compliance with this clause 14 as required by the College from time to time.

14.4 Any breach of this clause 14 shall constitute a Serious Breach under clause 32 of this Agreement which is not capable of remedy.

15. Health & Safety

15.1 The Provider shall comply with all relevant health and safety legislation, and shall take all reasonable steps to ensure that the Services are provided in a safe, healthy and supportive environment, which meets the needs of Learners and in particular the Provider shall:

15.1.1 co-operate with, and provide such information to, the College as the College shall request from time to time, to give assurance that adequate arrangements exist for Learner health and safety, to enable the College to review Learner incidents, and to assist the College with regard to its policy on Learner health and safety;

15.1.2 operate an effective health and safety management system which continually seeks to raise standards. The College may have regard to such guidance of the Health and Safety Executive as it deems appropriate from time to time as a benchmark when evaluating the arrangements of the Provider;

15.1.3 ensure that Learner health and safety shall be included in all self-assessments required by the College to be carried out by the Provider, the Funding Agency and the Education Inspection Framework;

15.1.4 promote good practice and, in particular, the concept of the 'safe Learner', which shall for the avoidance of doubt include an obligation on the Provider to ensure that Learners, through the quality of their tuition, gain an understanding of health and safety, are able to identify and control risk, and develop an appropriate set of safe behaviours;

15.1.5 (where part of the tuition of the Learner takes place in an environment outside the direct control of the Provider such as the premises of an Employer) ensure that Learners can make an informed judgement about health and safety suitability prior to tuition being delivered with the Employer from that environment. The Provider shall in any event ensure that all learning and environments involved in the delivery of the Programme(s) meet the Funding Agency's health and safety standard for Learner health and safety and the Provider shall periodically review suitability as an integral part of the quality of the learning being delivered;

15.1.6 ensure that it has access to persons sufficiently competent in health and safety and occupational health to meet its obligations in respect of Learner health, safety and welfare;

15.1.7 maintain adequate records in relation to Learner health and safety including assessments of premise environment suitability, agreements or commitments on health and safety with Learners, information relating to harm to Learners and records of assessments, monitoring and reviews of Learner health and safety understanding and capabilities including ensuring that suitability and health and safety assessments are carried out in respect of all Employers and related environments prior to the Enrolment of any Learner;

- 15.1.8 monitor, and act on, any other harm to Learners where the harm could affect the quality of the learning experience. Harm includes (but is not limited to) incidents that cause absence from learning, any loss to the Learner of any physical or mental faculty or any disfigurement, incidents of bullying or harassment;
 - 15.1.9 co-operate with the College and the Department for Work and Pensions for the purposes of the Industrial Injuries and Disablement Benefit in respect to those Learners to whom it applies;
 - 15.1.10 take account of and comply with relevant Health and Safety Executive guidance and other sources of good practice;
 - 15.1.11 ensure that Learners receive effective and timely information, instruction and training and effective supervision based on an assessment of risk. In the case of Learners below the minimum school leaving age, Learners under 18 years old and Learners with special needs, the environment in which the tuition is delivered should be such that risks have been reduced to the lowest level practicable;
 - 15.1.12 ensure that Learners' health and safety understanding and practical capabilities are periodically assessed based on an assessment of risk;
 - 15.1.13 engage recruitment processes that comply with the law and will ensure that young and vulnerable Learners are protected. The Provider will register with the Disclosure and Barring Service and ensure that the appropriate checks are made to ensure that employment or engagement is not offered to or held by anyone (including but not limited to any Tutor) who has been convicted of certain offences specified by the College from time to time, or whose name is included on lists of people considered unsuitable for such work held by the Department for Education or the Department of Health or any other Government body; and
 - 15.1.14 implement, maintain in force and train Tutors and all employees in respect of, an effective safeguarding policy, such policy to be supplied to the College immediately on execution of this Agreement and at such additional times as the College shall require. The Provider acknowledges and agrees that the College shall be entitled to require the Provider to make such changes to the Provider's safeguarding policy as the College shall in its sole discretion determine from time to time.
- 15.2 The Provider will notify the College immediately upon the occurrence of any of the following:
- 15.2.1 any incident which may need to be notified by the College to the College's insurers to enable the College to bring a claim under any of its insurance policies;
 - 15.2.2 any death or injury to any person or any loss of or damage to property which occurred during the provision of any part of a Programme or on any premises where a Programme is or has been held or in circumstances where there is any possibility that the Provider and/or the College may be liable, wholly or partly, for such death, injury, loss or damage.
- 15.3 Any event to be notified to the College pursuant to clause 15.2 must be notified to the College by the quickest means possible in the circumstances and must be followed up as soon as possible by the Provider giving written notice to the College setting out in full all relevant details and parties.
- 15.4 Notwithstanding clause 15.2, the Provider shall inform the College of injuries and diseases to Learners within the scope of the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations ('RIDDOR') and fatal road traffic accidents. This shall be done by:

- 15.4.1 (in the case of fatal accidents and 'major injuries' as defined in RIDDOR), informing the College by telephone or fax immediately after the Provider becomes aware of the event; and
- 15.4.2 (in all other cases) sending to the College a completed Learner Incident Record Form (as set out in the Provider Guidance) within 2 days of the Provider becoming aware of the incident.
- 15.5 The Provider shall investigate or assess the circumstances of all Learner incidents within the scope of RIDDOR and follow all guidance issued by the Health and Safety Executive from time to time. The Provider shall only use persons competent to investigate/assess Learner incidents with a view to identifying the causes of any incident and how any recurrence can be prevented.
- 15.6 The College acknowledges its responsibilities under the Health & Safety at Work etc. Act 1974 and other health and safety regulations with respect to each Enrolled Learner during delivery of a Programme provided that the Provider agrees that it will comply with all relevant requirements relating to health and safety, and that the premises, accommodation and equipment utilised to deliver the Programmes, and delivery of the Programmes satisfy and will continue to satisfy all legal requirements including those relating to health and safety.
- 15.7 Without prejudice to any other provision of this Agreement or any other rights which the College may have, the Provider hereby agrees to fully indemnify and hold harmless the College in respect of any liability, costs (including legal fees), losses, expenses, claims or damages suffered or incurred by the College and all and any claims made against the College which arise as a direct or indirect result of any act or omission on the part of the Provider or its employees, agents, Tutors or (notwithstanding clause 11.1) sub-contractors (including, without limitation, any non-compliance with health and safety legislation), any breach of this Agreement or any claim by any Learner against the College except to the extent (if any) caused by a negligent act or omission on the part of the College.
- 15.8 Any breach of this clause 15 shall constitute a Serious Breach under clause 32 of this Agreement which is not capable of remedy.
- 16. Liability**
- 16.1 Without prejudice to any other provision of this Agreement or any other rights which the College may have, the Provider shall fully indemnify and hold harmless the College, the College's servants, employees, and agents against all liability, costs (including legal fees), losses, expenses, claims or damages suffered or incurred by, or made against, the College, its servants, employees, or agents in respect of any loss or damage or personal injury (including death) which directly or indirectly arises out of or in the course of or is caused by:
- 16.1.1 the negligent act or omission or wilful default of the Provider or the Provider's employees, agents, Tutors or (notwithstanding clause 11.1) sub-contractors in the delivery of the Services;
- 16.1.2 any act or omission on the part of the Provider or the Provider's employees, agents, Tutors or (notwithstanding clause 11.1) sub-contractors;
- 16.1.3 any breach of this Agreement; or
- 16.1.4 any claim by any Learner or Tutor against the College,
- except to the extent (if any) that such liability is due to a negligent act or omission of the College.

- 16.2 The College shall not be liable to the Provider for any loss of profit, goodwill or business opportunity of the Provider or for any indirect or consequential loss, damage, injury, costs or expenses whatsoever suffered by the Provider howsoever caused.
- 16.3 The liability of each Party under this Agreement shall not exceed twice the value of this Agreement or £1,000,000 whichever is the greater save that this limit shall not apply to claims in respect of death or personal injury caused by negligence or any matter for which the Provider indemnifies the College.
- 16.4 Nothing in this Agreement excludes or limits the liability of either Party for death or personal injury caused by that Party's negligence.
- 16.5 The provisions of this clause 16 will apply throughout the continuance of this Agreement and thereafter.

17. Insurance

- 17.1 The Provider shall maintain at its own cost a policy or policies of insurance to cover the liability of the Provider in respect of any matter for which it may become liable to indemnify the College under this Agreement and shall in any event maintain with a reputable insurer throughout the continuance of this Agreement and thereafter:
- 17.1.1 employer's liability insurance with a minimum cover per claim of not less than £10 million with no aggregate limit;
 - 17.1.2 professional indemnity insurance with a minimum cover per claim of not less than £1 million with no aggregate limit;
 - 17.1.3 public liability insurance with a minimum cover per claim of not less than £5 million with no aggregate limit;
 - 17.1.5 insurance in respect of any and all equipment which is provided or made available by the Provider pursuant to this Agreement, such insurance to cover the replacement value of all such equipment; and
 - 17.1.6 where the Premises are owned or operated by the Provider, adequate insurance for the Premises and its contents against all risks usually associated with premises of a type, and used for a purpose, the same as the Premises and, where the Premises are not owned or operated by the Provider, the Provider shall procure that the owner of the Premises holds such an insurance policy.
- 17.2 The Provider agrees at the College's request to promptly provide to the College a certified copy of all its insurance policies taken out pursuant to this Agreement and satisfactory evidence that all premiums under such policies are paid up to date and the Provider acknowledges and agrees that this clause 17.2 shall apply in respect of all such policies in force at the Commencement Date and all renewals of such policies.
- 17.3 The Provider shall notify the College immediately on the occurrence of any incident which the Provider, acting reasonably, considers the College may need to notify to the College's insurers (whether on a precautionary basis or otherwise) to preserve any right the College may have to make a claim under any of the College's insurance policies.

17.4 The College reserves the right to require the Provider to insure against any act or default which arises as a result of fraud or other criminal activity by the Provider, the Provider's employees, agents or (notwithstanding clause 11.1) sub-contractors.

17.5 Any breach of this clause 17 shall constitute a Serious Breach under clause 32 of this Agreement which is not capable of remedy.

18. Intellectual Property

18.1 The College may, but is not obliged to, permit the Provider to use College Intellectual Property, on terms to be communicated by the College to the Provider from time to time. The Provider acknowledges that all College Intellectual Property remains the property of the College at all times and agrees to use College Intellectual Property only as permitted by the College and only as is strictly necessary for the performance of its obligations under this Agreement.

18.2 The Provider agrees that any goodwill arising out of the use of College Intellectual Property by the Provider belongs to the College.

18.3 The Provider will not make any application to register any trade or service mark in its own or any other name for use in connection with the provision of the Programme or any part of it which is confusingly similar to any College Intellectual Property. The Provider undertakes to enter into a separate licence in respect of any registered or unregistered trade marks if so required by the College.

18.4 Nothing in this Agreement constitutes any warranty or assurance as to the validity or subsistence of any College Intellectual Property.

18.5 In consideration of the College agreeing to abide by its obligations under this Agreement the Provider hereby grants (and, where relevant, shall procure from any relevant third party the right to grant) to the College a non-exclusive, irrevocable, worldwide, royalty-free licence to use any intellectual property rights created by the Provider in the course of the performance of the Provider's obligations under this Agreement, together with a right to sub-license the use of such intellectual property rights solely to the Funding Agency at the Funding Agency's request in order that the Funding Agency may fully, and may permit others to fully, use, exploit, develop and commercialise such intellectual property.

18.6 The Provider warrants to the College that none of the intellectual property rights which will be created or used during the performance of the Provider's obligations under this Agreement will infringe, in whole or in part, any copyright or other intellectual property right of any person and agrees to fully indemnify and hold harmless the College against any and all claims, demands, proceedings, expenses and losses, including but not limited to any of a consequential or indirect nature, arising directly or indirectly in relation to such intellectual property rights or any claim of a third party that the use of such intellectual property rights by the Provider, the College, the Funding Agency or any Learner infringes the intellectual property or other rights of that third party. This warranty and indemnity shall survive the termination or expiry of this Agreement for any reason.

18.7 The Provider will immediately notify the College if the Provider becomes aware of any breach or infringement of any College Intellectual Property or any other intellectual property rights made available to the Provider or of the unauthorised disclosure of any Know-How, Confidential Information of the College or any of the contents of the Quality Documentation.

19. Branding

- 19.1 The Provider shall use the name of the College and the Funding Agency, and any other name, mark, device or logo identifying or associated with the College and the Funding Agency, as the College or the Funding Agency from time to time may specify on any advertisements or prospectuses relating to the provision of the Programme by the Provider and all Programme materials subject always to the College's prior written approval of the same.
- 19.2 The Provider will not use any College Intellectual Property or anything confusingly similar to any part of it or any trade mark, name or logo of the Funding Agency for any purpose other than the provision or promotion of the Programmes in accordance with this Agreement.
- 19.3 The Provider shall comply with the requirements of the Funding Agency's endorsement identity guidelines available at <https://brand.skillsfundingagency.bis.gov.uk> or such other guidelines as the College notifies from time to time on all promotional materials and in relation to all activities associated with the Services. This shall include without limitation on prospectuses, direct mail advertising, TV and radio advertising, merchandising or any other literature or products.
- 19.4 The Provider shall be given access to any logos and statements which it is required to use and shall use such logos and statements in accordance with the relevant terms of use and shall not alter or amend such logos and statements. Such logos and statements are only to be used in relation to the Services under this Agreement.
- 19.5 The Provider may also be required to use logos from other co-branding or co-funding participants and shall comply with any terms which apply to the use of such logos.
- 19.6 Any breach of this clause 19 shall constitute a Serious Breach under clause 32 of this Agreement.

20. Access and Monitoring

- 20.1 The Provider will at all times (including during any ESIF retention period) allow any representative of the College, the Funding Agency (including any person nominated in writing by the Funding Agency), the internal and external auditors of the College and the Funding Agency, the Monitoring Body, the relevant Secretary of State and his representatives, the National Audit Office, representatives of the European Commission and the European Court of Auditors, the Audit Commission and the Inspectorates:

20.1.1 to attend announced and unannounced during the provision of any part of a Programme, or during any activity relating to the provision of a Programme;

20.1.2 access to all premises and every part of such premises announced and unannounced where tuition is or has been provided by the Provider;

20.1.3 access to facilities used in or for the provision or in connection with any part of a Programme, announced and unannounced;

20.1.4 access to all documents related to their subcontracted delivery;

for any purpose including the purpose of ensuring compliance with this Agreement; enabling the College to give directions to the Provider in accordance with the terms of this Agreement; monitoring the standard of any part of the Programme and the delivery of the Services and the manner in which they are provided; conducting an audit of the Provider's management and financial procedures and controls; and verifying the accuracy of information provided by the Provider.

- 20.2 The information and records referred to in clause 21 must be provided or made available (as the case may be) to the College (or any of its authorised representatives) or to the Funding Agency (or any of its authorised representatives) at the time and in the format specified in this Agreement in relation to such information and records, or at such other times and in such other format as the College may reasonably require from time to time by giving written notice of its requirements to the Provider. The Provider shall provide a nil return in the event that no information or records have been added or updated since the previous provision of information and records to the College.
- 20.3 The Provider acknowledges that it shall receive inspection visits from awarding bodies' external verifiers from time to time. The Provider will provide copies of any reports resulting from such visits in order for the College to maintain the College's quality assurance arrangements.

21. Provision of Records and Information

- 21.1 Throughout the continuance of this Agreement the Provider agrees to keep, maintain and provide to the College the following records and information:
- 21.1.1 a register of attendance of Learners which is compiled contemporaneously with every session of tuition given as part of a Programme;
- 21.1.2 a record of each scheduled tuition session that takes place or is cancelled, if any, and a note setting out in full the reasons for cancellation;
- 21.1.3 a written note of each complaint made by a Learner 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 Programme is or has been provided; or health and safety issues) along with the original of any letter or other document recording or notifying that complaint;
- 21.1.4 an up to date record from time to time of any other agreement entered into by the Provider or any organisation associated with the Provider with any third party where the arrangements under that agreement are wholly or partly funded by the Funding Agency either directly or indirectly, including the names and addresses of any associated third parties, where such agreement is in force during the continuance of this Agreement or at any time within three years prior to the Commencement Date;
- 21.1.5 audited accounts of the Provider immediately upon completion of audit and management accounts in respect of the Provider's business immediately on execution of this Agreement and at such subsequent times as the College shall in its sole discretion require;
- 21.1.6 pursuant to the Funding Rules, sufficient evidence to enable the College to:
- (a) assess the Provider's performance against OFSTED's Education Inspection Framework;
 - (b) incorporate the evidence provided by the Provider into the College's own self-assessment report; and
 - (c) guide the judgements and grades within the College's own self-assessment report; and
- 21.1.7 any other records and information referred to in the Funding Rules or elsewhere in this Agreement which the College requires the Provider to keep, maintain or provide (including

without limitation such records and information as are specified in schedule 2 and/or the Provider Guidance).

- 21.2 The Provider shall deliver to the College the original copy of the register of attendance and the original record of cancellation referred to in clauses 21.1.1 and 21.1.2 respectively, and such other original documentation as the College shall specify from time to time, in each case immediately upon request by the College, and in any event the Provider shall provide not less than once every eight weeks evidence in a form satisfactory to the College that tuition has taken place in respect of each Learner.
- 21.3 The Provider shall forward to the College any note of complaint and associated documents referred to in clause 21.1.3 as soon as possible after the complaint is made.
- 21.4 Within four weeks following the publication of results of a completed Programme the Provider will send to the College the Achievement Evidence in relation to each Learner who has attained a Qualification, provided that the Provider acknowledges that a Learner shall only attain a qualification if the Learner has completed the Programme and meets the criteria of the relevant examination body or the College (as applicable) for awarding the Qualification.
- 21.5 Notwithstanding clause 21.4, within 30 days of the intended completion date of each Learner's Programme the Provider shall provide evidence that the Learner has completed, or confirm in writing that the Learner has not completed, the Programme and provide all associated Achievement Evidence.
- 21.6 The Provider will in respect of each Learner send to the College the Attendance Evidence, signed by a duly authorised representative of the Provider, in accordance with the Provider Guidance and at such other times as the College requires from time to time.
- 21.7 The Provider acknowledges that the College may from time to time liaise with any third party referred to in clause 21.1.4 and disclose information relating to this Agreement and the Provider in order to ascertain whether the College has the largest agreement with the Provider, where "largest" is defined as being the agreement involving the greatest number of students or financial value of the arrangements. The Provider further acknowledges that the College shall have additional responsibilities which it is required to fulfil in accordance with the Funding Rules if this Agreement is the largest agreement of the type referred to in this clause 21.7.
- 21.8 The information and records referred to in clause 21.1 must be provided to the College and (if the College so requires) the Funding Agency at the times, in the format and by the delivery method specified in this Agreement and at such other times, in such other formats and by such delivery methods as the College may reasonably require from time to time by giving written notice of its requirements to the Provider.
- 21.9 Where any records or information are required to be sent to the College in accordance with this Agreement, such records and information must (unless otherwise stated in this Agreement or by written notice from the College to the Provider) be sent to the address and for the attention of the person specified in clause 41.1.1 and the Provider agrees at all times to send such information to the College in a secure manner. The Provider acknowledges and agrees that the College shall have no liability in respect of any records or information lost in transit or otherwise prior to receipt by the College.
- 21.10 The Provider warrants that all information provided or made available to the College and/or the Funding Agency will be complete, true and accurate in all respects and that it shall inform the College of any changes to such information immediately upon becoming aware of the change.

- 21.11 The Provider further warrants that all information regarding the Provider's past experience and other matters which were disclosed to the College in order to enable the College to assess whether it wished to enter into this Agreement (all of which information the Provider acknowledges was relied upon by the College) was true and accurate in all respects, that nothing which would be reasonably likely to alter the College's decision to enter into this Agreement was withheld or misrepresented and that the Provider shall notify the College in the event that there is a material change to such information disclosed or the Provider's circumstances.
- 21.12 All information provided or made available to the College and/or the Funding Agency under this Agreement may be provided to the College's advisors and internal and external auditors, the advisors and internal and external auditors of the Funding Agency, the Inspectorates, any Monitoring Body and, if considered necessary by the Funding Agency, the representatives of the European Court of Auditors.
- 21.13 The Provider agrees that the College, the Funding Agency, the internal and external auditors of the College and the Funding Agency, the Monitoring Body, the relevant Secretary of State and his representatives, the National Audit Office, representatives of the European Commission and the European Court of Auditors, the Audit Commission and the Inspectorates shall at all times and for any purpose have the right to, either announced or unannounced:
- 21.13.1 enter the Premises and any premises from which the Provider delivers or administers the Programme or the Services or stores documentation relating to the same, including to attend during the provision of any part of or activity relating to a Programme;
 - 21.13.2 examine, audit, take or copy any original or copy documentation, accounts, books and records of the Provider relating to the Programme, the Services or this Agreement;
 - 21.13.3 view and assess operations relating to the provision of the Services;
 - 21.13.4 interview and survey Learners and any person engaged in the provision of the Programme or the Services including but not limited to the Tutors; and
 - 21.13.5 carry out examinations into the economy, efficiency and effectiveness with which the Provider is using the Funding in the performance of its obligations under this Agreement.
- 21.14 Without prejudice to any other right or remedy which the College may have under this Agreement the College may at its option constitute such records as the Provider fails to provide pursuant to this Agreement provided that the Provider shall pay all costs of the College (including the College's reasonable charges in respect of management and administration time) incurred in constituting such records.
- 21.15 Without prejudice to any other right or remedy which the College may have under this Agreement, in the event that the College has reason to believe that the Provider is or has been subject to any circumstances which the College considers to have an actual or potential prejudicial impact upon the financial well-being of the Provider (including but not limited to where the Provider becomes the subject of a County Court Judgment), the College may appoint an independent third party to audit the Provider's activities and management and financial procedures and controls, the cost of such audit to be at the Provider's expense. The Provider shall co-operate with all requirements of the College and the appointed third party in relation to any such audit, including but not limited to allowing any representative of the appointed third party to:
- 21.15.1 enter the Premises and any premises from which the Provider delivers or administers the Programme or the Services or stores documentation relating to the same; and

21.15.2 examine, audit, take or copy any original or copy documentation, accounts, books and records of the Provider relating to the Programme, the Services or this Agreement,

provided that the College may only exercise its right under this clause 21.15 on one occasion in any consecutive period of 12 calendar months.

22. Significance of Records

- 22.1 The Provider acknowledges that payment of the Price from time to time is conditional upon the College receiving such records and information as the College and the Funding Agency reasonably require in the format and in accordance with the timescales and procedures set out in the Funding Rules and the Provider Guidance or as otherwise specified by the College from time to time. The Provider acknowledges that such information shall be used to create an individualised learner record which shall be forwarded to the Funding Agency and shall be used to verify that payments have been made to, and are being claimed by, the Provider in accordance with the terms of this Agreement.
- 22.2 The Provider acknowledges that where the College is concerned about the quality, accuracy or completeness of information supplied by the Provider the College may require the Provider to supply information more frequently for such period as the College shall require and the Provider agrees to carry out at the Provider's cost such additional work as is required to improve the quality, accuracy and completeness of information as the College requires.
- 22.3 The College reserves the right to suspend or terminate payments of the Price and recover from the Provider payments already made under this Agreement where the College reasonably determines that the information supporting those payments is of insufficient quality, accuracy, completeness or timeliness, or as a result of a directive from the Funding Agencies following data validation or audit.
- 22.4 A failure or delay on the part of the Provider to provide records and information as required under this Agreement will constitute a Serious Breach of this Agreement.
- 22.3 Where the Funding Agency has not made a payment to the College for any activity, the College reserves the right to terminate payment of the Price to the Provider for that activity and inform the Provider in writing.

23. Funding

- 23.1 In order to enable the College to comply with its obligations to the Funding Agency, to obtain Funding out of which the Price is paid and to effect its obligations under this Agreement, the Provider agrees that it will co-operate fully with the College to enable the College to comply with, and shall itself comply with, any requirements of the Funding Agency or the Funding Rules, and in particular the Provider will ensure that all relevant forms, agreements, applications and other documents which are required to be sent to the Funding Agency by the College from time to time are completed and signed by the relevant authorised officer of the Provider.
- 23.2 The Provider undertakes to provide all such information and comply with all such requirements as are specified by the Funding Agency or notified by the College from time to time and acknowledges that the College may vary any provision of this Agreement by giving notice in writing to the Provider at any time to the extent that the College considers such variation to be necessary in order to comply with any requirement of the Funding Agency.
- 23.3 The Provider agrees to comply with any requirements from time to time of the Funding Agency that affect the Provider and the Provider shall not do anything which would cause the College to be in

breach of the College's obligations to the Funding Agency under the Funding Rules or as otherwise notified to the Provider by the College.

23.4 The Provider will notify the College immediately in writing if at any time after a Learner has been Enrolled the Provider becomes aware or suspects that such Learner is considered, in accordance with the Funding Rules, to be funded publicly by a source other than the Funding Agency or to be funded by the Funding Agency more than once in respect of the same Programme, or to be in any other way ineligible for funding.

23.6 The Provider shall not use any element of the Price to make payment to any Learner (including without limitation in respect of wages).

24. Price, Payment and Claw Back

24.1 The Price will be calculated in accordance with the schedule 2 and in respect of each Learner will be paid in instalments on the College's verification of the Provider's completion of the relevant tasks and the Learner's status as set out in the Payment Schedule.

24.2 The College will invite the Provider to submit an invoice, following each Claim Date, reflecting such part of the Price due to the Provider as relates to each Programme or fraction of a Programme completed in the relevant Claim Period, together with such supporting documentation in such form as the College may reasonably require to enable the College to verify the invoice. Payment shall be made by the College within 30 days of receipt by the College of a valid claim for payment including an accurate invoice and supporting documentation provided that the College has received the corresponding Funding from the Funding Agency and any sums due from the Employer to the College in respect of the relevant Claim Period under any relevant Employer Agreement..

24.3 No payment will be due (and the Provider hereby agrees to repay to the College on demand any payment made) in relation to the participation in a Programme of any Learner who:

24.3.1 has not been Enrolled in accordance with the Enrolment Guidelines or the provisions relating to enrolment contained in this Agreement; or

24.3.2 is a person considered under the Funding Rules to be fully funded by a source other than the Funding Agency or funded by the Funding Agency more than once in relation to the same Programme or otherwise ineligible for Funding; or

24.3.3 fails to attend or complete the Programme, or fails to achieve any Achievement upon which the Funding of the Programme in respect of that Learner is dependent.

24.4 No payment will be due (and the Provider hereby agrees to repay to the College on demand any payment made) in relation to a Learner where the Provider has failed to notify the College of any relevant Attendance or Achievement by that Learner in accordance with the provisions of this Agreement.

24.5 Where any sum is to be paid by the Provider under this Agreement it shall be paid to the College immediately upon the College serving a notice requiring payment or, at the College's option, such sum shall be deducted from any sums owing by the College to the Provider under this Agreement or any other agreement between the Parties.

24.6 The Provider acknowledges that the Price has been calculated by reference to assumptions as to the anticipated number of Learners in respect of which the Provider will deliver the Programme. The College shall not be under any obligation to make any payment to the Provider in respect of any Learners exceeding the number specified in schedule 2 as the maximum number of Learners or

where such payment would result in the College having paid in total more than the maximum value of this Agreement stated in schedule 2.

- 24.7 Without prejudice to clause 24.6, the Provider undertakes to notify the College immediately if at any time during the continuance of this Agreement the Provider anticipates that it is unlikely to deliver the Programme to the anticipated number of Learners specified in schedule 2, or is at risk of exceeding the maximum number of Learners specified in schedule 2.
- 24.8 If in respect of any Funded Learner the Funding Agency shall for any reason whatsoever refuse, fail to make available or require the College to refund to the Funding Agency any element of the Funding in respect of any Funded Learner the College shall be under no obligation to pay any part of the Price relating to that Funded Learner to the Provider and any part of the Price already paid which relates to such Funded Learner shall be fully refunded to the College by the Provider on demand or may be deducted from any sum owed by the College to the Provider.
- 24.9 The Provider may be required by the College or the Funding Agency to charge a fee to any Learner or any third party in respect of a Learner (including not limited to the Employer) at a rate specified in writing from time to time by the College, provided it will not breach the funding conditions in the Funding Rules. Unless the College specifies otherwise in writing, the Provider shall be responsible for the collection of and shall be entitled to retain such fee. The Provider will, at the College's request from time to time, provide the College with evidence that such fees have been paid. For the avoidance of doubt, the College shall not be liable for any failure on the part of the Learner or third party to pay any fee to the Provider. The Provider acknowledges and agrees that the lack of payment of any such fee shall not diminish the Provider's obligations to the College under this Agreement in respect of any Learner and that the Learner shall continue to be entitled to participate in the Programme notwithstanding that such fee has not been paid.
- 24.10 Payment by the College shall be without prejudice to any claims or rights which the College may have against the Provider and shall not constitute any admission by the College as to the performance by the Provider of the Provider's obligations hereunder and shall not operate as a waiver of the College's rights under this Agreement. Prior to any such payment, the College shall be entitled to make deductions or deferments in respect of any disputes or claims whatsoever with or against the Provider, arising from this Agreement or any other agreement between the Provider and the College.
- 24.11 Where the College, the Funding Agency or the relevant ESIF Managing Authority carries out or procures the carrying out of a review or audit of a sample of the records or information which the Provider is required to provide under this Agreement to support the payments made by the College and identifies errors in that evidence which the College, the Funding Agency or the relevant ESIF Managing Authority (as the case may be) deems are material, the College may at its option terminate this Agreement and/or recover from the Provider an amount calculated by reference to the error rate identified, the amount paid to the Provider and the total value of the Agreement. Such amount may be recovered by making deductions from future payments due to the Provider under this Agreement or if no future payments are to be made, an invoice shall be raised by the College and paid by the Provider immediately upon issue. In all such reviews the decision of the College is final.
- 24.12 The Provider acknowledges and agrees that notwithstanding any other provision in this Agreement the Provider shall repay to the College on demand any sum which the Provider has claimed in breach of the terms of this Agreement or which have been paid in error by the College or which are otherwise required to be paid to the College under the terms of this Agreement, whether during the continuance of this Agreement or thereafter, and that the provisions of this clause 24.12 shall survive expiry or termination of this Agreement for any reason.

- 24.13 The Provider will notify the College immediately if any Learner withdraws from a Programme, as withdrawal is defined in the Funding Rules and in any other guidance provided by the College from time to time (and which shall in the absence of any such definition include a Learner who withdraws from the Programme prior to completing the Programme). The Provider acknowledges that:
- 24.13.1 the College may at its option treat any Learner as withdrawn where the Provider has not provided evidence in a form satisfactory to the College that tuition has taken place in respect of that Learner for a period in excess of four weeks at any time or that the Learner has completed the Programme within [10 weeks] of the intended date of completion; and
 - 24.13.2 the Provider may not be entitled to receive any further sums in respect of a Learner who has withdrawn from the Programme or is so deemed to have withdrawn from the Programme by the College and shall be required to repay to the College on demand any sums already paid in respect of that Learner.
- 24.14 The Provider is responsible for the provision and cost of the Premises, all accommodation, equipment and materials, training, administrative provision, accreditation costs and expenses, registration and certification of Learners, external verification visits and reports, study visits and costs which arise in relation to the performance of the Provider's obligations under this Agreement.
- 24.15 Nothing in this Agreement obliges the College to make any minimum payment to the Provider or any payment in the event that no Learners are Enrolled.
- 24.16 In order to apply for further funding for Learners with additional support requirements, as described in the Funding Rules, the Provider must, in relation to each such Learner, submit an additional support assessment form which shall be considered by the College in its absolute discretion.
- 24.17 All payments will be made by BACS transfer unless the College specifies otherwise.
- 24.18 The Provider acknowledges that the College may vary the Price at any time to the same extent that the Funding Agency varies the Funding (including but not limited to where a change of circumstances affecting any Employer, any Learner or any Programme results in training and/or assessment no longer being delivered under the relevant Programme).
- 24.20 The College reserves the right to reduce the overall maximum value for any Programme:
- 24.20.1 where required as a result of the Funding Agency varying the Funding, upon giving the Provider as much notice as is reasonably practicable in the circumstances, which the Provider acknowledges will be shorter notice than the length of notice given to the College by the Funding Agency; and
 - 24.20.2 in all other cases, upon giving the Provider not less than three Months' notice without the need to give a reason.
- 24.21 Without prejudice to the remainder of this clause 24.21 the College shall be entitled to retain, from all sums payable to the Provider under the terms of this Agreement, such sum as may be notified by the College to the Provider in writing, but not exceeding the Maximum Retention Percentage ("**the Retention Sums**") and the following provisions shall apply:
- 24.21.1 any Retention Sums held at any time by the College may be used, entirely at the College's discretion, to repay to the Funding Agency any sums which, in connection with this Agreement, are repayable to the Funding Agency;

24.21.2 without prejudice to the College's ability to recover sums from the Provider pursuant to the remainder of this clause 24.21, the College shall, upon the expiry of six Months after the End Date, pay to the Provider the Retention Sums less any amounts paid to the Funding Agency and any other amounts withheld by the College pursuant to this clause 24.21;

24.21.3 in the event that the Provider wishes payment of the Retention Sums as set out at clause 24.21.2 above to be made prior to the expiry of six Months after the End Date, the Provider may request in writing that the College arranges at the Provider's expense an audit to determine whether or not in the College's reasonable opinion any sums are repayable to the Funding Agency. If, in the College's reasonable opinion, no such sums are repayable, the College shall pay to the Provider the Retention Sums less any amounts paid to the Funding Agency pursuant to this clause 24.21; and

24.21.4 without prejudice to any other rights and remedies available to the College under this Agreement, the College shall be entitled to retain indefinitely such proportion of the Retention Sums as the College determines in its sole discretion in the event that the Provider fails to achieve any or all of the College Targets (if any) or the College reasonably determines that the Provider shall fail to achieve any or all of the College Targets (if any).

25. Taxation and other Payments

25.1 All payments to be made by the College to the Provider under the terms of this Agreement are inclusive of any value added tax and any other applicable tax.

25.2 The Provider is responsible for making all relevant tax payments in relation to Learners and will indemnify and hold harmless the College in respect of any claims or demands that may be made against the College in relation to such payments.

25.3 The Provider acknowledges that, for the avoidance of doubt, all Tutors and other employees of the Provider engaged in the delivery of the Programme and the Services and administration relating to the same are the responsibility of the Provider and are employed by the Provider and that the Provider is solely responsible for the payment of all wages, taxes (including but not limited to income tax), pension payments, national insurance contribution payments, social security payments and any other sums payable or claims made by any third party including but not limited to Her Majesty's Revenue and Customs in respect of each such employee and, where the Provider is an individual, in respect of the Provider. The Provider shall fully indemnify and hold harmless the College against all demands and claims that may be made against the College in relation to such payments.

26. Prohibited Activities

26.1 The Provider:

26.1.1 shall not, and shall procure that the Provider's employees, agents, Tutors and sub-contractors shall not, in connection with this Agreement, commit a Prohibited Act;

26.1.2 warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the College, or that an agreement has been reached to that effect, in connection with the execution of this Agreement, excluding any arrangement of which full details have been disclosed in writing to the College before execution of this Agreement;

26.1.3 shall provide the College with any reasonably requested assistance, at the College's reasonable cost, to enable the College to perform any activity required by any relevant Government or agency in any jurisdiction for the purpose of compliance with the Bribery Act;

- 26.1.4 shall, within 10 working days of the date of this Agreement, and annually thereafter, certify to the College in writing (such certification to be signed by an officer of the Provider) compliance with this clause 26 by the Provider and all persons associated with the Provider or other persons who are supplying goods or services in connection with this Agreement. The Provider shall provide such supporting evidence of compliance as the College may reasonably request.
- 26.2 The Provider shall have an anti-bribery policy (which shall be disclosed to the College immediately on request) to prevent the Provider's employees, agents, Tutors and sub-contractors from committing a Prohibited Act and shall enforce such policy where appropriate.
- 26.3 The Provider shall notify the College immediately of any known or suspected breach of clause 26.1.
- 26.4 If the Provider notifies the College that the Provider suspects or knows that there may be a breach of clause 26.1, the Provider shall respond promptly to the College's enquiries, co-operate with any investigation, and allow the College to audit books, records and any other relevant documentation. This obligation shall continue following the expiry or termination for any reason of this Agreement.
- 26.5 Where the College has reasonable cause to suspect that fraud or irregularity has occurred in relation to the delivery of this Agreement and payments made hereunder, the College shall:
- 26.5.1 have a right to suspend payments under this Agreement; and
- 26.5.2 have a right to enter the Provider's premises at any reasonable time with or without notice to examine and remove or copy all relevant documents and records and to interview the Provider's employees engaged in the delivery of this Agreement.
- 26.6 The College may terminate this Agreement by written notice with immediate effect if the Provider or any of the Provider's employees, agents, Tutors and (notwithstanding clause 11.1) sub-contractors (in all cases whether or not acting with the Provider's knowledge) breaches clause 26.1 and the College shall be entitled to recover from the Provider the amount of any loss resulting from such termination and/or to recover from the Provider the amount of value of any gift, consideration or commission.
- 26.7 Any termination under clause 26.6 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the College.
- 26.8 The Provider shall not enter into any agreement with any political or religious organisation using any funding provided by the College under this Agreement if the effect of that agreement would be to promote a particular political or religious point of view.
- 26.9 The Provider shall not hold itself out as acting on behalf of the College without the College's permission.
- 26.10 The Provider undertakes to comply with, and to cooperate with the College in respect of, the College's anti-fraud policy and to notify the College immediately upon becoming aware of any instance of suspected fraud or irregular financial or delivery activity in connection with this Agreement including, but not limited to, cases of:
- 26.10.1 collusion with members of staff of the College, the Funding Agency or any Government department;
- 26.10.2 non-delivery of training when funds have been paid;

- 26.10.3 the submission to the College of inaccurate, incomplete, misleading or falsified information;
 - 26.10.4 allegations of fraud, including but not limited to computer fraud and fraud involving awarding bodies;
 - 26.10.5 an inadequate OFSTED grade;
 - 26.10.6 the Provider's failure to meet any applicable indicators set out in the Quality Assurance Agency for Higher Education's UK Quality Code for Higher Education; or
 - 26.10.7 complaints or allegations made by any employee, agent, Tutor or (notwithstanding clause 11.1 subcontractor of the Provider or by any Learner, any Employer or any third party
- 26.11 The Parties shall co-operate in the identification of Learners who may be unlawfully claiming benefits. The College may from time to time brief the Provider as to the co-operation and assistance the College requires including the provision of information regarding Learners.
- 26.12 Any breach of this clause 26 by the Provider shall constitute a Serious Breach under clause 32 of this Agreement which is not capable of remedy.

27. Data Protection

- 27.1 The Provider shall comply at all times with the Data Protection Legislation, and shall not perform its obligations under this Agreement in such a way as to cause the College to breach any of the College's applicable obligations under the Data Protection Legislation.
- 27.2 Notwithstanding the general obligation in clause 27.1, where the Provider is Processing Personal Data or a data processor for the College, the Provider shall ensure that the Provider has in place appropriate technical and organisational measures to enable the security of such Personal Data and to guard against unauthorised or unlawful Processing of the Personal Data, as required by the Data Protection Legislation, and shall:
- 27.2.1 provide the College with such information as the College may reasonably require to satisfy itself that the College is complying with its obligations under the Data Protection Legislation and that the Provider is complying with its obligations under this clause 27.2, including but not limited to written details of the technical and organisational methods employed by the Provider to keep such Personal Data secure and details of where and how such Personal Data is stored, and in each case the Provider shall notify the College of any changes to such details; and
 - 27.2.2 Process the Personal Data only in accordance with instructions from the College (which may be specific instructions or instructions of a general nature as set out in this Agreement or as otherwise notified by the College to the Provider during the term of this Agreement); and
 - 27.2.3 ensure that any file containing any Personal Data (including but not limited to in relation to any Learner) is encrypted if being sent via email or stored on a portable electronic device; and
 - 27.2.4 take reasonable steps to ensure the reliability of any of the Provider's staff and Tutors who have access to the Personal Data; and

- 27.2.5 ensure that all staff and Tutors required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this clause 27; and
- 27.2.6 ensure that none of the Provider's staff or Tutors publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the College; and
- 27.2.7 notify the College within five working days if the Provider receives:
- (a) a request from a Data Subject to have access to that person's Personal Data; or
 - (b) a complaint or request relating to the College's or the Provider's obligations under the Data Protection Legislation;
- 27.2.8 provide the College with full co-operation and assistance in relation to any complaint or request made of the nature referred to in clause 27.2.7 above, including by:
- (a) providing the College with full details of the complaint or request;
 - (b) assisting the College in complying with any subject access requests within the relevant timescales set out in the Data Protection Legislation and in accordance with the College's instructions;
 - (c) providing the College with any Personal Data it holds in relation to a Data Subject (within the timescales required by the College); and
 - (d) providing the College with any information requested by the College;
- 27.2.9 permit the College or the College's representative (subject to reasonable and appropriate confidentiality undertakings) to inspect and audit the Provider's data Processing activities and comply with all reasonable requests and directions by the College to enable the College to verify and/or procure that the Provider is in full compliance with the Provider's obligations under this Agreement; and
- 27.2.10 not Process Personal Data outside the European Economic Area without the prior written consent of the College and, where the College consents to a transfer, shall comply with:
- (a) the obligations of a Data Controller set out in the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
 - (b) any instructions notified to the Provider by the College;
- 27.2.11 promptly notify the College of any breach of the security measures required to be put in place pursuant to this clause 27.2, including but not limited to any loss or unauthorised disclosure of Personal Data. The Provider acknowledges that any breach by the Provider of this clause 27 shall constitute a Serious Breach of this Agreement.

28. Quality Assurance

- 28.1 The Provider agrees to provide the Programme in accordance with the Quality Standards and to comply with any other reasonable requirements of the College which may be notified in writing to the Provider from time to time including, without limitation, those requirements set out in the Funding

Rules and the College's Charter, which shall for the purposes of this Agreement be deemed to apply to the Provider as they do to the College.

- 28.2 The Provider warrants to the College that the Provider has the resources and skills necessary to carry out the Provider's obligations pursuant to this Agreement and that the Provider will perform its obligations under this Agreement to such high standards of quality as it is reasonable for the College to expect in all the circumstances.
- 28.3 The Provider shall ensure that all activities carried out pursuant to this Agreement shall be documented in accordance with the requirements of the College and shall provide such documentation to the College as the College shall request from time to time.
- 28.4 The Provider shall have in place a rigorous system of quality assurance based on the regular review and self-assessment of the quality of the Services delivered. The Provider shall comply with the requirements of, and observe guidance on the process for review and assessment issued by, the College, the Funding Agency, the Inspectorates, any relevant authority and any regulatory body from time to time which shall in any event include the requirement for the Provider to carry out self-assessments reflecting the Education Inspection Framework. In any event the Provider shall provide the College with a self-assessment report containing such information and in such format as required by the College from time to time by no later than 22 September 2025.
- 28.5 The Provider shall continuously seek to improve the quality of the Services and raise standards to benefit Learners. The Provider shall have the primary responsibility for improving standards and shall demonstrate to the College's satisfaction that the Provider has an effective quality assurance system based on continuous self-assessment and the implementation of the Provider's own quality improvement processes. The Provider shall on request promptly provide to the College, the Funding Agency or any other regulatory or Government body evidence to support the quality improvement processes.
- 28.6 If at any time the Provider has not, in the College's reasonable opinion, complied with the Quality Standards the College may notify the Provider of that fact and give reasons for the College's opinion and the Provider will have an opportunity to remedy the defect provided that if, within a reasonable time after receiving notice from the College, the Provider has not remedied the defect to the College's reasonable satisfaction the College will be entitled to terminate this Agreement immediately upon written notice to the Provider.
- 28.7 The Provider will on request make available to the College a report on the Provider's own assessment of the quality of the Services provided under this Agreement in a form and dealing with such matters as the College may specify from time to time and which is in any event in accordance with OFSTED's Education Inspection Framework or any similar or equivalent framework or guidance issued by OFSTED from time to time.
- 28.8 Where the Services provided under this Agreement are subject to inspection by any of the Inspectorates and the inspection results in the Services or any aspect thereof being assessed as inadequate, the College may, in its absolute discretion, terminate the Agreement in respect of all of the Services or any part which is assessed as inadequate.
- 28.9 Notwithstanding any obligation contained in the Quality Standards the Provider shall take all reasonable steps to:
- 28.9.1 minimise drop-out rates and deliver high completion and achievement rates and appropriate progression;
- 28.9.2 ensure competent and appropriately qualified staff deliver and assess learning;

- 28.9.3 offer equality of access to learning opportunities and close gaps in learning, outcomes and achievements;
- 28.9.4 provide a safe, healthy and supportive environment, which meets the needs of Learners;
- 28.9.5 provide good management and leadership of the learning process; and
- 28.9.6 deliver value for money and financial probity,

and the Provider acknowledges and agrees that a breach by the Provider of this clause 28.9 shall constitute a Serious Breach for the purposes of clause 32 of this Agreement.

- 28.10 The Provider shall ensure that each Tutor is observed delivering the Programme not less than once in each year during the period of this Agreement (which shall include observation by the College where so required by the College), that a written report is provided to the College of each such observation promptly following the observation and that a representative sample of observations are validated by the College.
- 28.11 The Provider will provide the College with such co-operation and information as the College requests in relation to any visit to the College by OFSTED.

29. European Funding, Other Sources of Funding and State Aid

- 29.1 The Provider must not use any sums paid under this Agreement to make or support bids for or claims from any European source of funding on the Provider's own behalf or on behalf of the College or the Funding Agency or as match funding without obtaining consent in writing from the College or the Funding Agency as the case may be.
- 29.2 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 (in the sole discretion of the College or any other body undertaking the audit or monitoring) to the College, the Funding Agency and any other regulatory body that no double funding has occurred in respect of the Services delivered under this Agreement. Where the College, the Funding Agency or any other regulatory body identifies double funding in respect of the Services (or any part thereof) the Provider will be liable to repay to the College on demand any sums (or any part thereof) paid by the College in respect of the Services for which the Provider has received funding from another source and the College reserves the right to deduct such sums from any monies owed to the Provider under this Agreement or any subsequent agreement between the Parties.
- 29.3 In circumstances where the Funding Agency uses payments made under this Agreement as match funding for ESIF projects (such projects including the European Social Fund, the European Regional Development Fund and the European Agricultural Fund for Rural Development) the College may be requested to provide certain information to the Funding Agency. Where requested to do so in writing by the College, the Provider shall provide such information and in the form as the College specifies to enable the Funding Agency to comply with the requirements of the ESIF. The Provider shall, where required by the Funding Rules and in such other circumstances as the College may require from time to time, inform Learners or others that the Services provided have been financed in whole or part by the ESIF.
- 29.4 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> (or such other domain name as notified to the Provider by the College or the Funding Agency from time to

time). Learners must meet the eligibility criteria defined in such Operational Programme as well as the specific eligibility criteria required by this Agreement.

- 29.5 Unless the College otherwise specifies in writing, the Provider shall ensure that European Social Fund plaques are prominently displayed at each of its premises and agrees that it shall display the 2007/13 European Social Fund logos and emblems (or such other logos and emblems as may be required by the Funding Agency from time to time) on any materials relating to funding by the European Social Fund (including but not limited to websites, learner enrolment documents and training materials). The College will use reasonable endeavours to make available to the Provider all relevant 2007/13 European Social Fund logos and emblems (or such other logos and emblems as may be required by the Funding Agency from time to time).
- 29.6 The Provider must ensure that where it is agreed with the College 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".
- 29.7 The Provider must ensure that all Learners are aware of the support of the European Social Fund in respect of the Services being delivered under this Agreement and that they are subject to the rules of the European Social Fund.
- 29.8 The Provider must ensure that where the use of logos in a document or other form of communication for promotional purposes is not practicable, wording is included stating that the Programme is co-financed by the relevant Funding Agency.
- 29.9 The Provider shall satisfy itself whether the European rules on state aid apply to the Services delivered under this Agreement. Where such rules on state aid apply, the College will at the Provider's request supply the Provider details of the records that the Provider will need to collect and retain.
- 29.10 In the event that any sums paid under this Agreement are deemed to constitute unlawful state aid the College reserves the right to require immediate repayment of any such sums.

30. Additionality

- 30.1 The Provider undertakes that the resource per Learner which it will devote to the provision of education and training under this Agreement will be the same as or greater than:
- 30.1.1 the resource per Learner which it has in the past devoted to such provision; or
- 30.1.2 (if higher) the resource per Learner which it would have devoted to such provision had it not entered into this Agreement,
- provided that, for the purposes of this clause 30.1, any discounting factor which may apply to such provision pursuant to the Funding Rules shall be taken into account when calculating the resource per Learner in each case.
- 30.2 The Provider undertakes that in respect of any secondment arrangements it enters into in connection with the Services or this Agreement the resource per member of staff will not be less than:
- 30.2.1 the resource per member of staff which has in the past been devoted to secondment; or
- 30.2.2 (if higher) the resource per member of staff which it would have devoted to such provision had it not entered into this Agreement.

30.3 No part of the Price shall be applied for company-specific, or organisation-specific, training or to train the Provider's own employees and the Provider agrees that the Price shall not be used to reduce the Provider's own contribution to the training and development of its own staff or to reduce the Provider's training budget or resources designated for training purposes. The Provider agrees to provide such information and documentation as the College may require from time to time to evidence the Provider's compliance with this clause 30.3.

30.4 The Provider undertakes that where the Programmes, or any of them, are partly funded by the Price, the fees charged to Learners reflect the contribution made by the Price to the cost of the Programmes.

31. Disposal of Assets and Change of Use

31.1 In respect of Assets whose value exceeds £2,500 including VAT this clause 31 shall apply.

31.2 For the purposes of this clause 31:

31.2.1 'Asset' shall mean any property, real or personal, tangible or intangible;

31.2.2 an Asset shall be considered to have been financed by the College if it has been acquired wholly or partly with funds provided by the College;

31.2.3 the use of any Asset shall be considered to have changed if the Provider uses it for any purpose other than for the provision or connected with the provision of Services under this Agreement; and

31.2.4 'the appropriate proportion thereof' shall be the proportion represented by the amount of funding provided by the College to acquire, develop or improve an asset in relation to the entire price paid for its acquisition, or its market value when its development or improvement have been completed.

31.3 The Provider shall ensure that any Asset financed by the College is adequately insured.

31.4 The Provider shall inform the College if the Provider proposes to dispose of, or change the use of, any Asset that has been financed by the College.

31.5 The Provider shall not dispose of any Asset financed by monies provided by the College unless the Provider has first obtained the written consent of the College to such disposal.

31.6 Where the Provider disposes of the Asset the Provider shall pay to the College, whichever is the greater, either the amount of funding provided by the College in respect of the Asset or the net proceeds of any disposal of an Asset, or the appropriate proportion thereof, unless otherwise agreed with the College.

31.7 If the Provider changes the use of any such Asset it will be treated as a disposal and the Provider shall make a payment to the College in accordance with clause 31.6 above.

31.8 In the event of the Provider being acquired, merging or going into liquidation, all Assets financed by the College, or the equivalent portion of their market value, will immediately become the property of the College.

31.9 The provisions of this clause 31 shall apply during the continuance of this Agreement and after its termination howsoever arising. The College shall in its absolute discretion determine when its interest in Assets financed by the College under the terms of the Agreement shall cease.

32. Breach

- 31.1 Without prejudice to any other remedy, in the event of a Minor Breach, the Parties will adopt the following procedure:
- 31.1.1 the Party not in Minor Breach shall be entitled to serve written notice on the Party in breach, giving full details of the Minor Breach and requiring the other Party to remedy the Minor Breach within 30 days; and
 - 32.1.2 if the Party in breach fails to remedy the Minor Breach within 30 days of the date of the notice served under clause 32.1.1 or such other period as may be agreed between the Parties it shall constitute a Serious Breach by the Party in breach which is not capable of remedy.
- 32.2 Without prejudice to any other remedy, in the event of a Serious Breach which is capable of remedy, the Parties shall adopt the following procedure:
- 32.2.1 the Party not in breach shall be entitled to serve written notice on the other Party giving full details of the Serious Breach and requiring the Party in breach to remedy the Serious Breach within 14 days of the date of the notice; and
 - 32.2.2 in the event that a Serious Breach of this Agreement by the Provider is not capable of remedy or is not remedied within 14 days of the date of the notice served under clause 32.2.1 or such other period as may be agreed between the Parties the College may:
 - (a) require the Provider to suspend recruitment of Learners to the Programme to which the Serious Breach relates; and
 - (b) suspend payment to the Provider in respect of those parts of the Services to which the Serious Breach relates.
- 32.3 Without prejudice to any other remedy, in the event that any Serious Breach is not capable of remedy or is not remedied within 14 days of the date of the notice served in accordance with clause 32.2.1 or such other period as may be agreed between the Parties, the Party not in breach may at its sole discretion terminate this Agreement or that part of the Services to which the Serious Breach relates with immediate effect on giving notice in writing to the other Party.
- 32.4 For the avoidance of doubt:
- 32.4.1 neither Party shall be liable for any Minor Breach or Serious Breach under this clause 32 to the extent that any such breach is caused by any act or omission by the other Party; and
 - 32.4.2 in the event of a breach the Party not in breach may enforce the provisions of this Agreement relating to breach even if that Party has not done so in the event of earlier breaches.

33. Termination

- 33.1 The College may terminate this Agreement by written notice to the Provider if:
- 33.1.1 there is a material adverse change in the amount or nature of the Funding Agency's funding of the College or Funding is no longer available in respect of the Programme;

- 33.1.2 the Provider 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, or is the subject of any distress execution sequestration or other process levied upon or enforced against any part of the Provider's undertaking, property, assets or revenues, or the Provider suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business;
- 33.1.3 the Provider (if an individual or in the case of a partnership any partner) 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 the Insolvency Act 1986 or is unable to pay or has no reasonable prospect of being able to pay its debts within the meaning set out in the Insolvency Act 1986 or by written notice to the Provider or any representative of the Provider representatives if the Provider (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation;
- 33.1.4 the Provider is a company or limited liability partnership and a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Provider, or an application is made to court, or an order is made, for the appointment of an administrator or a notice of intention to appoint an administrator is filed or an administrator is appointed in respect of the Provider, or a floating charge holder over the assets of the Provider has become entitled to appoint or has appointed an administrative receiver, or a person becomes entitled to appoint a receiver over the assets of the Provider or a receiver is appointed over the assets of the Provider, or a creditor or encumbrancer of the Provider attaches or takes possession of, or a distress, execution or other such process is levied or enforced on or sued against, the whole or any part of the Provider's assets and such attachment or process is not discharged within 14 days;
- 33.1.5 the Provider takes any steps which may be indicative of its insolvency or stops payment or agrees to declare a moratorium or becomes or is deemed to be insolvent or unable to pay its debts when they fall due within the meaning set out in the Insolvency Act 1986;
- 33.1.6 the Provider is a company or limited liability partnership and a notice relating to the striking off of the Provider is published;
- 33.1.7 the Provider is a company or limited liability partnership 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 Provider;
- 33.1.8 the College determines in its sole discretion that the College's association with the Provider is harmful to the reputation of the College or that the Provider's conduct may bring the College into disrepute;
- 33.1.9 there are in the opinion of the College insufficient Learners to make the Programme viable;
- 33.1.10 the Provider undergoes any merger or acquisition or change of ownership or control to which the College has not consented in writing;
- 33.1.11 the Provider is a further education corporation and:
 - (a) ceases to operate as a further education corporation at any time prior to the End Date, or the College, acting reasonably, suspects that that the Provider will cease to operate as a further education corporation at any time prior to the End Date; or

- (b) becomes deemed to require special measures or the subject of a notice to improve;
 - 33.1.12 any Inspectorate has assessed the Provider's leadership and management or any part of its teaching provision which relates to the Services or learning outcomes as inadequate;
 - 33.1.13 any other agreement between the Parties is terminated before its intended expiry date;
 - 33.1.14 any aspect of a Programme has not been delivered where any element of the Price has been paid in respect of such aspect of the Programme;
 - 33.1.15 any sanctions have been imposed on the Provider by any awarding organisation or the Further Education Commissioner;
 - 33.1.16 any serious complaint or allegation has been made by any employee, agent, Tutor or (notwithstanding clause 11.1) sub-contractor of the Provider or by any Learner or any third party, or any irregular financial or delivery activity is discovered which is substantiated;
 - 33.1.17 the Provider ceases to be registered with the UK Register of Learning Providers or (if previously registered) the Register of Training Organisations;
 - 33.1.18 85% or less of the observations carried out pursuant to clause 28.10 in any year commencing on the Commencement Date or an anniversary thereof are graded as good or better; or
 - 33.1.19 the College determines that the Provider has not achieved, or is not likely to achieve, any or all of the College Targets; or
 - 33.1.20 the Funding Agency or the Further Education Commissioner requires that the College terminates this Agreement;
 - 33.1.21 you have an above average rating for risk with a credit agency or your statutory accounts are overdue;
 - 33.1.21 the College's agreement with the Chief Executive of Skills Funding or any agreed variation to that agreement, is terminated for any reason, and the Provider hereby undertakes to notify the College promptly if any event occurs which may give rise to a right for the College to terminate this Agreement pursuant to this clause 33.1; or
 - 33.1.22 the Provider otherwise fails in any way to meet the due diligence and/or financial health requirements and standards of the College and/or the Funding Agency and, in this regard, the Provider undertakes that it shall inform the College of any changes which impact its ability to meet those standards.
- 33.2 Termination of this Agreement pursuant to clause 33.1 may take effect either immediately or on the date specified by the College, as the College shall in its discretion determine. This Agreement shall remain in full force and effect until the date of termination.
- 33.3 Expiry or termination of this Agreement for any reason shall not prejudice or affect any right of action or remedy, which shall have accrued or shall thereupon accrue to the Parties under this Agreement.
- 33.4 The College shall be entitled to terminate this Agreement in respect of all or part of the Services provided under this Agreement by giving the Provider not less than three Months' written notice at any time.

33.5 In the event that this Agreement is terminated pursuant to clause 33.1 the Provider shall fully indemnify and hold harmless the College against all liability, costs (including legal fees), losses, expenses or damages suffered or incurred by the College and all and any claims made against the College directly or indirectly as a result thereof (without prejudice to any other remedy or right which the College might have).

33.6 Where the Provider enters into administration or liquidation, the College shall be assumed to be a creditor of the Provider. The Provider shall take steps to ensure that the College is provided with details of the administrator or liquidator and receives notification of any creditors' meetings. The College will confirm whether in fact it is a creditor within 8 weeks of being notified that the Provider is in administration or liquidation.

34. Consequences of Termination

34.1 The Provider shall upon expiry or termination for any reason of this Agreement immediately deliver up to the College all copies and original correspondence, documents, papers, information relating to Learners and other property belonging to the College, which may be in the Provider's possession or under the Provider's control.

34.2 The Parties agree that if upon termination of this Agreement any circumstances arise in which the Transfer of Undertakings (Protection of Employment) Regulations 2006 are applicable, the Parties shall in good faith co-operate with each other in the disclosure of information.

34.3 The Provider hereby agrees to fully indemnify and hold harmless the College against:

34.3.1 any claims made against the College by any Tutor or other employee of the Provider, including but not limited to all costs, claims, losses and expenses arising out of or in connection with any claim that the employment of such employees has transferred to the College by virtue of the Transfer of Undertakings (Protection of Employment) Regulations 2006;

34.3.2 any amounts paid by the College to any such employee in respect of statutory redundancy pay and awards of damages for failure to give due notice of termination to such employee where due notice could not be given by the College due to the Provider's actions (arising during or on or after termination of this Agreement); and

34.3.3 any amounts paid by the College to any employee of the College made redundant as a result of or in connection with the transfer of any of the Provider's employees to the College,

and the Provider further agrees that it shall not make any material changes to the terms and conditions of any Tutor or other employee of the Provider involved in the provision of the Services without the prior written agreement of the College to any such change.

34.4 The Provider agrees to grant to any Incoming Supplier an indemnity in the same terms as those granted to the College pursuant to clause 34.3.

34.5 On expiry or termination of this Agreement for any reason the Provider shall do its utmost to minimise disruption to Learners, and if so required by the College, assist with the implementation of any contingency plan proposed by the College either prior to or after the termination or expiry of this Agreement, to deal with the effects of such termination or expiry.

34.6 If so required by the College the Provider shall at no cost to the College promptly provide such assistance and comply with such timescales as the College may reasonably require for the purpose of ensuring an orderly transfer of responsibility for provision of the Services (or their equivalent)

following the expiry or termination of this Agreement to the College or any third party. The College shall be entitled to require the provision of such assistance prior to and after the expiry or termination of this Agreement, such assistance including but not being limited to delivery of documents and data in the possession or control of the Provider which relate to performance, monitoring, management and reporting in connection with the Services.

- 34.7 On termination or expiry of this Agreement for any reason, the Provider shall do its utmost to minimise disruption caused to Learners and to assist the implementation of any contingency plan proposed by the College either prior to or after the termination or expiry of this Agreement, to deal with the effects of such termination or expiry in so far as it is practicable to do so. The College will not be liable for any costs incurred by the Provider in complying with this clause.
- 34.8 The Provider undertakes that it shall not do or omit to do anything which may adversely affect the ability of the College to ensure an orderly transfer of responsibility for provision of the Services.
- 34.9 The Provider shall if so required by the College continue to provide the Services (or any part of them) following expiry or termination for any reason of this Agreement on the same terms as set out in this Agreement or as otherwise agreed between the Parties to the extent necessary to enable any Learner to complete the Programme commenced during the continuance of this Agreement. The College may withdraw any such requirement at any time by giving the Provider written notice, in which case the Provider shall immediately cease to provide the relevant Services.
- 34.10 The Provider shall on termination of this Agreement cease using any marks of the Funding Agency and the College (and any other related Trade Marks, logos or branding) and deliver up to the College all correspondence, documents, student data relevant to continuation of the Provision, specification papers and other property belonging to the College, which may be in its possession or under its control.
- 34.11 The provisions of this clause 34 will apply throughout the continuance of this Agreement and thereafter.

35. Force Majeure

- 35.1 If the College or the Provider is unable to perform any or all of its obligations under this Agreement due to the occurrence of an event beyond its reasonable control (including but not limited to fire or flood but not including strike or industrial action involving the Provider's employees) ('Force Majeure Event') it shall promptly notify the other Party of the nature of the Force Majeure Event and shall be relieved of its obligations to continue to perform its obligations under this Agreement for as long as and to the extent prevented or delayed as a consequence of the Force Majeure Event, provided that if the Force Majeure Event continues for a period in excess of 14 days the Party not so prevented from performance by a Force Majeure Event shall be entitled to terminate this Agreement by giving written notice to the other Party but without prejudice to any right of either Party against the other in respect of any breach of this Agreement.
- 35.2 During the period of any Force Majeure Event affecting the Provider the College shall be entitled to obtain the Services from a third party and all payments due to the Provider hereunder shall be suspended until such time as provision of the Services is resumed in full by the Provider.
- 35.3 In the event that the College procures provision of the Services by a third party under the terms of clause 35.2 and thereby incurs costs and expenses or other liability over and above the Price for the provision of those Services by the Provider payable pursuant to this Agreement then the Provider will repay to the College within 14 days of demand and/or indemnify the College against all such costs, expenses and liability in excess of the full Price contracted for hereunder in respect of those

Services or (at the discretion of the College) the College may set off such additional sums or liability against any further payments due to the Provider from the College from time to time.

36. Public Reputations of the Parties/Press Releases

- 36.1 The text of any press release or other communication to be published by or in the media concerning the subject matter of this Agreement shall require the approval of each Party which shall not be unreasonably withheld or delayed.
- 36.2 The Provider acknowledges that as Learners will be Enrolled with the College, the College's reputation is at stake and, accordingly, the Provider agrees that:
- 36.2.1 the Provider 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;
- 36.2.2 the Provider will do everything it reasonably can to promote the name and reputation of the College; and
- 36.2.3 the Provider will comply with all requirements of the College notified to the Provider from time to time in relation to the provision of the Programme(s) or any part of it.
- 36.3 In return for the Provider providing the Programme(s) in accordance with the terms of this Agreement the College agrees that it will provide the Provider with such reasonable support and assistance as the Provider reasonably requests from time to time provided that, for the avoidance of doubt, the College will not be obliged to the Provider 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.

37. Non-Solicitation

- 37.1 The Provider hereby undertakes to the College that the Provider shall not during the period of this Agreement and for a period of twelve Months thereafter without the prior written consent of the College whether by itself, through the Provider's employees or agents or otherwise and whether on the Provider's own behalf or on behalf of any other person, corporation, company or other organisation, directly or indirectly:
- 37.1.1 solicit business from or canvass any Learner or Employer if such solicitation or canvassing is in respect of any services which are the same as or similar to any Services supplied by the Provider under this Agreement ('Restricted Services');
- 37.1.2 supply any Restricted Services to any Learner or Employer other than pursuant to this Agreement;
- 37.1.3 solicit or induce or endeavour to solicit or induce any person who is or was during the twelve Months preceding the date of expiry or termination of this Agreement employed by the College in a managerial capacity to cease working for or providing services to the College, whether or not any such person would thereby commit a breach of contract; or
- 37.1.4 employ or otherwise engage in the supply of Restricted Services any person who is or was during the twelve Months preceding the date of expiry or termination of this Agreement employed by the College in a managerial capacity.
- 37.2 If the Provider breaches clause 37.1, the Provider shall, on demand, pay to the College:

37.2.1 a sum equal to 6 months' salary of the person in respect of which the breach related (up to a maximum of £10,000); and

37.2.2 a sum equal to the College's costs of recruiting a replacement for the person in respect of which the breach related (up to a maximum of £5,000).

38. Status of Agreement

38.1 This Agreement does not constitute a partnership, contract of employment or joint venture arrangement between the College and the Provider and the Provider must not act or purport to act as an agent of the College.

38.2 This Agreement and the documents referred to in it contain the entire understanding of the parties and overrides and supersedes any prior promises, representations, undertakings or implications relating to the subject matter of this Agreement.

38.3 If any provision of this Agreement or part thereof is invalid, void or unenforceable for any reason, such provision or part provision shall be deemed deleted and such invalidity, voidness or unenforceability shall not affect the remainder of this Agreement or the remainder of the relevant provision, which in each case will remain valid and enforceable in all respects.

38.4 Clauses 1, 4.6, 11 to 13, 15 to 21, 24 to 27, 29, 31, 33.5, 34 to 37, 39, 40, 42 and 44, and schedule 2, shall continue in full force and effect indefinitely notwithstanding the expiry or termination for any reason of this Agreement.

39. Waiver

39.1 No failure or delay on the part of either Party hereto to exercise any right or remedy under this Agreement shall be construed or operate as a waiver thereof nor shall any single or partial exercise of any right or remedy as the case may be.

39.2 The waiver by any party of any breach of any provision of this Agreement will not prevent the subsequent enforcement of that provision. Similarly, the waiver will not be deemed to be a waiver of any subsequent breach of that provision or of any other provision.

39.3 The rights and remedies provided in this Agreement are cumulative and are not exclusive of any rights or remedies provided by law.

40. Third Party Rights

This Agreement does not create, confer or purport to create or confer any benefit or right enforceable by any person not a party to it save that the Parties hereby agree that the Funding Agency and the Funding Agency's Chief Executive, and the relevant Secretary of State for Education (or any successor body), may enforce any provision of this Agreement.

41. Notices

41.1 Any notice served pursuant to this Agreement shall be properly served to:

41.1.1 (in the case of notices to be served on the College) Gateshead College, at the address shown at the beginning of this Agreement and marked for the attention of Deputy Principal (Finance Director), or to such other address marked to such other person as the College notifies pursuant to this clause 41.1;

41.1.2 (in the case of notices to be served on the Provider) the Provider at the address shown at the beginning of this Agreement or to such other address marked to such other person as the Provider notifies pursuant to this clause 41.1;

41.2 Notices sent in accordance with clause 41.1 shall be deemed served 72 hours after posting.

42. Dispute Resolution

42.1 Any dispute, difference or question arising between the Parties either during the term of this Agreement or afterwards shall be referred to the contract managers appointed pursuant to clause 3.1 for discussion and review in order to try to resolve the same.

42.2 In the event of the contract managers being unable to resolve the relevant issue, upon the instigation of either Party the Parties will refer the matter to the College's Director of Finance and the Provider's most senior executive officer (jointly 'the Dispute Resolution Panel') for formal review and consideration. The Dispute Resolution Panel will meet within 14 days of a matter being referred to them in order to objectively review the position and use their best endeavours to resolve the relevant issue.

42.3 In the event of the Dispute Resolution Panel failing to resolve within 28 days of the date of referral a relevant issue referred to it by the Parties ('the Resolution Period'), either party may refer the matter to the courts in England.

42.4 Nothing in this clause 43 shall prevent either party from serving any notice of termination or otherwise which it is entitled to serve under this Agreement which notice shall continue to have effect notwithstanding any dispute resolution process.

43. Entire Agreement

43.1 The Agreement shall comprise the following:

43.1.1 The operative provisions set out in this Agreement ("Operative Provisions")

43.1.2 schedule 1; and

43.1.3 schedule 2,

and in the event of conflict or inconsistency between them the following order of precedence shall apply to the extent of such conflict or inconsistency: The Operative Provisions, schedule 2, schedule 1.

43.2 This Agreement constitutes the entire agreement between the Parties. Except where otherwise specified in this Agreement, no part of this Agreement may be varied other than via the change control procedure set out in clause 45 below.

44. Change Control Procedure

44.1 Except where otherwise specified in this Agreement:

44.1.1 where either the College or the Provider identifies a need to change any part of this Agreement or any part of its Schedules ("Change"), such Change may only be made in accordance with the procedure set out in clause 44.2 below ("Change Control Procedure");

44.1.2 until such time as a Change is made in accordance with the Change Control Procedure, each Party shall continue to perform this Agreement in compliance with its terms prior to such Change; and

44.1.3 any discussions which take place between the Parties in connection with a request for or recommendation of a Change, in each case before the authorisation of that Change, shall be without prejudice to the rights of either Party.

44.2 The Parties agree that:

44.2.1 discussions between the parties concerning a proposed Change to which this clause applies shall have one of the following results:

- (a) no further action being taken; or
- (b) a request to change this Agreement by the College; or
- (c) a request to change this Agreement by the Provider;

44.2.2 approvals of any requested Change may only be authorised (i) by the Managing Director (or equivalent) of the Provider, and (ii) by either the College's Deputy Principal (Director of Finance) or the College's Principal;

44.2.3 each request for a Change shall be in such format as is required by the College from time to time and shall contain, as a minimum, the following:

- (a) the reason for the Change and the nature of the Change;
- (b) the signature of (i) where the Change has been requested by the Provider, the Managing Director (or equivalent) of the Provider, or (ii) where the Change has been requested by the College, the College's Deputy Principal (Director of Finance) or Principal;
- (c) no proposed Change to which this clause 44.2 applies shall be incorporated into this Agreement unless and until agreed in accordance with this Change Control Procedure;

44.2.4 Following receipt of any request for a Change from one Party to the other Party in accordance with clause 44.2.3 above, the party in receipt of the request shall evaluate the request and as appropriate:

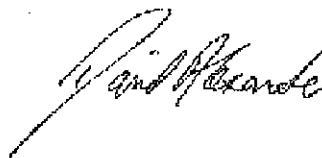
- (a) request further information from the Party which made the Change request, provided that in such circumstances the Party which made the Change request shall provide such information to the other Party within 7 days of request;
- (b) accept the Change request by arranging for a copy of the Change request to be signed by its relevant authorised signatory referred to in clause 42.2.2 above. In the event that both Parties agree to implement any such Change, the proposed Change shall take effect as an amendment to this Agreement on the date that the Party which issued the corresponding Change request has received a duly signed copy of the Change request from the other Party; or
- (c) notify the Party which issued the Change request of its rejection of the Change request in writing, in which case the proposed Change shall be rejected.

45. Governing Law and Jurisdiction

This Agreement shall be governed by and construed in accordance with English Law and is subject to the exclusive jurisdiction of the courts in England.

As Witness Whereof this Agreement has been signed the day and year first above written.

Authorised Signatory for and on behalf of
**Gateshead College Further Education
Corporation**



Name (Print):

David Alexander

Position in Organisation:

Principal & Chief Executive

Date:

1/8/2025

Authorised Signatory for and on behalf of SORA
Services Ltd



Name (Print):

Ian Tindle

Position in Organisation:

Managing Director

Date:

1/8/2025

Schedule 1

Services

Delivery of Adult Skills Budget funded courses

- 1.1 Gateshead College has entered into this subcontracting agreement for the following reasons:
- 1.1.1 To utilise SORA Services to complement College delivery to provide opportunities for learners to enter employment.
 - 1.1.2 Gateshead College does not provide the specific qualifications that SORA deliver that provides learners the opportunity to progress into the manufacturing sector.
 - 1.1.3 The relationship with SORA provides access to a wide range of manufacturing and engineering companies that are providing job outcomes, with Gateshead College overseeing the delivery of the programmes, through observations and quality assessments.
 - 1.1.4 In addition, the partnership provides a widening participation where the provision is able to engage hard-to-reach learners (e.g. Not in Employment, Education or Training - NEETs)
 - 1.1.5 To support NELEP/LSIP strategic skills priorities in the advanced manufacturing and engineering sectors
- Across the North East, advanced manufacturing is globally focussed with strong clusters in automotive and pharmaceuticals. The North East region manufactures automotive products including passenger cars, trains and heavy off-road vehicles and a range of parts and components.
- Substantial growth potential lies in international trade and investment, as well as local supply chains. Collectively, the North East's manufacturing industries represent a significant opportunity to deliver higher productivity by innovating in high level engineering; from design to manufacturing and from the application of a number of knowledge and innovation assets.
- 1.1.6 To enhance the opportunities available to young people and adults to enter employment
- 1.2 The Services to be delivered under this schedule are the delivery of NECA Adult Skills Budget funded programmes
- 1.3 The Delivery Partner shall deliver the Services under this Schedule in accordance with the NECA Funding Rules, detailed in the Definitions, and any subsequent amendment which forms part of the terms and conditions of this Contract. For the avoidance of doubt, this includes but is not limited to updated Funding Rules and any associated guidance issued by the NECA
- 1.4 An outline of the specific Services to be delivered under this Agreement are described in Schedule 2 and cannot be varied without prior written consent from the College.
- 1.5 The College shall set clear targets, in consultation with the Delivery Partner, for all achievements and/or employment outcomes for Services delivered under this Contract,
- 1.6 The Delivery Partner will demonstrate Learners' achievement of the required standard through examination board results, individual certificates, or externally signed verification forms
- 1.7 The Delivery Partner shall, prior to commencement of the Service:
- 1.5.1 identify suitable Learners

- 1.5.2 ensure that all Learners are eligible for funding
- 1.5.3 obtain a Unique Learner number for each Learner

- 1.8 The Delivery Partner shall be required to ensure the eligibility of participating Learners. Learners are required to confirm that they are eligible and do not already possess duplicate qualifications.
- 1.9 The Delivery Partner shall ensure that a Learning Agreement is in place for every learner
- 1.10 The Delivery Partner shall reference the College in the Learning Agreement
- 1.11 The delivery programmes shall be delivered solely by competent and suitably qualified, skilled staff, approved by the College. It is a requirement that all are police cleared
- 1.11 The delivery programmes shall be delivered on the premises of the Delivery Partner or on the College campuses. Other locations must be agreed, in writing, by the College
- 1.12 The Delivery Partner shall record the progression and destinations of Learners. This includes completing and collecting declarations early leavers if they have found employment, Further training etc.

Schedule 2

Calculation of the Price

1. Price

- 1.1 The Price shall be calculated on a Learner-by-Learner basis by reference to the LARS. The Price payable by the College in respect of each Learner shall be an amount equal to:

- (1) the LARS Price; **less**
- (2) 20% of the LARS Price, being an amount to be retained by the College to support the College's quality assurance and supervision of the Provider.

- 1.2 The maximum aggregate value of the Services which may be called off under this Agreement (i.e. the maximum value of this Agreement) is:

£1,600,000

- 1.3 The maximum number of Learners that may be enrolled by the College pursuant to this Agreement is:

1170

- 1.4 Payment for the Services will be in accordance with the procedures and Claim Schedule as set out in this Schedule 2.

2. Profile

See attached sheet headed "Provider Profile".

2. Claim Schedule

- 3.1 The Funding Rules and this Agreement together set out the evidence which the Provider must provide during each phase of a Learner's progress on a Programme in order for the Provider to claim the payment due in respect of that phase. No payment will be due in respect of any phase where evidence has not been supplied to the College's satisfaction. All evidence must be received by the College within the timeframes specified in the Funding Rules or as communicated by the College from time to time (as the case may be). In addition, any Learner claimed by the Provider to be on-programme after a period of 12 weeks in respect of which the College has not received the required evidence of contact will be deemed to have withdrawn and will be withdrawn from their Programme.
- 3.2 The Price shall be paid by the College in such instalments, subject to any Retention Sums that may apply in accordance with clause 24 **Error! Reference source not found.** and at such times as are specified by the College from time to time acting reasonably.

4. Claim Dates

The last day of each Month on which the banks in England are open for business.

5. Payment Procedure

- 5.1 The Provider shall submit the information specified in the Claim Schedule to the College by the dates specified in the Claim Schedule or by such other dates as the College notifies from time to time. All payments made by the College will be made in arrears subject to the terms of this Agreement.
- 5.2 Payment will not be made in respect of any Learner where the required information has not been provided by the date specified in the Claim Schedule.
- 5.3 Actual costs incurred in delivering any additional learner support agreed by the College will be paid provided that they are agreed in writing by the College in advance of the support being given.
- 5.4 The Provider will cease to receive payments in respect of Learners who withdraw from a Programme with effect from the date of withdrawal.

6. Qualifications

Qualification/Course	Reference	Awarding Body	Delivery
Level 1 Certificate in Introduction to Lean Techniques	603/3455/1	ETA	Classroom/Online
Level 2 Equality and Diversity	601/3145/7	NCFE	Classroom/Online
Level 1 Certificate in Personal and Social Skills	603/5753/8	ETA	Classroom/Online
Level 2 Award in Industrial Environmental Awareness	500/6147/1	EAL	Classroom/Online
Level 2 Diploma in Performing Manufacturing Operations	501/0928/5	EAL	Classroom
Level 2 TQUK Certificate in Understanding Environmental Sustainability	603/3776/X	TQUK	Classroom/Online

7. Maximum Retention Percentage (if applicable)

The College may retain 5% of the monthly delivery payment pending successful Audit. These monies will be fully reconciled at R14.

8. College Targets (if applicable)

Learner Achievement Overall Success Rate - 90%

Timely Success Rate minimum - 85%

Observation of Teaching and Learning - 90% graded Good or Outstanding

Schedule 3
The Programme(s)

1.1 Performance Management

The College will performance manage against monthly activity. Funding profiles will be continually monitored and formally evaluated at the following performance management points: point 1: January 2025, point 2: March 2026, point 3: May 2026

The College reserves the right to review and amend the funding value of the Delivery Partner where it is appropriate to do so based on the performance of the Delivery Partner and subject to College performance and any changes in the NECA requirements and audit.

The Delivery Partner's funding allocation as detailed in this Schedule 1 will be reviewed, and may be amended if there is a significant variance in the Delivery Partner's contract allocation and the actuals (including predicted achievement funding) on the ILR for a period of three consecutive months.

The Delivery Partner should note that restricted funds are available and the College cannot guarantee to provide funding above and beyond the Delivery Partner's confirmed allocation. In all circumstances, delivery over and above the Delivery Partner's confirmed allocation must be agreed in writing by the College authorised signatory in advance of any delivery and/or claim for such delivery being submitted. In consideration of available funding, performance to date and other factor the College will then issue a contract variation confirming the new contract funding value of the Delivery Partner.

1.2 Equality & Diversity

Achievement gaps for learners shall be identified and actioned. Action Plans shall be made available to the College

Schedule 4 – FINANCIAL DETAILS AND EVIDENCE REQUIREMENTS

1 Activity Schedules & Associated Contract Value Payments

- 1.1 Attached to this Contract and forming part of it is the Delivery Profile document in Schedule 2. These details the total maximum contract value related to learner starts and achievements for each area of provision and the overall maximum contract value related to learner starts and achievements the Delivery Partner may claim in total associated with the provision of Services detailed in the Contract.
- 1.2 The figures in Schedule 2 may be varied in writing by the College from time to time, following performance monitoring and review.
- 1.3 The amount in Schedule 2 cannot be exceeded, except with the prior written consent of the College and will be detailed within a contract variation.

2 Management Fee

- 2.1 The Management Fee for delivery funded by NECA is calculated as a percentage charge of 20% based upon the delivery of activity. Gateshead College provides full details of services provided for this management fee in the College's Supply Chain Fees and Charging Policy, which is produced annually and approved by the Governing Body. It is published for the 2025/2026 funding year and available on the College website.

Schedule 4 of this Contract outlines the list of all services Gateshead College will provide as part of this subcontracting arrangement, the associated costs for doing so and how each specific cost is reasonable and proportionate to the delivery of teaching or learning and contributes to delivering high quality learning.

- 2.2 The Management Fee at 2.1 shall apply for the duration of the Agreement as stated in Schedule 2
- 2.3 The Management Fee is subject to change for Learners and Programmes that are additional to those listed in Schedule 2. The Delivery Partner will be given due notice of proposed changes in the Management Fee.
- 2.4 The College may retain 5% of the monthly delivery payment pending successful Audit. These monies will be fully reconciled at R14.

3 Payment Arrangements

- 3.1 Where the Delivery Partner is delivering ASB activity, payment to the Delivery Partner will be made in accordance with the funding arrangements and rates detailed in the Funding Rules, the Learning Aim Reference Service (LARS) and documents relating to payment issued by the College.
- 3.2 Payment for each Programme will be made in accordance with the following profile, adjusted for the deduction of the College's Management Fee:
 - 3.2.1 80% of the total funding payable will be paid for delivery of the Programme (the "Delivery Payment"). The Delivery Payment will be paid in equal instalments for each month that the Learner is following their Programme.
 - 3.2.2 20% of the total funding payable will be paid on receipt by the College of evidence of achievement for the Programme.

- 3.3 Where the Delivery Partner's actual delivery will result in or has already resulted in an overpayment to the Delivery Partner by the College, the College will withhold from, or deduct the amount owed from payments due to the Delivery Partner under the Contract for current or subsequent months or years accordingly, or issue an invoice for the overpayment amount from the Delivery Partner.

4. Payment Process

- 4.1 Where the Delivery Partner delivers Qualifications funded through the Adult Skills Budget the Delivery Partner will be paid on actual learner activity as specified and evidenced at Clause 6 of this Schedule
- 4.2 The Delivery Partner shall issue an invoice to the College upon receipt of the monthly funding report
- 4.3 Payment will be made to the Delivery Partner via BACS on or before the last working day of the month following the month to which the monthly funding report relates
- 4.3 The College has the right to recover from the Delivery Partner any monies paid on the basis of Delivery for which evidence of eligibility for funding required by the Contract is lacking, or where the absence of an audit trail means that the location of evidence of eligibility cannot readily be determined

5 Reconciliation

Payment for the delivery of Qualifications will be in accordance with reconciled monthly funding reports based on the Individualised Learner Record (ILR) produced by the College's Management Information System, adjusted for the deduction of the College's Management Fee.

6 Evidence Requirements

At enrolment / start of programme

Gateshead College's standard paperwork or College approved forms shall be used by the Delivery Partner.

The Learner Pack must include the following and be completed and signed by the learner:

- Gateshead College's Learning Agreement signed and dated
- Enrolment form or equivalent supported by evidence of eligibility
- Copies of prior qualifications / Personal Learning Record (PLR)
- Induction checklist fully completed and signed
- Individual Learning Plan (ILP)
- Initial Assessment results (English, maths and where applicable ICT)
- Register of first learning activity

In addition to the above for all Adult Learners, evidence of full funding (where applicable) with the Learner Pack

- Foundation Learning, First Full L2, First Full L3 (prior qualifications and signed declaration)
- JSA/ESA (work related) / Universal Credit (mandated) benefit evidence dated within last 3 months or referral from JCP, Work Programme
- Other benefits and unemployed looking for work, benefit evidence dated within last 3 months and signed declaration
- Evidence of Low Pay and completion of Low Wage Declaration form

- 6.1 Evidence of delivery, with register or time sheet, covering start, planned and actual end dates, times, hours attended signed by tutor and learner or for distance learning evidence of the digital time stamps.
- 6.2 Where learning is planned for a period in excess of 6 months, evidence of delivery to date will be required at the 3-4 month point, with full evidence received on completion.
- 6.3 Evidence of achievement from awarding body to be received within 2 months of completion, with a copy of the certificate provided within 3 months.
- 6.4 The Delivery Partner must retain for inspection on demand, all evidence of delivery as set out in the Funding Rules.

7 Management Information

- 7.1 The College requires the Delivery Partner to submit regular Management Information and related documents in a timely fashion as specified in writing by the College
- 7.2 Data for funded learners for 2025/26 will be collected via the monthly ILR returns.
- 7.3 Late achievement will oblige the College of put new starts on hold until evidence is submitted, However, in the case of repeated failures this becomes a breach. Evidence can cause delay in new starts, but repeated inadequacies becomes a breach and will be dealt with in accordance with this Contract.
- 7.4 Outstanding paperwork such as delayed achievement evidence may be subjected to an additional 5% administration fee to cover the extra activities the College has to undertake in order to process.
- 7.5 In order for timely recording of data please notify the College immediately if your organisation is experiencing a delay in processing data. The College will endeavour to support the Delivery Partner through this period.
- 7.6 The College requires the Delivery Partner to adhere to the data requirements as described in the Specification of the Individualised Learning Record published by the NECA
- 7.7 The accurate completion of the fields in the enrolment form and other Learner documents is a mandatory requirement of the Delivery Partner. The College and the NECA reserve the right to vary the information required as appropriate.
- 7.8 Repeated inadequacies or inaccuracies in data reporting or failure to submit data in a timely fashion by the Delivery Partner may be regarded as a fundamental breach of this Contract for which the remedy may be termination of contract.
- 7.9 All data must be returned to the NECA via the College. The Delivery Partner must not include any data on learner aims funded through this Contract in any ILR data return for other funding streams (even if coded as unfunded learner

SCHEDULE 4 - MANAGEMENT FEE COSTS BREAKDOWN

Gateshead College Subcontractor Delivery Policy 2025/26 outlines how we apply fees and charges to subcontractors.

As per the funding rules a list of all services the College provide and the associated costs are detailed below. These include a list of individually itemised, specific costs for managing the subcontract and how they are reasonable and proportionate to the delivery of the subcontracted provision.

The costs are reasonable and proportionate as they reflect the College costs to oversee the monitoring of the provision. This includes senior leader governance and management costs, data and funding team, quality team, administration, curriculum management oversight, as well as other support activities to ensure the delivery of high-quality learning are detailed below.

The 20% management fee charged will cover the costs associated with Gateshead College providing regular and on-going performance management, CPD training to delivery staff, technical, management information and administrative support for delivery of this Contract from initial starts, on programme, through to completion and achievement. It will specifically include the following services:

Performance Management	Costs %
<ul style="list-style-type: none">Assigned Manager and Co-ordinator to oversee all aspects of contract deliveryMonthly monitoring of learner achievements and achievement ratesReview of learner documentation including tracking records, reviews and ILPsContract monitoring visitsRegular contract review meetingsStandardisation activities (portfolios/learner reviews/ILPS)Access to Gateshead College Staff development and training sessions on funding, Compliance, quality assurance and all regulatory requirements	8%
Data Management	
<ul style="list-style-type: none">Inputting of all submitted paperworkData checks and support to resolve data queriesEntry of learner data onto ILR to ensure timely and accurate processing and submission of data to funding body	2%
Quality Assurance	
<ul style="list-style-type: none">Regular and substantial programme of quality assurance checks on deliveryVisits at short notice, face to face interviews with staff and learnersIn partnership with subcontractor, observations of teaching, learning and assessment and share effective practiceOngoing support to address areas for improvementSupport on key quality processes such as self-assessment report (SAR) writing	8%
Audit and Compliance	
<ul style="list-style-type: none">Audits of paperwork, processes and proceduresAudit of the ILR returns and ensure that they are accurate and complete and providing assistance on funding and eligibility queriesAudit visits – announced and unannouncedAudit of MIS data including enrolment forms and attendance records	2%

