



Dated: 1st August 2025

(1) (Main Provider) The City of Liverpool College

(2) (Subcontractor) Orangebox Training Solutions UK Ltd

Contract Reference: OBOXASF 25/26

**Learning Provision Sub-Contract
Between**

[MAIN PROVIDER] and [SUBCONTRACTOR]

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THIS AGREEMENT is made on 1st August 2025

Between

- (1) The City of Liverpool College of Roscoe Street, Liverpool, L1 9DW (the "Main Provider")
- (2) **Orangebox Training Solutions UK Ltd** a company registered in England and Wales with company registration number 07047501 whose registered office is at Exchange Building, 66 Church Street, Hartlepool, England, TS24 7DN (the "Subcontractor")

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

Introduction and Recital of Intention

- (A) The Main Provider is a body concerned with the provision of education and training to learners.
- (B) The Subcontractor is in a position to assist the Main Provider in providing education and training to learners.
- (C) The Main Provider wishes to provide education and training to certain Learners by making use of the services of the Subcontractor.
- (D) The Main Provider is subcontracting to the Subcontractor in line with the subcontracting policy in order to provide:
 - i. Training which recognises the role of the employer and is informed by industry insight and practical needs – employer-led design linked to employer demand throughout Liverpool City Region to meet local skills needs e.g., low carbon and green energy.
 - ii. Support to employers for recruitment of diverse workforces that are reflective of the city and wider city region's population, helping businesses to access a wider pool of talent in their fields and thrive through targeted and tailored recruitment.
 - iii. Opportunity to develop the College offer in new markets extending the breadth of our routes into employment markets.
- (E) This Agreement should be read in conjunction with the Main Provider's subcontracting policy which is available on the <https://liv-coll.ac.uk/about-us/policies-and-procedures/subcontracting> page of the Main Provider's website.
- (F) The Main Provider and the Subcontractor have agreed that the provision of services by the Subcontractor shall be subject to the terms set out in this Agreement in order to provide a framework for an effective working relationship between the parties, to clarify their respective roles and responsibilities, to set out the applicable principles and to ensure the required objectives are met.

Now the Parties Agree as Follows

1. DEFINITIONS

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

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

'Achievement' means achievement of a Qualification or a group of Qualifications by a Learner as evidenced by the provision of 'Achievement Evidence';

'Achievement Evidence' means evidence produced by the Subcontractor to the Main Provider in a form satisfactory to the Main Provider which may include: (a) the original certificates produced by an external examination body for each Learner who has attained a Qualification; or (b) for Subcontractor accredited programmes, a record of Achievement, Subcontractor certification and/or progress reports indicating Achievement;

'Additional Services' means any ancillary and/or related services required to be undertaken by the Main Provider for the benefit of the Subcontractor, the Main Provider and/or the success/completion of a Programme(s) in accordance with **clause 7.7** and **Schedule 8**;

'Administration and Procedural Manual' means the Main Provider's manual for the administration of its subcontracted provision, as updated from time to time by the Main Provider and provided to the Subcontractor;

'Agreement' means all parts of this Agreement and includes the Schedules, the Appendices, procedures and the Administration and Procedural Manual incorporated into it;

'Agreement Data' all Personal Data processed on the Learners and any other third party individuals as necessary to comply with its obligations under this Agreement including for the avoidance of doubt in relation to the Funding and delivery of the Programme(s) and the delivery of any Additional Services and as set out in **Schedule 10**;

'APAR' means the Apprenticeship Provider and Assessment Register;

'Applicable Laws' means any (a) law including any statute, statutory instrument, bye law, order, regulation, directive, treaty, decree, decision (as referred to in Article 288 of the Treaty on the Functioning of the European Union) (including any judgment, order or decision of any court, regulator or tribunal); (b) rule, policy, guidance or recommendation issued by any governmental, statutory or regulatory body; and/or (c) industry code of conduct or guideline in force from time to time which relates to this Agreement and/or the Programmes and/or the activities which are comprised in all or some of the Programmes or the use or application of the output from the Programmes;

'Attendance' means the attendance of a Learner on a Programme as evidenced by the completion of a Main Provider approved Register of Attendance;

'Background Intellectual Property' means any Intellectual Property, other than the Programme Intellectual Property, which is necessary for the running of the Programmes and/or the use and development of the Programme Materials and Programme Intellectual Property and which a party owns, or has rights to, including but not limited to that which is notified to a party in writing by the other party before being used in relation to the Programmes;

'Barred List' means the barred lists provided for under the Safeguarding Vulnerable Groups Act 2006;

'Business Continuity Plan' means the business continuity and disaster recovery plan to be maintained and implemented by the Subcontractor in accordance with **clause 19**;

'Commencement Date' means 1st August 2025;

'Confidential Information' means all information in respect of the business of the Main Provider including, without prejudice to the generality of the foregoing, any ideas; business methods; finance; prices, business, financial, marketing, development or manpower plans; customer lists or details; computer systems and software; products or services, including but not limited to Know-How or other matters connected with the products or services manufactured, marketed, provided or obtained by the Main Provider, and information

concerning the Main Provider's relationships with actual or potential clients, customers or suppliers and the needs and requirements of the Main Provider and of such persons and any other information which, if disclosed, will be liable to cause harm to the Main Provider;

'Convictions' means other than in relation to any minor road traffic offences, any previous or pending prosecutions, convictions, cautions and binding overs (including any spent convictions as contemplated by section 1(1) of the Rehabilitation of Offenders Act 1974 by virtue of the exemptions specified in Part II of Schedule 1 of the Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975 (SI 1975/1023) or any replacement of amendment to that Order);

'CPN' means a Community Protection Order issued by a court in respect of antisocial behaviour;

'CPO' means a Criminal Behaviour Order issued by a court in respect of antisocial behaviour;

'Data Protection Laws' means all Applicable Laws relating to data protection, the processing of personal data, privacy and/or electronic communications in force from time to time; and references to "Controller", "Data Subjects", "Personal Data" and "Processor" have the meanings set out in and will be interpreted in accordance with such laws;

'Data Protection Supervisory Authority' means any regulatory authority responsible for the enforcement, regulation or governance of any Data Protection Laws and any replacement or successor body or person for any such authority from time to time;

'Data Security Incident' means the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Agreement Data transmitted, stored or otherwise Processed;

'Department' means the Department for Education, any successor body/bodies to it and any body by or through whom the Programmes may be funded;

'Disclosure and Barring Service' means the bureau established replacing the Criminal Records Bureau;

Due Diligence means identifying, evaluating and verifying all available information on a subcontractor (all subcontractors are subject to an annual due diligence process);

'E-Portfolio' means the electronic record of the Learner's progress and achievements during the Programme;

'Employer' means the person or firm employing the Learner for the purpose of furthering any Programme(s);

'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 Main Provider has notified the Subcontractor that such Learner has been enrolled with the Main Provider, and 'Enrol' and 'Enrolling' will be construed accordingly;

'Enrolment Guidelines' means such enrolment guidelines as the Main Provider notifies in writing to the Subcontractor from time to time as may be required from time to time in accordance with the requirements of the Main Provider or the Department;

'Enrolment Paperwork' means the Main Provider's relevant enrolment information form to be completed in respect of each Learner prior to Enrolment of such Learner by the Main Provider;

'Force Majeure Event' means

(a) act of God;

- (b) war, insurrection, riot, civil commotion, act or threat of terrorism;
- (c) lightning, earthquake, fire, flood, storm or extreme weather condition;
- (d) a change in applicable law which makes some or all of the activities of a party in connection with this Agreement illegal or unlawful and where no action of that party (such as obtaining a licence, authorisation or consent or amending or varying its activities or processes) can make such activities legal and lawful; or
- (e) a pandemic or epidemic.

'Funded Learner' means a Learner whose education and training is intended to be funded in part or in full by the Department or by an Employer;

'Funding' means the funding provided to the Main Provider by the Department or an Employer in accordance with the Funding Rules in relation to the relevant Programme and the provisions of this Agreement;

'Funding Rules' means the procedures, rules and requirements from time to time laid down by the Department for use by the Main Provider in applying for the Funding as applicable to the Programme(s) for the relevant Academic Year as amended and supplemented by the Department (including through any guidance notes) which are either publicly available or communicated by the Main Provider to the Subcontractor from time to time including but not limited to:

- (a) any relevant funding agreement between the Department and the Main Provider, including any additional conditions of funding imposed by the Department on the Main Provider and any accountability agreement from time to time and, if applicable to the Main Provider, the college financial handbook (as updated and amended from time to time);
- (b) "Apprenticeship funding rules";
- (c) any legacy European Social Fund rules;
- (d) "Adult skills fund (ASF) funding rules";
- (e) "Funding guidance for young people";
- (f) "Subcontracting funding rules for post-16 funding education and training";
- (g) "Funding Higher-Risk Providers and Subcontractors";
- (h) Department for Education subcontracting standard; and
- (i) "Assurance reviews of the subcontracting standard for post-16 providers"

'IfATE' means the Institute for Apprenticeships and Technical Education, and any successor body/bodies to it;

'Inspectorates' means one, any or all of the following inspectorates or any successor body to any of them or any inspector of the Programmes or Parties:

- (a) Ofsted;
- (b) Her Majesty's Inspectorate for Education and Training in Wales (Estyn);
- (c) the Quality Assurance Department for Higher Education;
- (d) the Office for Students;

- (e) the Care Quality Commission (CQC); and
- (f) the Local Government and Social Care Ombudsman;

'Intellectual Property' or **'IP'** means patents, Know-How, registered trademarks, registered designs, utility models, applications for and rights to apply for any of the foregoing, unregistered design rights, unregistered trademarks, rights to prevent passing off for unfair competition, copyright, database rights, topography rights, and any other rights in any invention, discovery or process, in each case in the United Kingdom and all other countries in the world and together with all renewals and extensions;

"Joint Statement of Intent" means The Joint Statement of Intent document which sets out the mutual understanding and commitments between parties in relation to the subcontracting which supplements the contract. This document incorporates the Management Plan and Relationship Charter.

'Know-How' means any and all non-patented information, knowledge, data and expertise of the Main Provider provided by the Main Provider to the Subcontractor in connection with this Agreement and includes without limitation the contents of the Quality Principles and Policies;

'Learner' means a person who is Enrolled and who receives the education and training comprised in a Programme from the Subcontractor;

'Learning Agreement' means the learning agreement between the Main Provider and a Learner as specified in Department guidance from time to time or in the form determined by the Main Provider;

'Liability' means all and any liability (whether civil or criminal), costs, losses, expenses or damages suffered or incurred by the Main Provider and all and any claims and damages made against the Main Provider, its servants, employees or agents whether in negligence or otherwise;

'London Living Wage' means the minimum hourly rate figure set annually in November each year by the Resolution Foundation and overseen by the Living Wage Commission which covers individuals aged 18 years and over in all boroughs in Greater London and which an employer may voluntarily choose to pay;

'Main Provider Background Intellectual Property' means any and all Background Intellectual Property owned by or licensed to the Main Provider;

'Month' means a calendar month;

'Ofsted' means the Office for Standards in Education, Children's Services and Skills, any successor body/bodies to it or any body with responsibility for inspection or regulation of the Programmes;

'Payments' means the payments due under the terms of this Agreement from the Main Provider to the Subcontractor in relation to the Programme(s);

'Premises' means the premises listed in **Schedule 5** to the Agreement or such other premises or workplaces as are agreed between the parties from time to time;

'Prevent Duty' means the duty to have due regard to the need to prevent people from being drawn into terrorism in accordance with the Counter-Terrorism and Security Act 2015 and any related guidance published by the Government, the Department, Ofsted and any other relevant body which are either publicly available or communicated by the Main Provider to the Subcontractor from time to time including but not limited to "Prevent Duty Guidance for England and Wales" and "Education Inspection Framework";

'Price' means the sums payable by the Main Provider to the Subcontractor in relation to the Programmes or part of the Programme(s) which sums are calculated in accordance with **Schedule 1** to this Agreement and which shall be inclusive of VAT;

'Processing' has the meaning set out in the Data Protection Laws and for the purposes of **clause 22 "process", "processing" and "processed"** will be interpreted accordingly;

'Programme' means an individual learning programme provided by the Subcontractor and approved by the Main Provider which programme will lead to the Learner achieving the Qualification(s) or other achievement(s) identified in the Funding Rules;

'Programme Intellectual Property' means any and all Intellectual Property in the information, materials, resources and systems arising out of, and other tangible or intangible results of, any research, development or other work undertaken by or on behalf of the Main Provider in connection with the Programmes and including without limitation any and all Intellectual Property in any and all Programme Materials;

'Programme Materials' means all materials designed and developed by the Main Provider or the Subcontractor, for inclusion within or use in connection with the Programmes and any other materials that the parties agree from time to time are to be designed and developed by the parties;

'Qualification' means a qualification of the type and standard permitted by the Funding Rules awarded either by a recognised external examination body to Learners who have completed a Programme and met that external examination body's criteria for awarding the relevant qualification or by the Main Provider;

'Quality Principles and Policies' means the Main Provider's Administration and Procedural Manual for Subcontracted provision and the statement of Quality Assurance Guide for Centre Based Subcontracted Provision from time to time to be adopted including by the Subcontractor to ensure quality in education delivered to Learners Enrolled at the Main Provider a copy of the current version of which has been provided to the Subcontractor or the Subcontractor's quality standards and procedures if expressly approved in writing by the Main Provider and any additional quality requirements set out in the Funding Rules, , or issued by Ofsted or IfATE from time to time;

'Quality Standards for Training' means the Main Provider's statement of the quality expected in education and training delivered by the Main Provider (at the cost of the Subcontractor) as set out in the Quality Principles and Policies. In the absence of any such statement Quality Standards for Training shall mean the standard expected of a skilled and competent Subcontractor of the kind of education and training which makes up the Programme(s) and includes any additional quality requirements set out in the Funding Rules, or issued by Ofsted or IfATE from time to time;

'Register of Attendance' means a register of Learners in the form required by the Main Provider from time to time of who attend each Programme (which may include Programme Registers, a record of Learner work-based learning and independent study hours or other forms of register notified to the Subcontractor by the Main Provider), which register is to be compiled contemporaneously with every session of training/assessment given as part of a Programme;

'Regulatory Body' means those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate or investigate the matters dealt with in this Agreement or any other affairs of the Main Provider or the Department, including, without limitation Ofsted, the Further Education Commissioner, the European Commission and the European Court of Auditors;

'Replacement Subcontractor' means any Subcontractor who, following the expiry or earlier termination of this Agreement, provides services or activities for the Main Provider which are the same or similar to the Programmes or any part of them;

'Restricted Transfer' means a transfer of Agreement Data which is undergoing processing or which is intended to be processed after transfer, to a country or territory to which such transfer is prohibited or subject to any requirement to take additional steps to adequately protect the Agreement Data for the transfer to be lawful under the Data Protection Laws;

'SAR Report' means the annual self-assessment report produced by the Subcontractor designed to evaluate Learners' progress and achievements, set targets for improvement and plan action and to help develop the provision for the benefit of Learners;

'Sub-contractor Declaration' means the form that the Main Provider is required to provide to the Department detailing its current sub-contracting arrangements;

'Subcontracted provision' is defined in the Funding Rules;

'Subcontractor Background Intellectual Property' means any and all Background Intellectual Property owned by or licensed to the Subcontractor;

'Sub-Processor' means any person (including any member of the Subcontractor's Group) appointed, engaged or permitted by the Subcontractor to process Agreement Data;

'Suspended Programme' means a Programme which has been suspended by the Main Provider pursuant to **clause 15**;

'Suspension Notice' means a notice served on the Subcontractor by the Main Provider pursuant to **clause 15** and which identifies the nature of the Intervention Event and the Programmes affected by such Intervention Event;

'Trainer' means the staff of the Subcontractor, or people who are under the direct control of the Subcontractor as employees or self-employed contractors, including volunteers, engaged partly or wholly in the provision of the Programme to Learners and which also includes assessors;

'TUPE' means the Transfer of Undertakings (Protection of Employment) Regulations 2006;

'UK Living Wage' means the minimum hourly rate figure applicable to individuals over 18 years old set annually in November each year by the Resolution Foundation and overseen by the Living Wage Commission and which an employer may voluntarily choose to pay;

'Working Day' means any day which is not a Saturday, Sunday or a public holiday in England;

'UKRLP' means the UK Register of Learning Providers;

'Year' means an Academic Year.

- 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 the Agreement and will not be taken into account when construing it.
- 1.4 References to Schedules, Clauses, Appendices or Conditions are references to schedules, clauses, appendices or conditions of this Agreement.
- 1.5 Any phrase in this Agreement introduced by the term "include" "including" "in particular" or any similar expression will be construed as illustrating and will not limit the sense of the words preceding that term.
- 1.6 Reference to a statute, statutory provision or subordinated legislation is a reference to it as it is in force at the date of this Agreement, taking account of any amendment or re-

enactment and includes any statute, statutory provision or sub-ordinate legislation which amends or re-enacts it.

2. **PRINCIPAL OBLIGATIONS**

2.1 The Subcontractor will provide the Programme(s) to the Learners on behalf of the Main Provider in accordance with the terms of this Agreement and the Funding Rules. For the avoidance of doubt, the Subcontractor must, where eligible, be at the Commencement Date and remain for the duration of this Agreement fully registered on:

2.1.1 the UKRLP and hold a valid UKPRN;

2.1.2 the APAR, unless they are not required to be registered and can demonstrate such exception to the Main Provider's reasonable satisfaction or have been approved to be exempt from the requirement to register as may be permitted by the Funding Rules and can produce evidence of such written approval from the Department to the Main Provider's reasonable satisfaction and, in each case, the Main Provider is permitted to use a subcontractor who is not registered on APAR in accordance with the Funding Rules as contemplated by this Agreement; and

2.1.3 any other register required by the Department,

in accordance with the requirements of the Department.

2.2 The Programme(s) will be as set out in **Schedule 4**.

2.3 The Main Provider will pay the Subcontractor the sums due in accordance with the terms of this Agreement in relation to each Learner who attends and completes an accredited Programme (or funded period of learning) as set out in **Schedules 1 and 4**.

2.4 The Subcontractor shall, if it has not done so before the Commencement Date, notify the Main Provider within 3 Working Days of any current or historic irregular financial or delivery activity in accordance with the requirements set out in the Funding Rules. For the avoidance of doubt such irregular financial or delivery activity shall include, but not be limited to:

2.4.1 substantiated non-delivery of training by the Subcontractor when funds have been paid to it by the Main Provider (or any other education institution);

2.4.2 sanctions imposed on the Subcontractor by any awarding organisation;

2.4.3 a grade (defined by Ofsted as inadequate) being received by the Subcontractor from Ofsted;

2.4.4 serious complaints and/or allegations by individuals working for or on behalf of the Subcontractor and/or Learners working with the Subcontractor and/or other third parties involved in the delivery or receipt of any Programme (or similar programmes agreed to be delivered by the Subcontractor on behalf of other further education institutions); or

2.4.5 allegations of fraud;

2.4.6 the Subcontractor being issued with a notice for financial management and control;

2.4.7 the Subcontractor being issued with a notice to improve, additional conditions of funding or additional contractual obligations in relation to minimum quality standards for 19+ education and training;

2.4.8 the Subcontractor has significantly undelivered against its contract value in previous years; or

- 2.4.9 the Subcontractor has been or is subject to an investigation for breach of contract and/or failed audit.

Any incidents of current or historic irregular financial or delivery activity may result in a reduction of the Price (in accordance with **clause 4.8**) or the termination of this Agreement (in accordance with **clause 16.1**), at the Main Provider's sole discretion.

- 2.5 The Subcontractor shall upon the reasonable written request of the Main Provider promptly provide all information or documentation requested by the Main Provider to enable the Main Provider to complete the Sub-contractor Declaration and its ILR return.
- 2.6 The Subcontractor acknowledges that the Main Provider is required to undertake due diligence checks on the Subcontractor prior to the commencement of this Agreement as well as on an annual/ongoing basis in line with the Funding Rules. In particular the Main Provider must review the circumstances and criteria set out within the Department's "Funding higher risk organisations and subcontractors policy". The Main Provider may share the results of these checks with the Department. The Subcontractor shall provide all such information and cooperate fully with the Main Provider in order for the Main Provider to do this. The Subcontractor shall continue to meet the due diligence requirements set out in the Funding Rules for the duration of this Agreement in accordance with the requirements of the Department and shall notify the Main Provider immediately of any changes within its business which might impact the Subcontractor's ability to meet these requirements. The Subcontractor acknowledges that the Main Provider may terminate this Agreement in accordance with **clause 16** if the Subcontractor does not continue to meet the required due diligence and financial health requirements/standards set out in the Funding Rules.
- 2.7 The Subcontractor shall use its best endeavours to:
- 2.7.1 secure enrolments upon such Programmes meeting the learner enrolment profile set out in **Schedule 4** (where the profile is not met by the Subcontractor, a revised learner enrolment profile may be substituted by the Main Provider and **Schedule 4** amended accordingly);
- 2.7.2 achieve the key performance indicators as set out in **Schedule 4**; and
- 2.7.3 not exceed the maximum number of Learners set out in **Schedule 4** unless approved in writing from the Contract Manager.
- 2.8 The Subcontractor shall ensure that Learners and Employers supported through this Agreement know about the parties' respective roles and responsibilities in providing learning.
- 2.9 If it is a company, the Subcontractor shall retain "Active" status on the register of companies at Companies House.
- 2.10 The Subcontractor shall not:
- 2.10.1 enter into contracts with any party other than the Main Provider for the provision of education and/or training services or Programmes within a radius of 20 miles of the Main Provider;
- 2.10.2 have an above average risk warning from a credit Department unless this has been approved in writing by the Main Provider;
- 2.10.3 pass a resolution (or a court has made an order) to wind up or liquidate the company, or administrators have been appointed; or
- 2.10.4 have overdue statutory accounts.
- 2.11 The Subcontractor shall deliver the Programmes at the Premises only.

- 2.12 The Subcontractor shall deliver the Programmes in accordance with the Prevent Duty.
- 2.13 The Subcontractor shall:
- 2.13.1 prepare a slavery and human trafficking statement in accordance with section 54 of The Modern Slavery Act 2015 as may be amended or re-enacted from time to time (the "**2015 Act**");
 - 2.13.2 comply with its obligations in accordance with section 54 of the 2015 Act, including but not limited to publishing its slavery and human trafficking statement on its website;
 - 2.13.3 provide such assistance and/or information to the Main Provider as is required for the Main Provider to comply with its obligations under section 54 of the 2015 Act; and
 - 2.13.4 comply with any guidance issued by the Secretary of State in accordance with sections 54(9)-(10) of the 2015 Act.
- 2.14 If the Programmes relate to apprenticeships (including foundation apprenticeships), the Subcontractor shall not commence any delivery of the Programmes until the Main Provider notifies the Subcontractor that:
- 2.14.1 it is in receipt of the eligibility declaration from the Employer of each Learner; and
 - 2.14.2 it is in receipt of a training plan relating to the Learner which both complies with the Funding Rules and is acceptable to the Main Provider.
- 2.15 If the Programmes relate to apprenticeships, the Subcontractor will assist the Main Provider to find new employment for any Learner (including those Learners who commenced a Programme prior to the date of this Agreement) that is made redundant and will provide the Main Provider with any records or information required to evidence the Subcontractor's assistance.
- 2.16 The Main Provider shall provide such parts of the Programme(s) to the Learners as set out in **Schedule 9**.
- 2.17 The Subcontractor shall use all reasonable endeavours to:
- 2.17.1 minimise dropout rates and deliver high completion and Achievement rates and appropriate progression;
 - 2.17.2 offer equality of access to learning opportunities and close equality gaps in learning and outcomes;
 - 2.17.3 provide good management and leadership of the learning process; and
 - 2.17.4 deliver value for money and financial probity.
- 2.18 The Subcontractor shall maintain direct centre approval where this is required by any awarding body for the Programme. The Subcontractor shall deliver the Programme in line with the qualification specification and guidance set out by the relevant awarding organisation.
- 2.19 If a regulatory body associated with a Programme requires the Subcontractor to hold approval to deliver the Programme, then the Subcontractor shall maintain that approval.
- 2.20 The Subcontractor shall notify the Main Provider within 2 Working Days:

- 2.20.1 of any events or circumstances arising in connection with the delivery by the Subcontractor of any of its obligations under this Agreement could give rise to any legal liability, have an adverse effect on the reputation of the Main Provider or the Department or call into question the Subcontractor's suitability to deliver training to Learners including (but not limited to):
 - 2.20.1.1 any events or circumstances leading to the death of serious injury of any Learner or other student, learner or apprentice of the Subcontractor; and
 - 2.20.1.2 the commission or suspected commission of any serious criminal offence by any Trainer or any senior officer, employee or agent of the Subcontractor; and
- 2.20.2 if it is subject to any remedial and/or enforcement action by any awarding organisation.
- 2.21 Subject to **clause** Error! Reference source not found. the Main Provider will be entitled to vary at any time:
 - 2.21.1 the parts of the Programme(s) to be delivered by the Main Provider as set out in **Schedule 9**;
 - 2.21.2 the parts of the Programme(s) to be delivered by the Subcontractor as set out in **Schedules 1 and 4**;
 - 2.21.3 the calculation of the Price as set out in **Schedule 1**; and
 - 2.21.4 any other provision of this Agreement as a consequence of the variations made pursuant to **clauses 2.21.1 to 2.21.3**,

by giving at least one month's prior written notice to the Subcontractor. The variation will be effective from the date specified in the notice.
- 2.22 The Subcontractor shall not enter into any form of brokerage, as that is defined by the Department.
- 2.23 The Subcontractor shall actively promote the fundamental British values of democracy, the rule of law, individual liberty, and mutual respect and tolerance of those with different faiths and beliefs, and promote principles that support equality of opportunity for all.
- 2.24 The Subcontractor shall immediately notify the Main Provider in writing if the Subcontractor:
 - 2.24.1 is aware of an incident, or pattern of incidents, which undermines the promotion of British fundamental values as referred to in **clause 2.23** or the ability of the Main Provider to comply with the Prevent Duty; or
 - 2.24.2 makes a referral of a Trainer for the purposes of determining whether that Trainer should be referred to a panel for the carrying out of an assessment under section 36 of the Counter-Terrorism and Security Act 2015 of the extent to which that individual is vulnerable to being drawn into terrorism.
- 2.25 The Subcontractor shall fund and support Enrolled Learners for the duration of their Programme.
- 2.26 In addition to the other rights of the Main Provider under this Agreement, if the Subcontractor is in breach of this Agreement or the Funding Rules or has committed any act which would constitute a material breach of any relevant agreement between the Main Provider and the Department, the Main Provider may:
 - 2.26.1 require the Subcontractor to participate in a rectification plan; and

- 2.26.2 take any action set out in the Funding Rules.
- 2.27 If the Subcontractor wants to appoint and work with a third party, which could include a sports club, only the Main Provider may have a direct contractual relationship with the third party and not the Subcontractor. There must be no financial transactions between the Subcontractor and a third party.
- 2.28 The Subcontractor shall upon the reasonable written request of the Main Provider promptly provide all information or documentation requested by the Main Provider to enable the Main Provider to complete any surveys (in any form whatsoever) required by the Department, a Regulatory Body or funder in respect of Learners and Learner completion rates.
3. **DURATION OF THE AGREEMENT**
- 3.1 This Agreement will commence on the Commencement Date and, unless terminated earlier in accordance with the terms of this Agreement, continue for an initial period from the Commencement Date ending on 31st July 2026 unless otherwise terminated in accordance with the terms of this Agreement.
4. **PAYMENT TERMS**
- 4.1 Subject to the Main Provider receiving all necessary paperwork from the Subcontractor and subsequent payment in full from the Department or the Employer, the Main Provider will pay to the Subcontractor, by BACS to a bank account nominated by the Subcontractor, such part of the Price due to the Subcontractor as relates to each Programme or fraction of a Programme completed in respect of the preceding Month. Payment shall be made by the Main Provider to the Subcontractor within 30 calendar days of receipt of valid paperwork from the Subcontractor. The Main Provider shall have the right in any subsequent Month to withhold, suspend or set off an appropriate proportion of the Price due in the event of non-completion of a Programme or a fraction of a Programme by the Subcontractor in a preceding Month.
- 4.2 The Price will be calculated in accordance with **Schedule 1** and is dependent upon the Subcontractor delivering the Programmes in accordance with the Funding Rules and otherwise in accordance with this Agreement (including, without limitation, the specific Programme requirements, if any, set out in **Schedule 4**).
- 4.3 No payment will be made in relation to the participation in a Programme of any Learner who:
- 4.3.1 has not been Enrolled in accordance with the provisions relating to enrolment contained in this Agreement and the sub-contractor administrative procedural manual.
 - 4.3.2 is a person considered under the Funding Rules to be fully funded by a source other than the Department or an Employer or is Enrolled on a Programme being taught to individuals funded in such a manner or is or has been funded more than once in relation to the same Programme;
 - 4.3.3 fails to attend for a period of 3 consecutive weeks or, in the case of a Learner undertaking a Programme or part thereof with an Employer, fails to attend for a period of 3 consecutive weeks and/or about whom the Subcontractor is unable to provide evidence of such Attendance upon demand (to the reasonable satisfaction of the Main Provider). In such circumstances the Main Provider may:
 - 4.3.3.1 consider that the Learner has ceased to participate in the Programme(s) and shall then cease to be required to make any Payments in respect of such a Learner from the date of their last recorded attendance on the Programme; or

- 4.3.3.2 suspend the funding in respect of any such Learner until such time as the Subcontractor provides the relevant evidence of attendance;
- 4.3.4 fails to achieve an Achievement upon which the Funding of the Programme in respect of that Learner is conditional; or
- 4.3.5 does not comply with the relevant conditions for funding Learners on such Programme.
- 4.4 No payment will be made in relation to a Learner unless the Main Provider has received evidence satisfactory to it to support the making of such payments in accordance with the Funding Rules including, but not limited to, evidence of any relevant Enrolment, Attendance or Achievement by that Learner in accordance with the provisions of this Agreement.
- 4.5 The Main Provider will not be under any obligation to make payment to the Subcontractor in respect of Learners over and above any upper limit on the number of Learners permissible on the Programme(s) or any Payments over and above the maximum Contract Value and maximum Learner numbers which are agreed between the parties and as set out in **Schedule 1** and **Schedule 4**.
- 4.6 If the Main Provider has paid the Price to the Subcontractor in relation to any Learner who is subsequently deemed by the Department not to be eligible in whole or part for payment of the Funding or the Department considers that the Subcontractor has failed to deliver, the Main Provider will be entitled to be fully refunded the amount of the Price in relation to each ineligible Learner paid, by the Subcontractor. At the sole discretion of the Main Provider such refund will either be (i) payable upon demand within 30 days of notice by the Main Provider to the Subcontractor or (ii) may be deducted by the Main Provider from the Price payable in relation to the subsequent Month.
- 4.7 If the Department or an Employer, for any reason whatsoever refuses or fails to pay the fees of any Funded Learner, the Main Provider shall be under no obligation to pay any part of the Price relating to that Funded Learner to the Subcontractor and any part of the Price relating to the said Funded Learner which has been paid to the Subcontractor by the Main Provider shall be fully refunded to the Main Provider by the Subcontractor in accordance with the repayment provisions set out in **clause 4.6** above.
- 4.8 If there is any change to the value of the Funding per Learner to the Main Provider, the Main Provider shall apply the change in Funding to the Price paid to the Subcontractor from the date on which the Funding rate is changed by the Department.
- 4.9 If the Funding Rules require an Employer to make a compulsory contribution to the Funding of a Learner, the Subcontractor must collect these contributions from the Employer if so directed by the Main Provider. The Subcontractor must provide evidence to the Main Provider of the level of such Employer contributions and that such Employer contributions have been paid to the Subcontractor. If such evidence is not provided to the Main Provider promptly when requested or otherwise in accordance with this Agreement, the Main Provider will be entitled to withhold Funding from the Subcontractor for the relevant Learner(s) until such evidence is provided. For the avoidance of doubt, the Subcontractor is not entitled to suspend any Programme(s) as a result of any Employer contributions being unpaid.
- 4.10 Unless the Main Provider agrees otherwise, the Main Provider shall not be liable to make (or as the case may be to continue to make) Payments of the Price unless a claim by the Subcontractor for an instalment shall:
 - 4.10.1 be submitted in the form (and with all appropriate supporting documentation) required by the Main Provider from time to time; and
 - 4.10.2 be submitted no later than 5 Working Days before the end of each Month in relation to the current Month.

- 4.11 The Subcontractor may not submit more than one claim each Month. The Subcontractor may (and is encouraged to) submit paperwork throughout the Month to evidence any claim.
- 4.12 The Main Provider shall not be obliged to make any payment to the Subcontractor in respect of any Learner unless:
- 4.12.1 such Learner has been Enrolled on and attended the provision of a Programme for the minimum period prescribed by the Department for that Programme; and
 - 4.12.2 the Main Provider has received Funding in respect of such Learner from the Department.
- 4.13 Any payment of Fees to the Subcontractor by the Main Provider shall be payments on account. Such payments are not a representation by the Main Provider that any Learners in respect of which payment are made are eligible for Funding.
- 4.14 The Main Provider may suspend payment of any part of the Price payable from the time that any audit is notified to the Main Provider in accordance with **clause 8.1** until the results of such audits are available for review by the Parties.
- 4.15 Any Programme discounts offered by the Subcontractor to any Employer (or Learner) must be approved in advance by the Main Provider in writing. Such discounts shall be borne by the Main Provider and the Subcontractor equally in proportion to each party's share of the income from that Employer (or Learner) on a pro-rated basis, unless otherwise agreed in writing.

5. **FUNDING**

- 5.1 In order for the Main Provider to comply with its obligations to the Department, to obtain Funding and to give effect to the provisions and the spirit of this Agreement, the Subcontractor agrees that it will co-operate fully with the Main Provider to enable the Main Provider to comply with any requirements of the Department and in particular the Subcontractor will procure that all relevant forms, agreements, applications or other documents which are required by the Main Provider (for the purposes of this Agreement) are provided promptly. For the avoidance of doubt, this **clause 5.1** will apply to any request made of the Subcontractor by the Main Provider in respect of the collection of tuition fees from co-funded Learners.
- 5.2 The Subcontractor shall ensure it has a full understanding of the Funding Rules and that the Funding Rules are fully applied by the Subcontractor in undertaking its rights and obligations set out in this Agreement.
- 5.3 The Subcontractor will not do anything which will cause the Main Provider to be in breach of its funding agreement with the Department or which will result in any of the general conditions of funding as set out in the Funding Rules not being met by the Main Provider.
- 5.4 The Subcontractor shall ensure that none of the Price is used for the funding of an extremist organisation.
- 5.5 The Subcontractor will notify the Main Provider immediately in writing if at any time after a Learner has been Enrolled it 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 Department or an Employer or to be funded by the Department more than once in respect of the same Programme, or to be in any other way ineligible for Funding.
- 5.6 Where required, the Main Provider is responsible for ensuring that the Programme(s) is (are) a programme(s) approved by the Department and the Subcontractor shall comply with any requirements of the Main Provider reasonably necessary to ensure that each Programme is and remains a programme funded by the Department. In accordance with the requirements of the Funding Rules, for the duration of this Agreement the Subcontractor shall:

- 5.6.1 not use any Funding to make bids or claims from any European source of funding on its own behalf or on behalf of the Main Provider or Department without obtaining consent in writing from the Chief Executive of the Department that it may do so; and
- 5.6.2 if required by the Funding Rules, be bound by any relevant European Social Funding clauses to which the Main Provider is also bound as may be notified to the Subcontractor from time to time.
- 5.7 Any breach of the Funding Rules by the Subcontractor will be deemed to be a fundamental breach of the conditions of this Agreement.
- 5.8 Where the Department identifies duplicate funding in respect of a Programme, or any part thereof, that has been provided by the Main Provider in accordance with this Agreement, the Subcontractor shall immediately repay the Main Provider an amount equal to such duplicate funding identified and the Main Provider reserves the right to deduct such sums from any monies owed to the Subcontractor in accordance with this Agreement.
- 5.9 The Subcontractor shall avoid any actual or perceived conflict of interest with the Main Provider regarding the Main Provider's appointment of the Subcontractor. The Subcontractor shall immediately inform the Main Provider should any such conflict arise and the Subcontractor warrants and represents that the information regarding such conflicts which it provided to the Main Provider before entering into this Agreement is complete and accurate.
- 5.10 The Subcontractor warrants that, and shall ensure on an ongoing basis that, no person with a financial interest in the Subcontractor will, on behalf of the Main Provider, undertake any management control activities of the Subcontractor which includes the signing of time sheets or invoices, as well as organising and/or carrying out monitoring activity or visits to check the subcontractor delivery.
- 5.11 The Subcontractor shall support the Main Provider to co-operate with the Department and Department for Work and Pensions for the purposes of the Industrial Injuries Disablement Benefit (IIDB) in respect of those Learners to which it applies.
- 6. **PROVISION OF RECORDS AND INFORMATION**
- 6.1 Throughout the term of this Agreement, the Subcontractor will keep the following records and information:
 - 6.1.1 a Register of Attendance (or equivalent document approved/provided by the Main Provider and which contains an accurate record of Learner work-based learning and independent study hours) signed or initialled (in electronic or hard copy, as agreed with the Main Provider) by the Learner and the tutor of each session of any Programme. The Register of Attendance will be made available at all times for inspection and copying by an authorised representative or representatives of the Main Provider from time to time;
 - 6.1.2 if the Programme relates to apprenticeships, a record of planned and delivered off-the-job training (noting that the minimum number of off-the-job training hours must meet the requirement set out in the relevant apprenticeship standard for each apprenticeship) and any supporting evidence required by the Main Provider and, if the original number of planned off-the-job training hours and the actual hours delivered do not align, a summary statement countersigned by the Learner and the Employer and prepared in accordance with the Funding Rules;
 - 6.1.3 if the Programme relates to apprenticeships and the Learner and the Employer wish to use keeping in touch (KIT) or shared parental leave in touch (SPLIT) days to continue off-the-job training and/or assessment during a period of maternity, adoption or shared parental leave, an agreement countersigned by

the Learner and the Employer and prepared in accordance with the Funding Rules;

- 6.1.4 if the Programme relates to apprenticeships and the Learner is withdrawn because they have been unable to find a new Employer, a 'record for part-completion of an apprenticeship' prepared in accordance with the Funding Rules;
- 6.1.5 if a Learner is an apprentice, evidence and a copy of that Learner's apprenticeship agreement and/or contract of employment (as applicable) as required by and in accordance with the Funding Rules;
- 6.1.6 if a Learner is an apprentice, a copy of the current training plan (which must be separate to the apprenticeship agreement) signed and dated by the Employer and the Learner and prepared in accordance with the Funding Rules, evidence of progress reviews and written confirmation from the Employer that the Learner will be allowed to complete the Programme within their working hours, including any English and maths required;
- 6.1.7 a record of each scheduled training/assessment session within a Programme that is cancelled if any, and a note setting out in full the reasons for cancellation and the proposed date of the rescheduled training/assessment session. The record of cancellation will be made available at all times for inspection and copying by an authorised representative or representatives of the Main Provider from time to time;
- 6.1.8 a written note of each complaint made by a Learner in relation to any aspect of Programme provision (and including complaints made against Trainers/Assessors or in respect of the quality of the Programme(s) or any part of it, the Premises, health and safety matters, safeguarding, quality or diversity) along with the original (where relevant) of any letter or other document recording or notifying that complaint;
- 6.1.9 a record of any other partnership or sub-contracting agreements entered into by the Subcontractor with other education institutions (or directly with the Department, including the names and addresses of any other partners; those current and all others entered into within three years prior to the Commencement Date) for the Programmes or other Learner courses; this record to be updated in writing by the Subcontractor to the Main Provider on each occasion that changes are made to any partnership arrangements, including the termination of any agreement; or the onset of any new or extended agreement; or any person who is an Associate (as defined by section 435 of the Insolvency Act 1986) of the Subcontractor;
- 6.1.10 a record of its estimated success rates and Achievements for that Academic Year against the minimum levels of performance set out in **Schedule 4**;
- 6.1.11 a record of its average costs per Learner in providing the Programme(s) by comparison to the Price received for each such Learner, such figures to be reported to the Main Provider at the end of each Month within any Academic Year;
- 6.1.12 a record of its intended Programme provision in the next Academic Year (along with appropriate financial information to support the viability of these intentions). Provision of such an intended Programme does not oblige the Main Provider to enter into, renew or extend any contractual obligations with the Subcontractor;
- 6.1.13 any other records and information specified elsewhere in this Agreement, including any records and reports received by the Subcontractor from any awarding organisation(s) and as otherwise required by the Funding Rules and Enrolment Guidelines;

- 6.1.14 suitable records as required (including any records reasonably requested by the Main Provider) to allow the Main Provider to adequately assess the performance of the Subcontractor against Ofsted's Education Inspection Framework published by Ofsted and as amended from time to time or against any other quality or regulatory requirements which apply to the Programme (such records to be sufficient so as to be incorporated into and to guide the judgements and grades within the Main Provider's SAR Report);
 - 6.1.15 any other records and information as the Main Provider may from time to time reasonably require the Subcontractor to keep, such requirements to be notified in writing to the Subcontractor including all said records and information specified in **Schedule 3**;
 - 6.1.16 any other records as may from time to time be required by the Main Provider for the purposes of the Funding, or upon the request of the Department;
 - 6.1.17 any pre-contractual information requested by the Main Provider at the beginning of any Academic Year (including any updates or amendments made to policies of the Subcontractor which affect the provision of any Programme);
 - 6.1.18 any information that may be requested by the Main Provider to demonstrate that the provision of any Programme takes account of the local enterprise partnership's priorities in accordance with the Funding Rules; and
 - 6.1.19 any information that will assist the Main Provider's auditors in the preparation of their annual report and certification of the Main Provider's sub-contracting arrangements in accordance with the Funding Rules.
- 6.2 A copy of the note of complaint made by Learners and/or Employers and the other documents referred to in **clause 6.1.7** above must be sent by the Subcontractor to the Main Provider as soon as possible after such complaint is made.
- 6.3 The Subcontractor shall ensure that Learners have access to a personal online learning platform during their Programme, and where applicable have the capacity to support an E-Portfolio that allows the Learner to select examples of work undertaken during the Programme that showcases their abilities, provides evidence that learning has occurred, and/or proves that learning outcomes have been met. The Subcontractor shall assist the Learner with the creation of their E-Portfolio which may include, without limitation, items such as coursework, assessment work, Achievement of individual learning outcomes, aggregated credit towards awards, evidence of achievement for assessment, planning and reflection, statements about other entries, skills and competences, outcomes of appraisals or interviews, links between entries, entries shared with peers, Trainers or mentors, feedback from peers and other pieces of work or personal material.
- 6.4 The Subcontractor shall provide a copy of its SAR Report and quality improvement plan to the Main Provider at the end of each Academic Year which shall evaluate the progress and achievements of Learners during the previous Academic Year and shall set targets for improving Achievement for the next Academic Year. The Subcontractor shall consult the Main Provider during the preparation of the SAR Report and the Main Provider shall assist the Subcontractor with target setting and shall provide suggestions for improving the Programme for the next Academic Year. The Subcontractor shall maintain at least a grade 2 (as defined by Ofsted) in its SAR Report.
- 6.5 The information and records referred to in **clause 6.1** above must be provided or made available by the Subcontractor (as the Main Provider shall determine) to the Main Provider (or any of its authorised representatives) or to the Department (or any of its authorised representatives) at the time and in the format reasonably notified by the Main Provider from time to time by written notice to the Subcontractor. The Subcontractor agrees to take all required steps to ensure that any request under this **clause 6.5** is complied with, including obtaining any consents from third parties to the disclosure of that information to the Main Provider and/or Department, where necessary.

- 6.6 All documents to be provided by the Subcontractor to the Main Provider in accordance with this Agreement shall be original and not copy documents except in respect of Learner achievement certificates in respect of which copy documents will be accepted by the Main Provider provided the Subcontractor certifies in writing that it has had sight of the original certificate to which the copy relates and that each copy is a true and complete copy of the original.
- 6.7 The Subcontractor shall inform the Main Provider of any conflicts or issues of concern which the Subcontractor may have with any of its partners where such conflicts or issues relate to agreements similar to this Agreement and of any investigation to which the Subcontractor or any such partner may be subject.
- 6.8 All information which shall be provided by the Subcontractor to the Main Provider in accordance or connection with this Agreement shall be obtained, completed and provided truthfully, fully, accurately and promptly and in accordance with the Data Protection Legislation.
- 6.9 The Subcontractor shall submit to the Main Provider correctly completed:
- 6.9.1 Enrolment Paperwork and supporting documentation to the Main Provider as soon as reasonably practicable and in any event no later than 5 Working Days before the end of each Month. Any enrolment forms received after this date will not be processed by the Main Provider and the Subcontractor will not be eligible to receive Funding under this Agreement in respect of Learners the subject of such enrolment forms;
 - 6.9.2 Achievement Evidence and supporting documentation and other paperwork relating to completion of Programmes as soon as reasonably practicable and in any event no later than 5 Working Days before the end of each Month. Paperwork received after this time will not be processed by the Main Provider and no completion payment of Funding will be payable in respect of such Programmes;
 - 6.9.3 Employer invoices and any other paperwork relating to the request of payment by an Employer as soon as reasonably practicable and in any event no later than 5 Working Days before the end of each Month. Paperwork received after this time will not be processed by the Main Provider and no payment of Funding will be payable in respect of such invoices;
 - 6.9.4 If the Learner is an apprentice, then a thorough appraisal of the Learner's existing knowledge, skills and behaviours against those required to achieve occupational competence. Where applicable, this must include in the appraisal any knowledge, skills and behaviours gained from:
 - 6.9.4.1 Work experience, particularly where the Learner is an existing employee;
 - 6.9.4.2 Prior education or training and associated qualifications in a related sector subject area; and
 - 6.9.4.3 Any previous apprenticeship undertaken;
 - 6.9.5 Review documentation in the form specified by the Main Provider and at such intervals as the Main Provider may require.
- 6.10 In the event of any Learner not completing the Programme which such Learner has commenced the Subcontractor shall as soon as reasonably practicable and in any event not later than one Month after the date on which the Learner left the Programme, provide the Main Provider with written evidence of the dates on which the Learner participated in any Programme(s) and the date such Learner left the Programme(s) and any comments obtained from the Learner as to why the Learner left the Programme(s). Such evidence

shall be a Learner review, Learner assessment, record of observation or Register of Attendance in respect of such Learner.

- 6.11 On request, the Subcontractor shall provide to the Main Provider details of such Premises, accommodation and equipment in respect of each site where each Programme is delivered prior to the commencement of the Programme concerned.
- 6.12 Where any records or information are required to be sent to the Main Provider in accordance with this **clause 6** or any other clause of the Agreement, such records or information must (unless otherwise stated in this Agreement or by written notice from the Main Provider to the Subcontractor) be sent to the address and for the attention of the person specified in **clause 29** (Notices) below.
- 6.13 The Subcontractor warrants that all information provided or made available to the Main Provider and/or the Department pursuant to this **clause 6** or any other clause of the Agreement will be true and accurate in all material respects.
- 6.14 The Subcontractor further warrants that all information and representations regarding the Subcontractor's past experience and other matters which were disclosed to the Main Provider in order to enable the Main Provider to assess whether to enter into this Agreement (including, without limitation, references provided by the Subcontractor, details of the Subcontractor's past experience and the results of a quality audit, all of which information the Subcontractor acknowledges was relied on by the Main Provider) was true and accurate in all material respects and that nothing which would reasonably be likely to alter the Main Provider's decision to enter into this Agreement was withheld or misrepresented. In the event that the status or relevant details change in a material way which would reasonably be deemed to influence the Main Provider in deciding whether or not to continue and/or review this Agreement, the Subcontractor shall have a continuing obligation to inform the Main Provider of such changes.
- 6.15 The Subcontractor acknowledges that the Main Provider may where lawful under the Data Protection Legislation apply to a credit reference Department or other body in order to carry out such financial checks in respect of the Subcontractor as the Main Provider may deem necessary prior to the Commencement Date or during the term of this Agreement.
- 6.16 The Subcontractor shall use its reasonable endeavours to procure the provision of information from Employers when such information is requested by the Main Provider or the Department in compliance with Data Protection Legislation.
- 6.17 The Subcontractor agrees to use its reasonable endeavours to contribute to the preparation of the Main Provider's Employer Engagement Strategy from time to time.
- 6.18 The Subcontractor shall confirm to the Main Provider where it has entered into any agreement(s) with any other college(s) or training provider(s) on request. The Subcontractor shall confirm in writing to the Main Provider the volume and value of any of the above agreement(s) on a regular basis and any time on request.
- 6.19 The Subcontractor acknowledges that the Main Provider has an obligation to the Department to ensure that Funding is only drawn in respect of a particular funded Learner through one lead provider and the Subcontractor shall not put the Main Provider in breach of this obligation.

7. CONTROL OF THE PROGRAMME(S)

- 7.1 The Subcontractor acknowledges that the Main Provider is responsible to the Department for the actions of the Subcontractor arising out of or connected to the delivery of the Programmes and for that reason the Main Provider is at all times to be in control of all aspects of the Programme(s). The Subcontractor will comply with and implement at no cost to the Main Provider (unless and to the extent the Main Provider agrees otherwise in writing): (i) the Main Provider's reasonable requests in respect of any aspect of the Programme(s) and (ii) any request by the Main Provider in respect of any aspect of the Programme(s) if required to comply with any direction or other requirement of the

Department or any Regulatory Body. Without prejudice to the generality of the foregoing, the Subcontractor shall comply with the following obligations and are subject to the Main Provider's Learner policies and procedures.

7.2 **Marketing**

- 7.2.1 The Subcontractor is responsible for the promotion, advertising and marketing of the Programmes, at its own expense and in compliance with the Data Protection Legislation.
- 7.2.2 All promotional material referring to the Main Provider must be approved in writing by the Main Provider, before it is published. Without prejudice to the generality of the foregoing, materials will not be approved unless they clearly and accurately specify the nature of the relationship with the Main Provider, and do not represent the Subcontractor as being part of the Main Provider.

7.3 **Enrolment**

- 7.3.1 Once the Subcontractor has received details of a potential Learner, the Subcontractor shall send the Main Provider any paperwork and make such other arrangements as deemed necessary in the reasonable opinion of the Main Provider for the Main Provider to determine the Learner's eligibility for Enrolment. Subject to the Main Provider giving express written permission to the Subcontractor, the Learner will be Enrolled as a Learner of the Main Provider by the Subcontractor. For 16 to 19 provision, this paperwork must include an enrolment form which must include the Main Provider's name and logo. The Subcontractor acknowledges that it is not the Main Provider's agent for the purpose of Enrolment and the decision as to whether a person is eligible to be enrolled as a Learner is for the Main Provider alone (in its sole and absolute discretion). The Main Provider alone has the right to suspend or expel any Learner as if the Learner was taught on its own site.
- 7.3.2 The Main Provider may, in its absolute discretion, from time to time allow the Subcontractor to select potential Learners, for consideration in accordance with the process set out in **clause 7.3.1** above without prejudice to the Main Provider's right to accept or reject persons for enrolment as Learners as it sees fit and the Subcontractor shall select and inform potential Learners that this is the case.
- 7.3.3 The initial guidance and assessment of Learners and potential Learners shall be carried out by the Subcontractor in accordance with the Funding Rules. The Main Provider may, in its absolute discretion, from time to time carry out such initial guidance and assessment of Learners and potential Learners. The Main Provider shall specify the form which the said initial guidance and assessment shall take, including the form of the Learning Agreement which shall be entered into at that time and which shall comply with the Funding Rules. The terms of the Learning Agreement shall form part of the specification of the Programme(s).
- 7.3.4 The Subcontractor shall not make any representation to any potential Learner about their eligibility, likelihood of becoming Enrolled or any conditions regarding Enrolment save as expressly authorised by the Main Provider.
- 7.3.5 Upon request by the Main Provider, the Subcontractor shall submit to the Main Provider an organisation needs analysis in the format specified by the Main Provider in respect of each Employer and a written assessment of how each Learner's Achievement of a Qualification has impacted on such Learner's employer.
- 7.3.6 Unless the Main Provider is the awarding body, it shall be the responsibility of the Subcontractor to register Learners with the relevant awarding body for the Programme(s) for which such Learners are Enrolled.

- 7.3.7 Unless the Main Provider is the awarding body, it shall be the responsibility of the Subcontractor to apply to the relevant awarding body for certificates for Qualifications in respect of Learners who have successfully completed.
- 7.3.8 The Subcontractor is required to supply the Main Provider with evidence in respect of compliance with **clauses 7.3.6 and 7.3.7**.
- 7.3.9 In respect of 16 to 19 provision, the Learner will sign a Learning Agreement (which must include the Main Provider's name and logo) at the time of being Enrolled which must reflect the outcome of initial guidance and assessment as well as setting out their study programme and any learning support to be required.
- 7.3.10 [The Subcontractor agrees that:
- 7.3.10.1 Dependent of MCV Learners enrolled under this Agreement will be resident in the area covered by the Liverpool City Region Local Enterprise Partnership ("**LEP Area**") and
- 7.3.10.2 save for the Learners resident in the LEP Area, no Learners Enrolled under this Agreement may be resident in an area in which adult education has been devolved to a local Combined Authority or the Mayor of London or an area which has been identified for adult education devolution from time to time which, at the date of this Agreement, comprises the following areas and Combined Authorities (or, in London, the Mayor of London):
- (a) Cambridgeshire and Peterborough
 - (b) Greater Manchester
 - (c) Greater London Authority
 - (d) North of Tyne
 - (e) South Yorkshire
 - (f) Tees Valley
 - (g) West Midlands
 - (h) West of England
 - (i) West Yorkshire

7.4 **Provision**

Trainer Approval

- 7.4.1 The Subcontractor shall always have suitably qualified Trainers available to deliver the Programmes.
- 7.4.2 The Subcontractor shall, at least 20 Working Days before the date on which the Subcontractor first provides any of the Programmes, give the Main Provider a written list of the names and addresses of all Trainers who it expects may provide the Programmes, confirming each is an employee of the Subcontractor, each Trainer is paid through the Subcontractor's PAYE scheme, which Programme(s) each Trainer will be working on and giving such other particulars as the Main Provider may require, including but not limited to evidence of the

employment relationship between the Subcontractor and the Trainer. For the avoidance of doubt, self-employed Trainers shall only be used in exceptional circumstances. The Subcontractor will need to obtain written consent from the Main Provider and demonstrate that the contracts issued contain all the relevant terms from this contract to ensure full compliance with the Funding Rules.

- 7.4.3 It is an expectation that the Subcontractor shall ensure that all Trainers working on a Programme will receive at least the UK Living Wage and for those based in Greater London, the London Living Wage.
- 7.4.4 The Subcontractor shall use its reasonable endeavours to update this information as and when any such individuals are replaced or complemented by others, not less than 20 Working Days before the date on which they will perform the Programmes. Where it is not reasonably practicable (for whatever reason) to provide some or all of the information required within this timescale in respect of a Trainer, the Subcontractor shall ensure that any outstanding information is provided as soon as practicable and such a person may nonetheless be entitled to perform the Programmes, provided always that the Subcontractor shall ensure that such Trainers are accompanied at all times in the performance of the Programmes and whilst on the Premises by a Trainer who has been approved by the Main Provider after being properly notified to the Main Provider in accordance with the terms of **clause 7.4.1** and is a Trainer in respect of whom checks have been made with the Disclosure and Barring Service and provided to the Main Provider in accordance with this **clause 7**.
- 7.4.5 The Main Provider reserves the right to refuse to grant approval of any Trainer notified to it in accordance with **clause 7.4.1** for any reason in its absolute discretion, including if, in the opinion of the Main Provider, the Trainer presents a risk to themselves or any other Learner. The decision of the Main Provider on whether any person is to be refused approval to perform the Programme shall be final and conclusive and the Main Provider shall not be obliged to give reasons for its decision.
- 7.4.6 The provision of the Programme(s) shall be as specified by the Main Provider at **Schedule 4**. The Main Provider shall have the right in its sole and absolute discretion to alter all or any part of the specification of the Programme set out in **Schedule 4** at any time, provided that such right shall not be unreasonably exercised.
- 7.4.7 The Subcontractor must co-operate fully with the Main Provider to enable the Main Provider to communicate freely with the Learners and to allow the Learners to take advantage of the facilities (including but not limited to the Programme(s)) offered by the Main Provider. In particular, the Subcontractor must give to each Learner, as part of the Enrolment process, a copy of the Main Provider's Learner Handbook, which includes the Main Provider Charter, and must provide a copy of the Main Provider's Equal Opportunities Policy and Safeguarding Policy to any Learner that requests it, whether before they are Enrolled or at any time thereafter.
- 7.4.8 The Subcontractor shall procure that all Trainers obey the reasonable instructions of the Main Provider in respect of the Programme(s) and participate in any induction training the Main Provider feels is reasonably required from time to time.

Conduct of Trainer

- 7.4.9 The Subcontractor shall procure that, whilst engaged at the Premises, any Subcontractor Employees shall comply with the Main Provider's policies from time to time relating to the conduct of staff and security arrangements. The Main Provider (acting reasonably) may:

- 7.4.9.1 instruct the Subcontractor that disciplinary action is taken against any Trainer (in accordance with the terms and conditions of employment of the Trainer concerned) where such Trainer misconducts themselves or is incompetent or negligent in their duties (in which case the Main Provider shall co-operate with any disciplinary proceedings and shall be advised in writing of the outcome); or
- 7.4.9.2 where the Main Provider has reasonable grounds for considering that the presence or conduct of a Trainer at any location relevant to the performance of the Programmes is undesirable, require the exclusion of the relevant Trainer from the Premises.
- 7.4.10 The Subcontractor must ensure that there are set up and maintained by it personnel policies and procedures covering all relevant matters (including discipline, grievance, equal opportunities and health and safety). The Subcontractor must ensure that the terms and implementation of such policies and procedures comply with law and good industry practice and that they are published in written form. The Subcontractor must provide copies of such policies to the Main Provider, on the Main Provider's request.

Safeguarding Responsibilities

- 7.4.11 The Subcontractor shall procure that before any Trainer begins to perform any of the Programmes where lawful under the Data Protection Legislation:
 - 7.4.11.1 each Trainer is questioned as to whether they have any Convictions; and
 - 7.4.11.2 the results of a check of the most extensive available kind made with the Disclosure and Barring Service (or successor body/bodies) are obtained in respect of each Trainer; and
 - 7.4.11.3 if the Disclosure and Barring Service is in the process of issuing the DBS Certificate, the Subcontractor completes and submits a Risk Assessment Form to the Main Provider; and
 - 7.4.11.4 each Trainer has the necessary qualifications, and necessary and relevant experience, to enable them to properly perform the Programme(s); and
 - 7.4.11.5 a copy of the results of such checks as are referred to in **clause 7.4.11.2** and **7.4.11.4** are notified to the Main Provider
- 7.4.12 If the Subcontractor believes that, having regard to the Trainer's role, a less extensive check is required under this **clause 7.4.11**, it will notify the Main Provider in advance and seek their agreement to proceed in this way.
- 7.4.13 The Subcontractor shall procure that no person who appears on a Barred List following the results of a Disclosure and Barring Service check shall be employed or engaged in the performance of the Programmes.
- 7.4.14 The Subcontractor shall procure that no person who discloses any Convictions, civil injunctions for antisocial behaviour, CPNs or CPOs or who is found to have any Convictions following the results of a Disclosure and Barring Service check, is employed or engaged in the performance of the Programmes without the Main Provider's prior written consent (such consent not to be unreasonably withheld or delayed).
- 7.4.15 The Subcontractor shall procure that the Main Provider is kept advised at all times of any Trainer who, subsequent to their commencement of employment as a Subcontractor Employee, receives a Conviction, a civil injunction for

antisocial behaviour, CPN or CPO or whose previous Convictions, civil injunctions for antisocial behaviour, CPNs or CPOs become known to the Subcontractor (or any employee of a sub-Subcontractor involved in the provision of the Programmes). For the avoidance of doubt, in the event that any Trainer is subsequently added to a Barred List, the Subcontractor shall procure that such Trainer immediately ceases to be engaged in the performance of the Programmes.

- 7.4.16 The Subcontractor shall comply with the safeguarding obligations set out in the Main Provider's funding agreement with the Department and shall ensure that any background checks (including DBS checks) required on Trainers either under this contract or the Funding Rules are refreshed at least every three years.
- 7.4.17 The Subcontractor shall ensure that appropriate arrangements are in place for the initial and ongoing development and training of the Subcontractor's staff involved in the delivery of the Programme(s) (including the completion by each such staff member of the Main Provider's mandatory training modules including Child Protection, Equality and Diversity and Data Protection within one Month of the date of this Agreement or, in respect of staff employed by the Subcontractor following the date of this Agreement, within one Month of the commencement of that individual's employment by the Subcontractor) and shall make such information available concerning the staff, their qualifications and arrangements for development as the Main Provider shall reasonably require and shall inform the Main Provider in writing as soon as reasonably practicable of any changes to such staff. The Subcontractor agrees to comply with any reasonable instructions of the Main Provider requiring additional training/development of any staff involved in the delivery of the Programme(s).
- 7.4.18 The Subcontractor must not employ or engage, or continue to employ or engage, any person who is subject to a prohibition order made under section 141B of the Education Act 2002, or an interim prohibition order made under regulation 14 of the Teachers' Disciplinary (England) Regulations 2012, to carry out teaching work (as defined in regulation 3 of the Teachers' Disciplinary (England) Regulations 2012), in respect of any Learners under the age of 19 and High Needs Learners aged 19 to 25 (as if those Learners were pupils for the purposes of the definition of teaching work in regulation 3 of the Teachers' Disciplinary (England) Regulations 2012). The Subcontractor shall comply with applicable obligations under "Keeping Children Safe in Education".

Learners and Quality

- 7.4.19 Whilst they are receiving a Programme, the Subcontractor acknowledges that the Learners are subject to the rules of the Main Provider, including the Main Provider's disciplinary rules. The Subcontractor in particular undertakes that it will comply with such rules and no Learner who makes a complaint to the Main Provider relating to a Programme shall suffer any disadvantage as a result.
- 7.4.20 The Subcontractor shall ensure that all Learners are aware of:
 - 7.4.20.1 their status as Learners of the Main Provider;
 - 7.4.20.2 the fact that they are subject to the rules of the Main Provider including the disciplinary rules from time to time (copies of which are available upon request);
 - 7.4.20.3 the fact that they are subject to the terms of the Learning Agreement and the Main Provider's enrolment conditions;
 - 7.4.20.4 their right to complain to the Main Provider about any aspect of a Programme;

- 7.4.20.5 how such a complaint may be made; and
- 7.4.20.6 the fact that complaints made in good faith cannot lead to action being taken against the Learner by the Subcontractor.
- 7.4.21 The Subcontractor will notify the Main Provider in writing immediately if any Learner withdraws from a Programme. The Subcontractor shall provide written evidence of the date that the Learner withdrew from the Programme in accordance with **clause 6.10**.
- 7.4.22 Learners Enrolled through the Main Provider by the Subcontractor cannot be Enrolled elsewhere on any other Government funded programme with another provider if this contravenes funding or eligibility guidelines.
- 7.4.23 The Subcontractor acknowledges that the Main Provider shall be entitled to expel, suspend or otherwise discipline any Learner in accordance with the Main Provider's policies, procedures, rules and codes of conduct.
- 7.4.24 The Subcontractor must provide the Programme(s) in accordance with the Quality Principles and Policies as notified to the Subcontractor from time to time.
- 7.4.25 The Subcontractor must co-operate fully with the Main Provider and any third party undertaking an external verification visit during the course of and following such visit.
- 7.4.26 The Subcontractor shall ensure that all systems, processes and procedures implemented by the Main Provider which the Subcontractor is obliged to follow under the terms of this Agreement are adhered to by the Subcontractor at all times in order to support the Main Provider's objective of obtaining and maintaining the Quality Standards for Training.
- 7.4.27 If at any time the Subcontractor has not, in the Main Provider's reasonable opinion, met the Quality Standards for Training or complied with the Quality Principles and Policies then the Main Provider will notify the Subcontractor in writing of that fact and give reasons for its opinion. The Subcontractor will then have an opportunity to remedy the failure provided that if, within a reasonable time and in any event within 14 days (or such longer period as the Main Provider may specify in writing) after receiving notice from the Main Provider, it has not remedied the failure to the Main Provider's reasonable satisfaction the Main Provider will be entitled to terminate this Agreement immediately upon written notice to the Subcontractor. If the Agreement is terminated in accordance with this clause then the provisions as to the consequences of termination as set out in this Agreement at **clause 17** will apply.

7.5 **Assessment**

The Subcontractor shall carry out an assessment of Learners in respect of the progress on the Programme or more generally, if the Main Provider requires it. All aspects of the assessment of the Learners by the Subcontractor shall be carried out in accordance with the requirements of any relevant awarding body and any directions given from time to time by the Main Provider. The Main Provider shall have the right to carry out any such assessments, or any part of such assessments, itself, or to delegate such assessments or any part thereof to the Subcontractor's staff.

7.6 **Warranty**

- 7.6.1 The Subcontractor warrants on a continuing basis to the Main Provider that it will perform its obligations under this Agreement to such high standards of quality as it is reasonable for the Main Provider to expect in all the circumstances.

- 7.6.2 The Subcontractor warrants that it has and will have on a continuing basis the right to pass all records, information and personal data to the Main Provider in compliance with its obligations under the Data Protection Legislation as envisaged by this Agreement for the Main Provider to use accordingly.

7.7 Additional Services

- 7.7.1 The Main Provider may from time to time decide that it requires Additional Services to be carried out to ensure the success of a Programme. In such circumstances the Main Provider shall notify the Subcontractor of its proposal for Additional Services in writing to the person nominated in **clause 29.1**
- 7.7.2 Both parties agree to meet to discuss any such proposal in good faith within 20 days of the receipt by the Subcontractor of the notice referred to in **clause 7.7.1**.
- 7.7.3 For the avoidance of doubt, any charges for Additional Services imposed by the Main Provider and agreed by the Subcontractor shall be separate from and in addition to the Price under this Agreement.
- 7.7.4 Details of any agreed Additional Services at the date of this Agreement are set out in **Schedule 8** and the parties agree that any Additional Services agreed after the Commencement Date and during the term of this Agreement shall be recorded in **Schedule 8** as soon as reasonably possible and in any event before the commencement of those Additional Services by way of agree written variation of that Schedule. Both parties agree to act in good faith at all times for the purposes of complying with this **clause 7.7**.

7.8 Employer Engagement Subcontracted Provision

Unless the Main Provider is the relevant awarding body:

- 7.8.1 The Subcontractor shall register Learners with a relevant awarding body within four weeks following commencement of delivery.
- 7.8.2 The Subcontractor shall apply to the relevant awarding or issuing body for certificates of qualifications in respect of Learners who have successfully complete the Programme and will be responsible for any fees associated with this.
- 7.8.3 Learners Enrolled through the Main Provider by the Subcontractor cannot be Enrolled elsewhere on any other Government funded programme with another provider if this contravenes funding or eligibility guidelines.
- 7.9 Subcontractors should be able to demonstrate that they comply with statements in the Investors in People (IiP) Framework.

8. MONITORING, AUDITING AND COMPLIANCE

- 8.1 The Subcontractor acknowledges that the Main Provider is required by the Funding Rules to carry out a regular and substantial programme of quality assurance checks on the education and training provided by the Subcontractor, and acknowledges that such monitoring may be, with or without the reasonable prior notice of the Main Provider, allow any authorised representative (including an auditor) of the Main Provider and/or any Regulatory Body and any awarding body for any Qualification(in respect of each and any such body reference to them shall include any successor entities of any of them):
- 8.1.1 to attend during the provision of any part of a Programme, or during any activity relating to the provision of a Programme and shall procure that any Employer co-operates with such attendance;

- 8.1.2 access to Premises and every part of any premises where training/assessment is or has been provided by the Subcontractor; and
- 8.1.3 access to records, documentation (regardless of media or format) or facilities used in or for the provision or in connection with any part of a Programme or in respect of any Learner in order to confirm eligibility; and
- 8.1.4 facilitate any request by the Main Provider to speak to any Learner, Employer or Trainer (including on a face to face basis),

for the purpose of auditing, monitoring and/or ensuring compliance with this Agreement and for checking quality, performance, provision of the Programme, checking the welfare of the Learners and any other reason; enabling the Main Provider to give directions to the Subcontractor under **clause 7.1** above; monitoring the standard of any part of the Programme(s) and the way in which it is provided; ensuring that for 16 to 19 provision (where applicable) all Learners have access to free funded education and training including but not limited to information and access to 16 to 19 bursary and other student support funding, information, advice and guidance and/or conducting an audit of the Subcontractor's management and/or financial procedures and controls. The Subcontractor agrees to provide the Programme(s) in accordance with the Quality Standards for Training and so as to comply with any other standards and/or requirements of the Main Provider which may be notified in writing to the Subcontractor from time to time. The Main Provider may carry out unannounced spot checks at any time to monitor the Subcontractor's compliance with this clause.

- 8.2 The Main Provider may organise such external verification visits during the term of this Agreement as it in its sole discretion sees fit. The Subcontractor shall at the request of the Main Provider procure that such of its staff as the Main Provider may specify attend such external verification visits as may be specified by the Main Provider.
- 8.3 The Subcontractor shall operate and annually review policies and procedures in relation to equal opportunities of staff, health and safety and safeguarding which are the same as or comparable to those operated by the Main Provider and shall make them (and any changes to them) available to the Main Provider.
- 8.4 In the event that the Subcontractor does not have in place a suitable health and safety policy, equality or diversity policy and safeguarding policy at the Commencement Date the Subcontractor shall inform the Main Provider and shall adopt and apply the Main Provider's relevant Policies in respect of the provision of the Programmes and in all dealings with Learners.
- 8.5 Upon request, the Subcontractor shall provide the Main Provider with a copy of all materials, including but not limited to Programme Materials, used by the Subcontractor in the provision of the Programmes in order that the Main Provider may assess the quality and suitability of such materials. The Subcontractor shall comply with all requests made by the Main Provider to amend such material to ensure the same comply with the Main Provider's Quality Principles and Policies.
- 8.6 The Main Provider may appoint an independent third party to monitor the quality control systems of the Subcontractor to assess the Subcontractor's compliance with the minimum requirements of each awarding body relevant to the provision of the Programmes.
- 8.7 The Subcontractor must submit timely returns for starts, Achievement and withdrawals. The Main Provider reserves the right to impose a 5% penalty for late notification or submission or an inaccurate claim or submission.
- 8.8 The parties agree to attend meetings in accordance with **Schedule 7**.
- 8.9 The Subcontractor shall inform the Main Provider as soon as it becomes aware that it is being or will be inspected by Ofsted or any other Inspectorate.

- 8.10 The Subcontractor shall during the Term of this Agreement and for a period of six (6) years afterwards, or such other time period as required by the Department, fully co-operate with any enquiry, investigation or inspection (whether routine or specific) which in any way concerns, affects or relates to the services delivered in accordance with this Agreement, or any sum claimed or charged in relation to this Agreement or to any other agreement of the Department. Such enquiry, investigation or inspection may be by, inter alia:-
- 8.10.1 the Department;
 - 8.10.2 the Department's auditors (whether internal or external);
 - 8.10.3 Regulatory Bodies; and/or
 - 8.10.4 the Inspectorates.
- 8.11 The co-operation required by **clause 8.10** will include (but not be limited to) the following:
- 8.11.1 providing access to or copies of such files, documents, letters, emails, notes, minutes, records, accounts or any other information (whether held or stored electronically, in hard copy format or otherwise) which relate to the subject or part of this Agreement (in whole or in part) under investigation;
 - 8.11.2 providing access to the Premises, equipment (including IT hardware and software) or other assets used by the Subcontractor in the performance of this Agreement, such access to be supervised at all times unless the nature of the investigation requires the parties defined at **clause 8.10** to be unsupervised, such parties acting reasonably in making such assessment;
 - 8.11.3 providing access to Subcontractor's personnel (of whatever seniority) involved in this Agreement (including managerial or supervisory staff) or who may be the subject of, or be named in, any enquiry or investigation by the auditors or the ombudsmen (including providing suitable facilities for interviewing such staff);
 - 8.11.4 maintaining the confidentiality of the enquiry or investigation when requested to do so;
 - 8.11.5 making such explanations (whether written or oral) as may be necessary for the enquiry or investigation to be satisfied that the terms and conditions of this Agreement, the Funding Rules and the law are being complied with;
 - 8.11.6 at all times and without notice allow access to the Inspectorates, in connection with any complaint, investigation or inspection relating to this Agreement. This will extend to the Premises and to all documentation and information relating to this Agreement to which the Subcontractor has access and to the Subcontractor's agents, employees and sub-contractors.
- 8.12 Where the Department has undertaken an investigation or received a report from an independent accountant or otherwise, in relation to the Main Provider or the Subcontractor, the Main Provider may, as a consequence of that investigation or report, require the Subcontractor to, and the Subcontractor will, accept and comply with additional contractual obligations and will meet the cost of such investigation.
- 8.13 Where the Subcontractor fails to comply with the contractual obligations imposed under **clause 8.12**, within such time as the Main Provider deems reasonable, the Main Provider may take such actions as it deems appropriate which may include, but is not limited to, termination of this Agreement.
- 8.14 The Subcontractor will in performing its obligations under this Agreement comply fully with all relevant rules and regulations of the Department in force from time to time.

- 8.15 The Subcontractor will, if requested by the Main Provider, co-operate with the Main Provider, at its own expense, in connection with any legal proceedings, adjudication, arbitration, court proceedings or ombudsmen enquiries in which the Main Provider may become involved, arising from breaches of the Department's duties under the equalities legislation due to the alleged acts or omissions of the Subcontractor, its employees, subcontractors or agents.
- 8.16 The Subcontractor shall upon request provide the Main Provider with full access to the relevant area of any systems of the Subcontractor or its subcontractors where the Department's data is stored or held for the purpose of viewing, retrieving, copying or otherwise dealing with the Department's data.

9. **HEALTH AND SAFETY AND LIABILITY**

- 9.1 The Subcontractor is responsible for completing Health and Safety checks and monitoring visits of the Premises and/or of any delivery location(s) for each Programme (including the premises of any Employer). Checks must be made by a qualified IOSH member of staff (or equivalent). The Subcontractor shall notify the Main Provider of the identity of this qualified member of staff and provide evidence of their qualifications upon reasonable notice from the Main Provider. Copies of all relevant Health and Safety documentation must be made available to the Main Provider for the duration of the Agreement.
- 9.2 The Subcontractor will notify the Main Provider immediately upon the occurrence of any of the following:
- 9.2.1 any incident (including, without limitation, any breach of the Main Provider's health and safety policies) which may need to be notified by the Subcontractor to its insurers to enable the Main Provider to bring a claim under any of its insurance policies; and
 - 9.2.2 any 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 Subcontractor and/or the Main Provider may be liable, wholly or partly, for such injury, loss or damage.

For the avoidance of doubt, any event to be notified to the Main Provider pursuant to this **clause 9.2** must be notified to the Main Provider by the quickest means possible in the circumstances and must be followed up as soon as possible by written notice to the Main Provider setting out in full all relevant details and parties.

- 9.3 The Subcontractor will comply with all applicable legal requirements relating to health and safety at the Premises and/or the provision of the Programme(s) by the Subcontractor. The Subcontractor will continue to have this Liability irrespective of any health and safety inspection which the Main Provider may have made at the Premises from time to time.
- 9.4 The Subcontractor will comply with the obligations set out in **Schedule 2** in relation to health and safety and with any reasonable additional directions issued by the Main Provider in writing to the Subcontractor from time to time.
- 9.5 The Subcontractor will at all times comply with the relevant legal requirements in respect of equal opportunities legislation including but not limited to the Equal Pay Act 1970, the Equality Act 2010, the Human Rights Act 1998, the Special Education Needs and Disability Act 2001, and the Equality Act 2006 all as subsequently consolidated, modified or re-enacted from time to time. The Subcontractor confirms that its practices comply with the legislation referred to but not limited to the above. The Subcontractor further confirms that it will comply with the public sector equality duties (as set out under the Equality Act 2006 and the Equality Act 2010, as subsequently consolidated, modified or re-enacted from time to time) and that it will use all reasonable endeavours to ensure that the Main Provider is also able to comply with its duties in respect of equal opportunities, for example, by agreeing to provide information to the Main Provider as is necessary to enable the Main Provider to comply with its obligations in this regard.

- 9.6 Without prejudice to any other provision of this Agreement or any other rights which the Main Provider may have, the Subcontractor will indemnify and keep indemnified the Main Provider, its servants, employees fully in respect of any Liability which arises as a direct or indirect result of any act or omission on the part of the Subcontractor or its employees or agents (including, without limitation, any non-compliance with health and safety legislation), any breach of this Agreement or any claim by any Learner against the Main Provider except to the extent that such Liability is due to a negligent act or omission or wilful default on the part of the Main Provider.

10. **SPECIFIC LEARNER INCIDENT REPORTING REQUIREMENTS**

- 10.1 The Subcontractor shall inform the Main Provider and the appropriate enforcing authority of any injuries to or diseases contracted by Learners within the scope of the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations (RIDDOR) 2013 and fatal road traffic accidents. This shall be done by:
- 10.1.1 in the case of fatal accidents and "major injuries" (as defined in RIDDOR) - informing the Main Provider by telephone or email immediately the Subcontractor becomes aware of the event; and
 - 10.1.2 all RIDDOR events - sending to the Main Provider a completed Learner incident record form within 10 days of the Subcontractor becoming aware of the event.
- 10.2 The Subcontractor shall investigate or assess the circumstances of all Learner incidents within the scope of RIDDOR and all current guidance issued by the Health and Safety Executive from time to time. The Subcontractor shall only use persons competent to investigate/assess Learner incidents with a view to identifying the causes of any incident and lessons to be learned.
- 10.3 The Subcontractor shall also monitor, and act on, any other harm to Learners to the extent that the Subcontractor could reasonably be expected to do so and/or where the harm could affect the quality of the learning experience. Harm includes (but is not limited to) other incidents that cause absence from learning, any loss to the Learner of any physical or mental faculty or any disfigurement, incidents of bullying and harassment.
- 10.4 The Subcontractor shall co-operate with the Main Provider for the purposes of the Industrial Injuries Scheme in respect to those Learners to which it applies.

11. **INSURANCE**

- 11.1 The Subcontractor will maintain adequate public and employer liability, third party and occupier's liability insurance with a minimum cover per claim as specified in **Schedule 6** and any other insurance it may be required by law to hold.
- 11.2 The Subcontractor will maintain adequate insurance to cover the risks specified in **Schedule 6**. Such insurance will be taken out with a minimum cover per claim as specified in **Schedule 6**.
- 11.3 The Subcontractor will, upon request by the Main Provider, immediately produce to the Main Provider 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 to date.

12. **CO-OPERATION AND REPUTATION**

- 12.1 The Main Provider and the Subcontractor agree to use their respective reasonable endeavours to meet regularly on the date and at the place specified in **Schedule 7** or on such other dates and/or at such other place as are agreed between them (provided that in the absence of agreement the date and place specified in **Schedule 7** will continue to apply) in order to discuss any matters arising from this Agreement and the provision of the Programme(s).

- 12.2 The Subcontractor shall specify a nominated person who will represent the Subcontractor and manage the Agreement on behalf of the Subcontractor.
- 12.3 The Subcontractor acknowledges that as Learners will be Enrolled with the Main Provider, the Main Provider's reputation is at stake and, accordingly, the Subcontractor agrees that:
- 12.3.1 it will not do anything which brings the reputation of the Main Provider into disrepute or which is calculated or which is reasonably likely to bring the reputation of the Main Provider into disrepute;
 - 12.3.2 it will provide the Programme(s) in accordance with current best working practice subject always to the Main Provider's right to direct how the Programme(s) will be provided;
 - 12.3.3 it will do everything it reasonably can to promote the name and reputation of the Main Provider;
 - 12.3.4 it will comply with all requirements of the Main Provider notified to it from time to time in relation to the provision of the Programme(s) or any part of it;
 - 12.3.5 it will not assign or purport to assign any of its rights under this Agreement nor sub-contract to any third party any part of the provision of the Programme(s);
 - 12.3.6 it will not make any statement or comment to the press or other media outlets relating to any of its obligations under this Agreement, the Learners or the Programmes without the prior written consent of the Main Provider to the content and format of the proposed statement/comment; and
 - 12.3.7 it will not do or fail to do anything which materially prejudices or is likely materially to prejudice the ability of the Subcontractor to comply with the terms of this Agreement.
- 12.4 In return for the Subcontractor providing the Programme(s) in accordance with the terms of this Agreement the Main Provider agrees that it will provide the Subcontractor with such reasonable support and assistance as the Subcontractor reasonably requests from time to time provided that, for the avoidance of doubt, the Main Provider will not be obliged to the Subcontractor to provide staff to run or to assist in the provision of any part of the Programme(s) due to the unavailability of Trainers/Assessors or any other reason.

13. **CERTIFICATION OF ACHIEVEMENT**

- 13.1 As soon as reasonably practicable and in any event no later than the deadlines set out in **Schedule 1**, the Subcontractor will send to the Main Provider the Achievement Evidence in relation to each Learner who has attained a Qualification and such supporting evidence as may be specified by the Main Provider from time to time.
- 13.2 As soon as reasonably practicable and in any event no later than the deadlines set out in **Schedule 1**, the Subcontractor will send to the Main Provider the Achievement Evidence and such supporting evidence as may be specified by the Main Provider from time to time, signed by a duly authorised representative of the Subcontractor, which relates to Achievement (including any relevant attendance information) in the preceding Month.

14. **LEARNERS REQUIRING ADDITIONAL LEARNING SUPPORT**

- 14.1 In order to apply for further funding for Learners with additional learning support requirements, as referred to in the Funding Rules, the Subcontractor must:
- 14.1.1 comply with the Funding Rules in relation to additional Learner support; and
 - 14.1.2 in relation to each such Learner, submit an additional support assessment form in the form set out in or otherwise notified to the Subcontractor by the Main Provider from time to time.

- 14.2 In the event that the Subcontractor determines that a Learner requires additional learning support the Subcontractor will retain the risk of and shall indemnify the Main Provider against such additional support costs in the event that such support is considered ineligible for Funding by the Department or fails to be approved by the Main Provider. This obligation will survive termination or expiry of this Agreement.
- 14.3 If the Main Provider notifies the Subcontractor that:
- 14.3.1 one of the main objectives of the Programmes is to deliver information and advice to Learners; or
 - 14.3.2 the delivery of information and advice to Learners is embedded as part of the delivery of the Programmes,
- the Subcontractor will have or attain the matrix Standard within six months of the Commencement Date.
15. **INTERVENTION**
- 15.1 The Main Provider may exercise the rights contained in this **clause 15** if any of the following events (each being referred to as an “**Intervention Event**”) occurs:
- 15.1.1 the Main Provider has the right (whether or not it exercises it) to terminate this Agreement under **clause 16**;
 - 15.1.2 the Main Provider is instructed by the Department or is required by the Funding Rules (and in particular the funding higher risk organisations policy) or by applicable law to exercise its rights under this **clause 15**;
 - 15.1.3 the Subcontractor has given notice to the Main Provider that it has suffered a Force Majeure Event and is unable to provide part or all of the Programmes at all or in accordance with this Agreement for a period of more than 3 months;
 - 15.1.4 the Main Provider wishes to exercise its right to suspend the Programmes in accordance with this **clause 15**;
 - 15.1.5 the Subcontractor is failing to deliver any part of the Programmes, or fulfil any obligation under this Agreement, and/or is in breach of one or more obligations under this Agreement (whether or not material).
- 15.2 If an Intervention Event occurs the Main Provider may, in addition to any other rights it may have under this Agreement suspend, all or part of the Programmes by serving a Suspension Notice on the Subcontractor requiring that the provision of the Programmes (or such part of them as the Main Provider will nominate) by the Subcontractor be suspended.
- 15.3 Following service of a Suspension Notice the Subcontractor will:
- 15.3.1 co-operate (and procure that any Trainers and/or an Employer co-operate) and in the exercise by the Main Provider of its rights pursuant to this **clause 15** and allow them access to all information and records that they reasonably require;
 - 15.3.2 procure that all Trainers and/or Employers follow the lawful and reasonable instructions of the Main Provider;
 - 15.3.3 grant, and procure that any necessary third parties grant, to the Main Provider those rights (including any IP, rights to use premises, equipment and personnel) that any of them may need in order that the Main Provider may fully enjoy the rights granted to it pursuant to this **clause 15**; and

- 15.3.4 at the Main Provider's request from time to time, ensure that appropriately senior and informed personnel of the Subcontractor meet with the Main Provider, to discuss any of the foregoing.
- 15.4 The suspension of the Suspended Programmes will take effect from the date and time specified in the relevant Suspension Notice (the "**Suspension Period**"). During the Suspension Period:
- 15.4.1 the Subcontractor will cease to perform the Suspended Programmes, but will continue to provide all other Programmes; and
- 15.4.2 the Main Provider may elect to perform the Suspended Programmes itself or to receive them from another member of its Group or a third party (or through a combination of two or more such entities).
- 15.5 The Main Provider may (at its sole discretion and at any time) revoke a Suspension Notice by giving to the Subcontractor not less than 28 days' notice. The Subcontractor will resume provision of the Suspended Programmes at the date and time specified in the Suspension Notice.
- 15.6 If the Subcontractor is able to remedy the relevant Intervention Event and/or to successfully put in place arrangements to ensure that it does not recur, then the Subcontractor may serve written notice (a "**Resumption Notice**") on the Main Provider requesting that the Subcontractor resume provision of the Suspended Programmes. The Subcontractor will provide the Main Provider with all information that the Main Provider reasonably requires in order to verify that the Subcontractor will be able to provide the Suspended Programmes to the Main Provider's reasonable satisfaction and ensure proper and sustained compliance with all service levels and other provisions set out in this Agreement. If the Main Provider is satisfied that the Subcontractor will be able to provide all of the Suspended Programmes to the Main Provider's satisfaction, the Main Provider will serve not less than 10 Working Days' notice (a "**Confirmation Notice**") requiring the Subcontractor to resume provision of such Programmes on the date and at the time specified in such Confirmation Notice and the Subcontractor will resume provision of the Suspended Programmes from such date and time.
- 15.7 If a Suspension Notice has been served (which has not been revoked by the Main Provider pursuant to **clause 15.5**) and:
- 15.7.1 the Subcontractor has not served a Resumption Notice within 10 Working Days of service of that Suspension Notice; or
- 15.7.2 following service of a Confirmation Notice the Subcontractor has not resumed provision of the Suspended Programmes (for any reason) on the date and time specified in that Confirmation Notice; or
- 15.7.3 the Main Provider has not served a Confirmation Notice within 10 Working Days of service of a Resumption Notice; and/or
- 15.7.4 having resumed provision of the Suspended Programmes, a further Intervention Event occurs at any subsequent time in respect of any of the previously Suspended Programmes,
- the Main Provider may (at its sole discretion) terminate this Agreement pursuant to **clause 16**.
- 15.8 During any Suspension Period the Main Provider will not be obliged to make any Payments to the Subcontractor in respect of the Suspended Programmes. This **clause 15.8** will not apply if the Intervention Event giving rise to the Suspension Notice was the exercise by the Main Provider of its discretion under **clause 15.1.4**.
- 15.9 There will be no limit on the number of times the Main Provider may exercise its rights pursuant to this **clause 15**.

16. **TERMINATION**

16.1 The Main Provider may terminate this Agreement by written notice to the Subcontractor if:

- 16.1.1 there is a material adverse change in the amount or nature of the Department's funding of the Main Provider or Funding is reduced or no longer available in respect of a Programme;
- 16.1.2 the Subcontractor fails to achieve the minimum Learner Achievement levels and other key performance requirements specified in **Schedule 4**;
- 16.1.3 the Main Provider, in its reasonable opinion, has serious concerns about the ability or suitability of the Subcontractor to deliver the Programmes as a result of information received from the Subcontractor (or other third parties) which relate to irregular financial or delivery activities as set out in **clause 2.4**;
- 16.1.4 there is a material or persistent breach by the Subcontractor of the terms of this Agreement and such breach is incapable of remedy or, where the breach is capable of remedy, the Subcontractor fails to remedy such breach to the satisfaction of the Main Provider within 14 days' service of a written notice from the Main Provider to the Subcontractor specifying the breach and requiring it to be remedied;
- 16.1.5 the quality of documentation supplied to the Main Provider by the Subcontractor does not meet the Quality Principles and Policies or the requirements of the Department;
- 16.1.6 the Subcontractor has failed at any time to meet the required due diligence or financial health requirements/standards as set out in the Funding Rules;
- 16.1.7 the Subcontractor has entered into any composition or arrangement with its creditors, has a petition presented by it or by any other person for its bankruptcy, has a bankruptcy order made against it, has applied to court for an interim order under section 253 Insolvency Act 1986, has submitted a proposal for a voluntary arrangement to a nominee under section 256A Insolvency Act 1986, has a petition presented for an Administration Order under Part III of the Insolvent Partnerships Order 1994 ("the Order"), has a petition presented for winding up as an unregistered company under Parts IV or V of the Order, has an interim receiver of its property appointed under section 286 of the Insolvency Act 1986, is unable to pay its debts within the meaning of section 267 and 268 Insolvency Act 1986;
- 16.1.8 the Subcontractor (being a company), is unable to pay its debts within the meaning of section 123 Insolvency Act 1986, makes a proposal for a voluntary arrangement or convenes a meeting of its creditors to consider such a proposal, becomes subject to any voluntary arrangement, has a receiver, manager, or administrative receiver appointed over any of its assets, undertaking or income, passes a resolution for its winding-up (save for the sole purpose of a solvent liquidation to effect a reconstruction or amalgamation), is subject to a petition presented to any court for its winding-up, has a provisional liquidator appointed, has a proposal made for a compromise or arrangement under Part 26 Companies Act 2006 (save for the sole purpose of a solvent reconstruction or amalgamation), has an administrator appointed in respect of it or is the subject of an application for administration filed at any court or a notice of appointment of an administrator filed at any court or a notice of intention to appoint an administrator filed at any court by any person or is the subject of a notice to strike off the register at Companies House;
- 16.1.9 the Subcontractor ceases, or appears in the reasonable opinion of the Main Provider likely to or is threatening to cease to trade within 30 days;

- 16.1.10 in the reasonable opinion of the Main Provider, the Subcontractor acts in a manner which is in breach of **clause 12.3.1**;
- 16.1.11 the Subcontractor is inspected by Ofsted and fails to achieve at least an Ofsted grade 2 rating;
- 16.1.12 the Department or any Regulatory Body requires termination of this Agreement;
- 16.1.13 the Department terminates or has the right to terminate its agreement with the Main Provider;
- 16.1.14 Funding Rules incorporated into this Agreement give the Main Provider the right to terminate this Agreement;
- 16.1.15 the Subcontractor has any distraint, execution or other process levied or enforced on any of its property;
- 16.1.16 where, for any reason, the Department or an Employer declines to fund all or any of the Enrolled Funded Learners;
- 16.1.17 key delivery staff, including but without limitation the Trainers, cease to be employed or otherwise engaged by the Subcontractor;
- 16.1.18 the Subcontractor is not listed on the APAR (where applicable) but is required to be; or
- 16.1.19 the Subcontractor ceases to have a valid UKPRN.

Such termination may take effect either immediately or at the end of the Academic Year as the Main Provider shall in its sole and exclusive discretion determine. In the latter case this Agreement shall remain in full force and effect until the end of the said Academic Year when it shall automatically terminate.

- 16.2 The Main Provider may in its absolute discretion terminate this Agreement by giving the Subcontractor not less than one Month prior written notice.
- 16.3 The Subcontractor may terminate this Agreement by written notice to the Main Provider if:
 - 16.3.1 there is a repudiatory breach by the Main Provider of the terms of this Agreement which breach is not capable of remedy; or
 - 16.3.2 there is a material or persistent breach by the Main Provider of the terms of this Agreement which breach is capable of remedy but which is not remedied to the reasonable satisfaction of the Subcontractor within one Month after the Subcontractor has given written notice of the breach to the Main Provider requiring it to be remedied (provided that the notice terminating this Agreement is given by the Subcontractor within one Month after the expiry of the period during which the breach should have been remedied).

Provided that (except in the case of **clause 16.3.1**) the Subcontractor shall (upon notice to the Main Provider) be obliged to continue to provide the Programme(s) notwithstanding that it has the right to terminate this Agreement in accordance with any provision set out herein (and all of the terms and conditions of this Agreement shall remain in force) until the end of the Academic Year in which the event entitling the Subcontractor to terminate this Agreement occurred.

- 16.4 Any termination of this Agreement will be without prejudice to any right of either party arising out of or in relation to this Agreement.
- 16.5 Any rights of termination set out above are in addition to any other rights for termination which may be set out elsewhere in this Agreement.

17. **CONSEQUENCES OF TERMINATION**

- 17.1 The termination of this Agreement under **clause 16** is without prejudice to the rights, duties and liabilities of either party accrued prior to termination.
- 17.2 The clauses in this Agreement which expressly or impliedly have effect after termination will continue to be enforceable notwithstanding termination.
- 17.3 On termination or expiry of this Agreement howsoever arising:
- 17.3.1 outstanding monies due from the Subcontractor to the Main Provider shall become immediately payable by the Subcontractor;
 - 17.3.2 the Subcontractor shall cease to promote, market or advertise the Programme, and shall cease to make use of any of the Main Provider Background Intellectual Property and/or Know-How;
 - 17.3.3 each party shall honour any outstanding services due to the other at the date of termination;
 - 17.3.4 all licences granted hereunder shall terminate;
 - 17.3.5 all Programme Materials which are confidential shall be returned by the Subcontractor to the Main Provider together with any other materials which were supplied by the Main Provider to the Subcontractor which are requested by the Main Provider to be returned including but not limited to any documentation which may be required by the Main Provider for auditing or inspection purposes;
 - 17.3.6 at the option of the Main Provider, the Subcontractor shall securely delete or return to the Main Provider all Agreement Data promptly after the end of the provision of Services relating to Processing and securely delete any remaining copies and promptly certify (via a director) when this exercise has completed; and
 - 17.3.7 subject as otherwise provided herein and to any rights or obligations which may have accrued prior to termination, neither party shall have any further obligation to the other under this Agreement.
- 17.4 Upon termination for any reason or expiry, the Main Provider and/or Subcontractor (as applicable) shall permit those Learners who are registered on the Programme at the date of termination, to continue upon the Programme until the due completion date for such Programme and all normal Achievement Evidence shall be provided in respect of such Learners to ensure continuity of learning as required by the Funding Rules.
- 17.5 Upon termination or expiry of this Agreement, the Main Provider and the Subcontractor shall continue to work together in good faith to conclude any outstanding administrative, audit or other Learner requirements that may exist prior to the commencement of the following Academic Year to ensure Learners are able to continue with or start new Programmes with the Main Provider, the Subcontractor or any other third party. For the avoidance of doubt any actions required to conclude any outstanding administrative, audit or other Learner requirements shall be considered a consequence of termination of this Agreement and shall not constitute a new agreement between the Main Provider and the Subcontractor.
- ## 18. **FORCE MAJEURE**
- 18.1 If the Main Provider or the Subcontractor is unable to perform any or all of their respective obligations under the terms of this Agreement (including the payment of the Price) due to a Force Majeure Event then that Party will be relieved of its obligations to continue to perform under this Agreement for as long as their fulfilment is prevented or delayed as a consequence of any such event.

- 18.2 Any Party that is subject to a Force Majeure Event shall not be in breach of this Agreement provided that:
- 18.2.1 it promptly notifies the other Party in writing of the nature and extent of the Force Majeure Event causing its failure or delay in performance;
 - 18.2.2 it could not have avoided the effect of the Force Majeure Event by taking precautions which, having regard to all the matters known to it before the Force Majeure Event, it ought reasonably to have taken, but did not; and
 - 18.2.3 it has used all reasonable endeavours to mitigate the effect of the Force Majeure Event, to carry out its obligations under this agreement in any way that is reasonably practicable and to resume the performance of its obligations as soon as reasonably possible.
- 18.3 If the Force Majeure Event prevails for a continuous period of more than three months, any Party may terminate this Agreement by giving 14 days' written notice to the other Party. On the expiry of this notice period, this Agreement will terminate. Such termination shall be without prejudice to the rights of the parties in respect of any breach of this Agreement occurring prior to such termination.
- 18.4 In the event of termination in accordance with this **clause 18**, the Main Provider shall only be required to pay such part of the Price as relates to those Programmes which were provided up to and/or during the Force Majeure Event, if any to the extent payable in accordance with the Funding Rules. Payment of any monies to the Subcontractor is subject to the Main Provider receiving payment in full.
19. **BUSINESS CONTINUITY**
- 19.1 The Subcontractor will, at all times, maintain and comply with the Business Continuity Plan, and ensure that it is, at all times, able to implement the Business Continuity Plan immediately upon an event occurring which the Business Continuity Plan is expressed to cover, or reasonably can be expected to cover.
- 19.2 The Subcontractor will update the Business Continuity Plan if at any time an amendment to it is reasonably required in order to reflect any change to this Agreement, the Programmes or any other matters that have occurred since agreement of the last Business Continuity Plan. Not more than 15 days after each such update the Subcontractor will submit the revised Business Continuity Plan to the Main Provider for approval. The Subcontractor will amend the revised Business Continuity Plan so as to incorporate all of the Main Provider's comments. The amended Business Continuity Plan will be promptly re submitted to the Main Provider for approval and the process contained in this **clause 19** will be repeated until the Main Provider approves the draft Business Continuity Plan. The Subcontractor will retain business continuity readiness in accordance with the last approved version of the Business Continuity Plan (insofar as this still applies).
- 19.3 The Subcontractor will comprehensively test the Business Continuity Plan once in every rolling 12 month period during the term of the Agreement and will within 10 Working Days of any test provide the Main Provider with a written report detailing the results of that test and any actions it proposes to take to address those results. The Main Provider will be given not less than 10 days' prior written notice of each test and may attend and observe such tests and may notify the Subcontractor in writing of any actions or remedial measures that it requires the Subcontractor to implement as a result of such tests and the Subcontractor will be bound to promptly implement the same.
- 19.4 The Subcontractor will implement the Business Continuity Plan if the Programmes are impaired or unavailable (or appear likely to be impaired or unavailable) as a result of any occurrence envisaged in the Business Continuity Plan. The Subcontractor will notify the Main Provider in writing each time the Business Continuity Plan is, or should be, implemented.

20. **TAXATION AND OTHER PAYMENTS**

- 20.1 All Payments to be made by the Main Provider to the Subcontractor under the terms of this Agreement are inclusive of any value added tax (or like tax of a similar nature).
- 20.2 The Subcontractor is responsible for making all relevant tax payments in relation to the Learners and will indemnify and keep indemnified the Main Provider in respect of any claims or demands that may be made against the Main Provider in relation to such Payments.
- 20.3 The Subcontractor is responsible for the Premises and for all accommodation equipment and materials necessary for the provision of the Programmes, and for all training, administrative, employment and other costs (without limitation) which arise from the provision of the Programmes.

21. **PERSONNEL**

- 21.1 The Subcontractor acknowledges that, for the avoidance of doubt, all Trainers are the responsibility of the Subcontractor and are employed by it and that it is responsible for all Liabilities in respect of each Trainer, including in relation to any acts or omissions of any Trainer, except in so far as any Liabilities (or any part thereof) arise from any act of unlawful discrimination or other unlawful act or omission of the Main Provider in relation to the arrangements under this Agreement. The Subcontractor will indemnify and keep indemnified the Main Provider against any Liabilities the Main Provider may incur in respect of any failure by the Subcontractor to comply with its obligations under this **clause 21**.
- 21.2 On the expiry or earlier termination of this Agreement, the parties acknowledge and agree that it is their understanding that TUPE shall not apply in respect of the provision thereafter of any service equivalent to the Programmes on the basis that the Trainers will not constitute an organised grouping of employees who have as their principal purpose the carrying out of the Programmes.
- 21.3 Notwithstanding **clause 21.2** in the event that any Trainer alleges that upon the termination of this Agreement their employment or any Liabilities have (or should have) transferred to the Main Provider or any Replacement Subcontractor:
- 21.3.1 within 20 Working Days of becoming aware of that effect or allegation, the Main Provider or Replacement Subcontractor may terminate such person's contract of employment; and
- 21.3.2 the Subcontractor will keep the Main Provider or any Replacement Subcontractor indemnified in full against all Liabilities arising (directly or indirectly) in connection with:
- 21.3.2.1 the termination of employment of any Trainer in accordance with **clause 21.3.1**;
- 21.3.2.2 any sums payable to or in relation to such person in respect of such person's employment whether before or after the termination of this Agreement, save only to the extent that the Main Provider has positively chosen to employ such a person, in which case this indemnity shall not apply from the date of such person's employment by the Main Provider; and
- 21.3.2.3 any claims for failure to inform and consult under Regulation 13 of TUPE.

22. **DATA PROTECTION**

- 22.1 The Subcontractor will process the Agreement Data during the Term of this Agreement as Processor solely for the purposes and to the extent described in **Schedule 10**.

- 22.2 In performing the Services and its other obligations under this Agreement the Subcontractor will:
- 22.2.1 comply with the Data Protection Laws;
 - 22.2.2 not cause the Main Provider to breach any obligation under the Data Protection Laws; and
 - 22.2.3 notify the Main Provider without undue delay if it identifies any areas of actual or potential non-compliance with the Data Protection Laws or this **clause 22**, without prejudice to its obligations to comply with, or to any rights or remedies which the Main Provider may have for breach of, the Data Protection Laws or this **clause 22**.
- 22.3 The Subcontractor will not engage or use any third party for the Processing of Agreement Data or permit any third party to Process Agreement Data without the prior written consent of the Main Provider.
- 22.4 If the Subcontractor appoints a Sub-Processor pursuant to **clause 22.1**, the Subcontractor will ensure prior to any Processing taking place, that the Subcontractor has provided the Main Provider with such information regarding the Sub-Processor that the Main Provider may reasonably require and that there is in place a written contract between the Subcontractor and the Sub-Processor that specifies the Sub-Processor's Processing activities and imposes on the Sub-Processor the same terms as those imposed on the Subcontractor in this **clause 22**. The Supplier will procure that Sub-Processors will perform all obligations set out in this **clause 22**.
- 22.5 The Subcontractor will remain responsible and liable to the Main Provider for all acts and omissions of Sub-Processors as if they were its own.
- 22.6 The Subcontractor will:
- 22.6.1 process the Agreement Data only on documented instructions (including this Agreement) from the Main Provider (unless the Subcontractor or the relevant Sub-Processor is required to process Agreement Data to comply with domestic law to which the Subcontractor is subject, in which case the Subcontractor will notify the Main Provider of such legal requirement prior to such Processing unless such law prohibits notice to the Main Provider on public interest grounds);
 - 22.6.2 immediately notify the Main Provider if, in its reasonable opinion, any instruction received from the Main Provider infringes any Data Protection Laws;
 - 22.6.3 ensure that any individuals authorised to process Agreement Personal Data access such Agreement Data strictly on a need to know basis as necessary to perform their roles in the performance of this Agreement, and have committed themselves to confidentiality or are subject to confidentiality obligations or are under an appropriate statutory obligation of confidentiality;
 - 22.6.4 taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of Processing, implement, and assist the Main Provider to implement, technical and organisational measures to ensure a level of security appropriate to the risk presented by Processing the Agreement Data, in particular from a Data Security Incident;
 - 22.6.5 not, without the Main Provider's prior written consent, make or permit any announcement in respect of a Personal Data Security Incident or respond to any request for exercise of a Data Subject's rights under the Data Protection Laws or communication or complaint from a Data Subject or Data Protection Supervisory Authority in connection with Agreement Data;
 - 22.6.6 notify the Main Provider promptly and without undue delay after becoming aware of a reasonably suspected, "near miss" or actual Data Security Incident,

including the nature of the Data Security Incident, the categories and approximate number of Data Subjects and Agreement Data records concerned, the likely consequences of the Data Security Incident and any measure proposed to be taken to address the Personal Data Security Incident and to mitigate its possible adverse effects. Where, and in so far as, it is not possible to provide all the relevant information at the same time, the information may be provided in phases without undue delay, but the Subcontractor may not delay notification under this **clause 22.6.6** on the basis that an investigation is incomplete or ongoing;

- 22.6.7 provide reasonable assistance to the Main Provider in:
 - 22.6.7.1 documenting any Personal Data Security Incidents and reporting any Personal Data Security Incidents to any Data Protection Supervisory Authority and/or Data Subjects;
 - 22.6.7.2 taking measures to address Personal Data Security Incidents, including, where appropriate, measures to mitigate their possible adverse effects;
 - 22.6.7.3 documenting compliance of the Processing of Agreement Personal Data with the Data Protection Laws, including providing a systematic description of the envisaged Processing operations; and
 - 22.6.7.4 conducting data protection impact assessments of any Processing operations and consulting with Data Protection Supervisory Authorities, Data Subjects and their representatives accordingly;
 - 22.6.8 at the option of the Main Provider, securely delete or return to the Main Provider or transfer to a Replacement Subcontractor (in the format required by the Main Provider) all Agreement Data promptly after the end of the provision of Services relating to Processing or at any time upon request, and securely delete any remaining copies and promptly certify (via a director) when this exercise has been completed;
 - 22.6.9 make available to the Main Provider all information necessary to demonstrate compliance with the obligations set out in this **clause 22**;
 - 22.6.10 promptly (and in any event within 72 hours) notify the Main Provider of any request that it receives for exercise of a Data Subject's rights under the Data Protection Laws or communication, request for information or complaint that it receives from a Data Subject or Data Protection Supervisory Authority or other third party in connection with Agreement Personal Data;
 - 22.6.11 provide reasonable assistance to the Main Provider in responding to requests for exercising Data Subjects' rights under the Data Protection Laws or communications, requests for information or complaints from Data Subjects or Data Protection Supervisory Authorities or other third parties in connection with Agreement Data, including by appropriate technical and organisational measures, insofar as this is possible; and
 - 22.6.12 allow for and contribute to audits, including inspections, conducted by the Main Provider or another auditor mandated by the Main Provider.
- 22.7 Subject to **clause 22.8**, the Subcontractor will not make a Restricted Transfer without the Main Provider's prior written consent or specific instruction. If the Main Provider gives its prior written consent to a Restricted Transfer, before making that Restricted Transfer the Subcontractor will demonstrate or implement, to the Main Provider's satisfaction, appropriate safeguards for that Restricted Transfer in accordance with Data Protection Laws and will ensure that enforceable rights and effective legal remedies for Data Subjects are available. Such appropriate safeguards may include:

- 22.7.1 an appropriate safeguard as directed by the Main Provider, as determined by the Main Provider in accordance with Data Protection Laws;
 - 22.7.2 that the country or territory to which the Restricted Transfer is to be made ensures an adequate level of protection for Processing of Personal Data pursuant to adequacy regulations made in accordance with Data Protection Laws; or
 - 22.7.3 the relevant Processor enters into an agreement with the Main Provider in the form of the standard contractual clauses for the transfer of personal data to Processors established in third countries approved in accordance with Data Protection Laws, completed with such information and incorporating such technical, organisational or other safeguards as the Main Provider may reasonably require.
- 22.8 If the appropriate safeguards demonstrated or implemented in accordance with this **clause 22.7** are deemed at any time not to provide an adequate level of protection in relation to Agreement Data, the Subcontractor will implement such alternative measures and execute all such documents as may be required by the Main Provider to ensure that the relevant Restricted Transfer and all resulting Processing are compliant with Data Protection Laws.
- 22.9 The Subcontractor will indemnify the Main Provider against any Liabilities, in each case arising out of or in connection with any breach by the Subcontractor or any Sub-Processor of any of its obligations under this **clause 22** (including any failure or delay in performing, or negligent performance or non-performance of, any of those obligations).
- 22.10 Without prejudice to the Main Provider's other rights and remedies under this Agreement, any breach of this **clause 22** by the Subcontractor or any Sub-Processor will be a material breach of this Agreement which is not capable of being remedied, irrespective of whether any financial loss or reputational damage arises, and irrespective of the level of any financial loss or deprivation of benefit arising, as a consequence of such breach.
- 22.11 Where, under this **clause 22**, the Subcontractor is required to notify the Main Provider of any matter or thing, such notification will be marked for the attention of the Main Provider's Data Protection Officer and sent by e-mail to the following e-mail address: gdpr@liv-coll.ac.uk
- 23. FREEDOM OF INFORMATION**
- 23.1 For the purposes of this **clause 23**:
- 23.1.1 "FOI Legislation" means the Freedom of Information Act 2000, all regulations made under it and the Environmental Information Regulations 2004 and any amendment or re-enactment of any of them; and any guidance issued by the Information Commissioner, the Department for Constitutional Affairs, or the Department for Environment Food and Rural Affairs (including in each case its successors or assigns) in relation to such legislation;
 - 23.1.2 "Information" means information recorded in any form held by the Main Provider or by the Subcontractor on behalf of the Main Provider; and
 - 23.1.3 "Information Request" means a valid request for any Information under the FOI Legislation.
- 23.2 The Subcontractor acknowledges that the Main Provider:
- 23.2.1 is subject to the FOI Legislation and agrees to assist and co-operate with the Main Provider to enable the Main Provider to comply with its obligations under the FOI Legislation; and
 - 23.2.2 may be obliged under the FOI Legislation to disclose Information (including information provided to the Main Provider by the Subcontractor even where

considered confidential or commercial prejudicial by the Subcontractor) without consulting or obtaining consent from the Subcontractor.

23.3 Without prejudice to the generality of **clause 23.2**, the Subcontractor shall and shall procure that its agents and or partners (if any) shall:

23.3.1 transfer to a person as may be notified by the Main Provider to the Subcontractor each Information Request relevant to any Learner, the Agreement, the Programme(s) to the Learners or any Programme that it or they (as the case may be) receive as soon as practicable and in any event within 2 Working Days of receiving such Information Request; and

23.3.2 in relation to Information held by the Subcontractor on behalf of the Main Provider, provide the Main Provider with details about and/or copies of all such Information that the Main Provider requests and such details and/or copies shall be provided within 5 Working Days of a request from the Main Provider (or such other period as the Main Provider may reasonably specify), and in such forms as the Main Provider may reasonably specify.

23.4 The Main Provider shall be solely responsible for determining whether Information relating to this Agreement is exempt information under the FOI Legislation and for determining what Information will be disclosed in response to an Information Request in accordance with the FOI Legislation. The Subcontractor shall not itself respond to any person making an Information Request, save to acknowledge receipt, unless expressly authorised to do so in advance by the Main Provider.

24. **CONFIDENTIALITY**

24.1 Neither party will (save as required by this Agreement) without the written consent of the other disclose any of the contents of this Agreement or of the commercial arrangements or any Confidential Information between them and each party shall keep the same confidential save:

24.1.1 (in the case of both parties) for any necessary disclosure to professional advisers of that party;

24.1.2 (in the case of the Main Provider) to the Department and any other organisation or person having jurisdiction over the Main Provider;

24.1.3 where required to do so by law, court order or any other governmental or regulatory authority; or

24.1.4 where it has received the written consent of the other party to make such disclosure (subject to any terms stipulated therein).

24.2 Both parties will use their reasonable commercial endeavours to ensure that this **clause 24** is complied with by their employees, agents and authorised contractors.

24.3 The Subcontractor acknowledges that:

24.3.1 the Know-How is confidential; and

24.3.2 the contents of the Quality Principles and Policies are confidential.

24.4 During the term of this Agreement and for as long afterwards as the Know-How and any other Confidential Information imparted to the Subcontractor by the Main Provider remains outside the public domain (otherwise than by reason of any breach of this Agreement), the Subcontractor will keep such information strictly private and confidential and will not disclose it to any other person, firm or company without the Main Provider's prior written consent.

24.5 The Subcontractor will immediately notify the Main Provider if, during the term of this Agreement or any renewal of it, the Subcontractor becomes aware of any breach of any unauthorised disclosure of:

24.5.1 any Know-How; or

24.5.2 the contents of the Quality Principles and Policies.

25. **INTELLECTUAL PROPERTY RIGHTS**

25.1 All Main Provider Background IP is and shall remain the exclusive property of the Main Provider (or where applicable, the third party from whom the Main Provider's rights to use the Main Provider Background IP has derived).

25.2 Subject to **clause 25.10**, the Main Provider grants to the Subcontractor a non-exclusive, non-transferable, payment-free, worldwide licence to use the Main Provider Background IP for the delivery of the Programmes in accordance with this Agreement but without the right to sub-license or copy or adapt such Main Provider Background IP, such licence to terminate automatically on the termination or expiry of this Agreement.

25.3 All Subcontractor Background IP is and shall remain the exclusive property of the Subcontractor (or where applicable, the third party from whom the Subcontractor's right to use the Subcontractor Background IP has derived).

25.4 The Subcontractor grants the Main Provider an irrevocable, perpetual and payment-free licence, with the right to sub-license, to use all Subcontractor Background IP used in the delivery of the Programmes (such licence to survive termination of this Agreement).

25.5 Where the Subcontractor is licensed to use any part of the Subcontractor Background IP by any third party the Subcontractor warrants that it has the ability to sub-license such IP to the Main Provider in accordance with **clause 25.4**.

25.6 Under this Agreement, with regard to Programme IP, the Subcontractor assigns (by way of present assignment of future IP) and shall procure the assignment of any Programme IP arising during the provision of the Programmes to the Main Provider, with full title guarantee and free from third party rights. The Main Provider grants to the Subcontractor a non-exclusive, non-transferable, payment-free licence to use any Programme IP to such extent as is necessary to enable the Subcontractor to provide the Programmes, such licence to terminate automatically on termination or expiry of this Agreement. To the extent that any such Programme IP does not vest in the Main Provider, the Subcontractor shall hold it in trust for the Main Provider.

25.7 Each party shall, at its own cost, promptly do or procure the doing of all such acts and things and execute or procure the execution of all such documents that may from time to time be required to give effect to this **clause 25**.

25.8 Except as expressly provided in this Agreement, no rights or obligations in respect of a party's Background IP are granted to the other party or to be implied from this Agreement.

25.9 Each party shall immediately give written notice to the other party of any actual, threatened or suspected infringement of any party's Background IP or Foreground IP of which it becomes aware.

25.10 This Agreement does not confer any licence or other right on the Subcontractor to use any trade mark or branding used by the Main Provider including the name of the Main Provider in any material without the prior express written permission of the Main Provider.

26. **IMPROVEMENTS**

26.1 The Subcontractor shall adhere to the principle of continuous improvement and enhancement of the Programme(s) (or the way in which they are provided) and must inform the Main Provider of any suggestions for improvements or enhancements to the

Programme(s) (or the way in which it is provided), the curriculum and the Programme Materials. The Main Provider will consider such suggestions and it may, if it so wishes, make use of the suggestions for its own benefit, the benefit of its Learners or the benefit of other Subcontractors.

- 26.2 The Main Provider will use its reasonable endeavours to improve and develop the Programme curriculum and the Programme Materials unless such curriculum or such Programme Materials were not originally developed by or in conjunction with the Main Provider. The Subcontractor agrees to implement any changes to the Programme(s), 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 Main Provider specifying the changes to be made. For the avoidance of doubt, the Main Provider shall own all Intellectual Property in Programme Materials and any alterations thereto.

27. **GENERAL PROVISIONS**

- 27.1 This Agreement does not constitute a partnership, contract of employment or joint venture arrangement between the Main Provider and the Subcontractor and the Subcontractor must not act or purport to act as an agent of or seek to bind the Main Provider.
- 27.2 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.
- 27.3 This Agreement contains all the terms which the parties have agreed in relation to the transactions provided for by this Agreement and neither of the parties have been induced to enter into this Agreement by a statement or promise which it does not contain. This shall not exclude any liability which a party would otherwise have to the other party in respect of any statement made fraudulently by that party prior to the date of this Agreement.
- 27.4 If any provision of this Agreement is invalid for any reason, its invalidity will not affect the remainder of this Agreement which will remain valid and enforceable in all respects.
- 27.5 This Agreement is personal to the Subcontractor and it may not assign, charge or (except as otherwise provided by this Agreement) license any of its rights hereunder or otherwise delegate any of its obligations hereunder in whole or in part, except with the prior written consent of the Main Provider.
- 27.6 In the event that the Subcontractor assigns or otherwise disposes of rights or obligations under this Agreement, it shall remain responsible and fully liable for all acts or omissions of any assignees as if it were its own act or omission.
- 27.7 The Main Provider may assign, sub-contract, mortgage, charge or (except as otherwise provided by this Agreement) license any of its rights hereunder, or otherwise delegate any of its obligations hereunder at any time.
- 27.8 The Subcontractor may only sub-contract its rights hereunder with the prior written consent of the Main Provider and the consent of the Department (which shall be requested by the Subcontractor through the Main Provider in writing), in accordance with the Funding Rules.
- 27.9 Subject to **clause 30**, this Agreement is enforceable by the original parties to it and their successors in title and permitted assignees. Any rights of any person (other than those granted to any Replacement Subcontractors and to the Department) to enforce the terms of this Agreement pursuant to the Contracts (Rights of Third Parties) Act 1999 are hereby excluded.
- 27.10 Each party shall:-

- 27.10.1 comply with all Applicable Laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (the "**Relevant Requirements**");
 - 27.10.2 not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
 - 27.10.3 comply with the Main Provider's ethics, anti-bribery and anti-corruption policies as provided to the Subcontractor and any relevant industry code on anti-bribery, in each case as the Main Provider or the relevant industry body may update them from time to time ("**Relevant Policies**");
 - 27.10.4 have and shall maintain in place throughout the term of this Agreement its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements, the Relevant Policies and **clause 27.10.2** and will enforce them where appropriate;
 - 27.10.5 promptly report to the other party any request or demand for any undue financial or other advantage of any kind received by it in connection with the performance of this Agreement;
 - 27.10.6 immediately notify the other party (in writing) if a foreign public official becomes an officer or employee or acquires a direct or indirect interest (and each party warrants that it has no foreign public officials as officers, employees or direct or indirect owners at the date of this Agreement); and
 - 27.10.7 upon the request of the other party, certify to the other party in writing signed by an officer of that party, compliance with this **clause 27.10** by it and all persons associated with it. The certifying party shall provide such supporting evidence of compliance as the other party may reasonably request.
- 27.11 For the purpose of **clause 27.10**, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively.
- 27.12 Each party will bear its own costs and expenses incurred in connection with or arising out of the negotiation, preparation and execution of this Agreement.
- 28. GOVERNING LAW AND JURISDICTION**
- 28.1 This Agreement and any non-contractual obligations arising out of or in connection with it will be governed by and shall be construed in accordance with English law.
- 28.2 Subject to **clause 28.3** the Parties to this Agreement submit to the exclusive jurisdiction of the English Courts.
- 28.3 If any dispute arises out of this Agreement, the parties may attempt to settle it by mediation in accordance with the model mediation procedures ("**the Procedures**") published by the Centre for Effective Dispute Resolution, CEDR Solve ("**the Service Subcontractor**"). To initiate mediation, a party must give notice in writing ("**the mediation notice**") to the other party to the dispute in accordance with **clause 29**.
- 28.4 The parties will seek to agree the appointment of a mediator but, failing agreement within 28 days of the service of the mediation notice, either party may ask the President of the Law Society of England & Wales (or its successor body) to nominate a mediator and to recommend a mediation procedure. The parties will accept such nomination under either this or the preceding sub-clause and also the recommended mediation procedure.

29. **NOTICES**

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

29.1.1 (in the case of the Main Provider) the Main Provider at the address shown in this Agreement and marked for the attention of Deputy Chief Executive.

29.1.2 (in the case of the Subcontractor) the Subcontractor at the address shown at the start of this Agreement and marked for the attention of Orangebox Training Solutions UK Ltd CEO.

30. **THE DEPARTMENT**

30.1 The Main Provider may vary the terms of this Agreement to the extent that it is necessary for the Main Provider and the Agreement to comply with the requirements of the Department and any Regulatory Body from time to time in force. Otherwise (save where additional rights are expressly set out elsewhere in this Agreement) the Agreement may only be varied by the written agreement of both parties.

30.2 The Subcontractor undertakes to comply with any requirements of the Department from time to time directly or indirectly affecting the obligations of the Subcontractor under this Agreement.

30.3 The Parties acknowledge that this Agreement may be amended unilaterally as dictated by the Department from time to time, including but not limited to the movement of the Subcontractor to a direct contractual relationship with the Department.

30.4 The Subcontractor shall permit the Department to enforce the terms of this contract for the purposes of compliance with the Funding Rules as if the Department were the Main Provider.

31. **DEVOLUTION**

31.1 From August 2019, some areas of England have had the Adult Skills Fund (which replaced the Adult Education Budget (AEB)) devolved to the local Combined Authority.

31.2 The definition of "Department" in this Agreement has been drafted widely enough that a Combined Authority or the Mayor of London would be deemed to be the "Department" in a devolution situation and so the clauses of this Agreement would apply to the situation following devolution. But, for the avoidance of doubt in a devolution or delegation situation:

31.2.1 The Parties will comply with any requirements, rules or contractual obligations of a relevant Combined Authority or the Mayor of London as they are updated from time to time. The Parties will not put each other in breach of any such requirements, rules or obligations.

31.2.2 Any terms required to be included in this Agreement by a Combined Authority or the Mayor of London are deemed to be included in this Agreement.

SCHEDULE 1

Calculation of Price

Part 1

1. In this Schedule the following words shall mean:

"Funding Rate" amount of money received by the Main Provider from the Department or an Employer in respect of each Learner who participates in the Programme(s) and calculated in accordance with the Funding Rules less the Programme awarding body registration fees (where applicable).

"Fees" 80% of the Funding Rate for each Programme payable by the Main Provider to the Subcontractor in the Funding Rules, following submission of satisfactory evidence and achievement of targets as detailed in **Schedule 4**.

1.1 Subject to **paragraph 1.6** below, **clause 4**, the Funding Rules and the terms of the Agreement, the Main Provider shall pay the Subcontractor the proportion of Fees due in respect of the information submitted to the Department by the Main Provider in the preceding Month within 30 days of receipt of a valid invoice.

1.2 Subject to **clause 4** the Fees shall be calculated upon the number of Learners achieved by the Subcontractor and the actual delivery of the Programme during a Month.

1.3 Learners shall be Enrolled upon such Programmes as are more particularly described within **Schedule 4**. The Subcontractor is to use its best endeavours to:

1.3.1 secure Enrolments upon such Programmes in accordance with the Learner Enrolment Profile set out in **Schedule 4** (where the profile is not met by the Subcontractor, a revised Learner Enrolment Profile may be substituted by the Main Provider and **Schedule 4** amended accordingly);

1.3.2 achieve the target number of individual Learners as defined in **Schedule 4**; and

1.3.3 not exceed the maximum number of Learners set out in **Schedule 4**. For the avoidance of doubt the overall maximum values for each Learning Programme takes precedence over delivery volumes. Where the Subcontractor considers that the combination of funding rates and volumes would result in the overall maximum value being exceeded, the Subcontractor must notify the Main Provider and the Parties will either agree a variation to the volumes, funding rates or to the maximum value for the Learning Programme to ensure the Subcontractor remains within the agreed maximum value.

1.4 For the avoidance of doubt, the Subcontractor shall only be entitled to the Fees once in respect of each Learner undertaking the Programme(s).

1.5 The Main Provider is not obliged to make Payments to the Subcontractor over and above the maximum Contract Value which is £183,606.

Maximum Contract Value ("MCV") subject to affordability and based on performance at the end of first term;

MCV 25/26

£91,803 (For Term 1)

The MCV will increase to £183,606 (increase of £91,803 MCV for Term 2 and Term 3) subject to performance review by the end of Term 1. See clause 1.9

MCV is the value of the contract to the Partner Provider and is the indicative funding that can be paid to the partner against the agreed learner aims based on ILR returns. Please note that the MCV for Term 2 and Term 3 are subject to affordability and funding will be agreed termly basis following a review of individual partner performance and the overall budget available at the review point.

1.6 In accordance with **clause 4.1** the Subcontractor shall provide the following completed paperwork to the Main Provider to confirm income generated by Learners:

- 1.6.1 The Main Provider's enrolment form completed and signed by the Subcontractor and the Learner and such other supporting documentation as may be required by the Main Provider from time to time;
- 1.6.2 Register of Attendance;
- 1.6.3 Individual Learning Record/Plan;
- 1.6.4 Initial assessment;
- 1.6.5 Completed Learning Agreement in a format approved by the Main Provider;
- 1.6.6 Health and Safety form (one per Employer); and
- 1.6.7 Learner reviews completed and sent to the Main Provider at periods specified to the Subcontractor by the Main Provider (as updated from time to time) whilst the Learner is Enrolled on a Programme.
- 1.6.8 All documentation to support curriculum visit and teaching observation process.
- 1.6.9 The City of Liverpool College will within our formal performance review processes regularly monitor and discuss partner performance data in respect of equality and diversity measures such as participation and achievement gaps with a view to delivering reduction on the prior year. We will also regularly monitor and discuss positive destinations data for all learners including job entry, progression to further learning or apprenticeships with the expectation or improvements on the prior year.

1.7 Payment of the Fees breakdown is in line with the payment to the college by the funding body.

1.8 In monitoring the Subcontractor, the Main Provider will incur costs. The management fee and reasons are referred to the subcontracting policy along with the payment of fees breakdown which can all be found in www.liv-coll.ac.uk/the-college/subcontracting/

1.9 Funding will be apportioned as follows:

Funding Profile	Term 1 50%	
MCV	£91,803	Achievement Target 98%

Subject to review of performance at the end of Term 1, further MCV will be available for the remainder of the year to be apportioned as follows.

Funding Profile	Term 2 & Term 3 50%	Achievement Target 98%
MCV	£91,803	

Any underperformance in Term 1, Term 2 and Term 3 will result in an automatic reduction to your MCV and a variation to contract will be issued for the specific amount of the underperformance.

- 1.10 In monitoring the Subcontractor, the Main Provider will incur the following costs. If the amount of the Fees varies, then the Main Provider will proportionately scale up or down the services it delivers in accordance with this paragraph and the costs will be deemed to be adjusted proportionately.

2 SCHEDULE 2

Health and Safety

1. The Subcontractor shall:
 - 1.1 Deliver health and safety training for Learners before commencement of the Programme and make each Learner aware of the Subcontractors health and safety policy;
 - 1.2 Provide Learners with suitable ongoing health and safety information, instruction and training during the course of the supervised Programmes;
 - 1.3 On or before the Commencement Date carry out all necessary risk assessments in connection with Learner's activities (e.g. manual handling, hazardous substances, noise, PPE, display screen equipment), record any significant findings and control measures and bring the same to the attention of Learners on commencement of each Programme;
 - 1.4 Provide Learners with and ensure proper use is made of any necessary personal protective equipment;
 - 1.5 Impose prohibitions for activities or areas of work which are not part of the Programme or for activities in which a Learner is not yet competent, ensuring that Learners have signed a suitable disclaimer to indicate they have been informed of and understand any such prohibitions;
 - 1.6 Promote a safe and healthy working environment welfare facilities, equipment, safe systems of work and emergency fire and first aid arrangements for all Learners; and
 - 1.7 Procure that the Employer promotes a safe and healthy working environment welfare facilities, equipment, safe systems of work and emergency fire and first aid arrangements for all Learners.

3 SCHEDULE 3

Reporting Start, Progress Reviews, Withdrawals and Completions

1. Within four weeks following start, Achievement or withdrawal on a Programme the Subcontractor will send to the Main Provider the following evidence in relation to each Learner who has Enrolled on the Programme in accordance with **clause 6** (save where the Funding Rules require such evidence to be provided to the Department by an earlier date, in which case the Subcontractor will send such evidence to the Main Provider at least four weeks prior to that date). For further guidance, please refer to the Administration and Procedural Manual and associated appendices.

It is the responsibility of each subcontractor to check that all sections of the enrolment form are compliant with the funding rules.

Start

- Residency declaration - copies of passports/visas as required by the Main Provider
- Completed Residency Confirmation form as required by the Main Provider
- Evidence of valid and eligible Learner residency status and the right to work in England.
- 'Proof of Benefit Letter' for those on Active benefits to evidence JSA or ESA.
- Initial assessment outcome.
- Initial assessment documentation and outcome for vocational knowledge/skills gaps.
- Eligibility check completed.
- Enrolment Form.
- Copy of induction, signed confirmation from Learner – induction to include equality, health and safety, safe Learner training.
- Evidence of pre-entry IAG.
- Signed and completed ILR.
- Signed and completed Learning Agreement.
- Signed Health and Safety Audit.
- Attendance record evidencing that the Learner has attended structured learning / assessment. This date must match that recorded on ILR.
- Schemes of work.
- Timetables
- Any other evidence required by the Funding Rules

Apprenticeships (Only)

- Evidence of employer contributions (cash and in kind).
- Signed employer Safeguarding leaflets.
- Apprenticeship Agreement (unless excepted under the Funding Rules).
- Contract of Employment for each Apprentice (unless excepted under the Funding Rules).
- Training plan.

Any additional evidence requirements detailed in the Administration and Procedural Manual.

Achievements/Completions

- 98% of all starts due for completion in July 2026 to complete their full standard requirements by July 2026.
- All completions to be evidenced by certificates (within 3 months of completion).
- All completions must undergo exit interviews.
- All completions must be supported with Attendance Records evidencing all learning activity in line with standard or course Guided Learning Hours.
- Completed ILR which accurately reflects final day of learning.
- Completed Learning Agreements.
- Completed Learner Reviews.
- Completed Information Advice and Guidance.

- ACE certificate.
- Learner and/or Employer (where applicable) Feedback Forms.
- Destination Evidence.

Any additional evidence requirements detailed in the Administration and Procedural Manual.

Reporting Progress Reviews and Withdrawals

Quarterly On Programme Payments

- Evidence of registration with relevant awarding bodies for all learning aims or standard components within six weeks of start.
- Updated tracker sheet evidencing Learner progress.
- Monthly up to date Attendance record demonstrating Learners are still actively engaged.
- Completed Learner progress reviews.
- Copies of any IV and/or EV reports (where applicable).
- Updated delivery timetables.

Reporting Progress Reviews and Withdrawals

The Subcontractor agrees to:

- For programmes over 4 weeks, reviews will be required and the frequency in which reviews are conducted will be documented in the partner's delivery breakdown document.
- Provide detailed and relevant information, advice and guidance to Learners.
- Deliver the agreed training programme.
- Accurately complete Main Provider paperwork.
- Provide timely progress and completion information.
- Make files available for audit purposes as and when requested.
- Provide information to complete interim and final evaluation reports including the Main Provider Self-Assessment Report.
- Allow the Main Provider access to employers (where applicable) and Learners associated with this programme.

Apprenticeships

All original documentation to be submitted to the Main Provider marked for the attention of Employer Engagement Team Administrator no later than 4 weeks following the last date of the relevant activity.

Non-Apprenticeships

All original documentation to be submitted to the relevant Main Provider staff at the Main Provider's offices no later than 4 weeks following the last date of the relevant activity.

2. Reporting Withdrawals and Breaks in Learning

The Subcontractor will report within one Month to the Main Provider when a Learner withdraws from a Programme or takes a break in learning of four weeks by submitting the Learner's name, programme, reason for leaving and last date of attending a training activity, accompanied by a copy of the Learners' Register of Attendance together with the other documentation outlined in the withdrawal section.

4 SCHEDULE 4

Learner Numbers and Performance Targets

Programme	Number of Learners
	Learners

Course Codes 25/26	Learning Aim Tittle	Learning Reference	Aim
PAR153-C/1	Certificate in Lean Organisation Management Techniques	60125305	

The Main Provider shall notify the Subcontractor at the start of the contract a monthly profile in writing (which shall for the purposes of this provision include email) of the maximum number of Learners which may be Enrolled by the Subcontractor each Month in respect of each Programme.

1. Key Performance Indicators

- Minimum performance level: 98% Achievement.
- Minimum performance level: 100% Learner Starts.
- Minimum performance level: 50% Job Entry
- Minimum performance level: 90% Attendance.

* Of those entering employment 68% are expected to have sustained employment for a 6month period (October to March in the year following study or have submitted a self-assessment record.

2. Surveys

Minimum response rate of 70% Learner Satisfaction surveys.

A minimum score of 90% Learner satisfaction rate from returns received to be satisfactory or better

Minimum response rate of 60% from Employer satisfaction surveys.

Minimum score of 90% overall Employer satisfaction from return to be satisfactory or better.

3. Observation of Teaching and Learning

Teaching observations will be unannounced and will be carried out twice a year. If any of the observations are ineffective, a further observation will be conducted; in the event that these observations continue to be rated as ineffective, an action plan will be issued by the Quality Team to work with the partner closely to improve their results. It is the Partner's responsibility to make sure timetables and course schedules are shared electronically with COLC and kept up to date with any changes, and to operate within the College Calendar (www.liv-coll.ac.uk).

4. Equality & Diversity

Equality and Diversity Impact Measures are a key part of measuring how Providers are individually and collectively helping to narrow the gaps for under-representative learners through skills provision.

Underrepresented groups and disadvantage learner's imbalances in learner cohort performance will be monitored by you as part of Equality and Diversity Impact Measures detailed within Self-

Assessment Reports. You are required to record and monitor core impact Equality and Diversity Impact Measures including participation and achievement of:

- Learners aged 50 and over with low skills.
- Black and minority ethnic learners
- Learners with learning difficulties and/or disabilities
- Underrepresented learners by gender specific to your provision and
- Former Armed Forces staff (all ages not just those in receipt of a pension)

Achievement gaps for Learners should not exceed a 5% tolerance against any grouping.

This will be based on the performance of the Subcontractor and subject to Main Provider performance and any changes in the Department's requirements and audit.

5 SCHEDULE 5

Premises

List of Premises:

Provider company name Number, name Street, Liverpool, Postcode. ("Partner Provider"). ("Partner Provider").

Delivery address: To be confirmed-The subcontractor needs to inform the CoLC of the delivery address at least one week to commencement of their courses throughout the academic year.

6 SCHEDULE 6

Insurance

The Subcontractor confirms that insurance is held for:

(a) Minimum cover per claim

Employers Liability	£5,000,000
Public Liability	£5,000,000
Professional Indemnity	£2,000,000

(b) Risks to be insured against ALL

7 SCHEDULE 7

Meeting Arrangements

Meeting dates: A meeting will take place termly, however, depending on partners risk rating this, meetings can be set to be done on a monthly basis and will be arranged between the Subcontractor and Main Provider Contract Managers. An agenda will be drawn up for each meeting to ensure the quality delivery of the programmes.

The Main Provider should be invited to attend all meetings between the approved centre and the awarding body. All correspondence between the approved centre and awarding body must be copied to the Main Provider.

8 SCHEDULE 8

Additional Services

Costs for any Additional Services will be agreed and a variation to contract issued as appropriate.

9 SCHEDULE 9

Direct delivery

Programme	Element(s) to be delivered directly by Main Provider

10 SCHEDULE 10

Agreement Data

Subject matter of Processing	Processing of Learner Personal Data for the purposes of the providing the Programmes.
Duration of Processing	The term of the Agreement
Nature of Processing	Teaching the Learners as detailed in the Programme(s) detailed, reporting back to the Main Provider on progress and attainment. Data will be processed for the purpose of funding monitoring and achievement.
Purpose of Processing	To provide the Programmes and any other Additional Services to the Learners.
Type of Personal Data	Learner names, contact, ethnicity, qualifications, benefit, employment, employer details, registrations, and achievements
Categories of Data Subject	Learners, employees of the [Main Provider.

SIGNED BY the duly authorised representatives of the parties on the date stated at the beginning of this Agreement.

For and on behalf of **The City of Liverpool College**

Signature: 
.....
Name: Julie Barnes
Position: Deputy Chief Executive
Date: 18 Aug 2025
.....

For and on behalf of Orangebox Training Solutions UK Ltd

Signature: 
.....
Name: Simon Corbett
Position: CEO
Date: 18 Aug 2025
.....



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Parties involved with this document

Document processed	Party + Fingerprint
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Mon, 18th Aug 2025 13:22:23 BST	Julie Barnes - The City of Liverpool College - Signer (2cdb72ee66817a6c7b8cf6187f29ae46)

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Mon, 18th Aug 2025 13:22:23 BST Julie Barnes - The City of Liverpool College signed the envelope (212.219.22.4)

Mon, 18th Aug 2025 13:22:23 BST This envelope has been signed by all parties (212.219.22.4)