

Appendix 1 – Curriculum case for procuring a Subcontracting Partner

Campus/College:	
Case prepared by:	
Date:	

1. Curriculum rationale (highlight all that apply)	Please input further details to support the curriculum rationale
To temporarily expand provision to meet a short term need	
To provide immediate provision whilst expanding direct capacity. This might include working with sub-contractors to explore and learn about new frameworks or sectors prior to investment in resources	
Providing access to, or engagement with, a new range of customers	
Established delivery model and market that is best delivered independently	
A suitable for route for expansion in a new area / market	
We do not consider that the long term demand is sufficient to establish our own infrastructure	
To provide niche delivery where the cost of developing direct delivery would be inappropriate	
To support employers with a wide geographic requirement	

Appendix 1 – Curriculum case for procuring a Subcontracting Partner

To support another provider to develop capacity/quality	
Other – please specify	

2. Further details	
Estimated contract value (N.B if contract value is over £150,000, an invitation to tender will need to be prepared)	
Proposed start date	
Proposed completion date	
Number of learners	
Where possible, please identify potential subcontracting partners	

3. Decision	
Approved by Executive	Yes/No (delete as appropriate)
Date	
Executive’s reason(s) for declining business case (if appropriate)	
Approved by Governing Body	Yes/No (delete as appropriate)
Date	
Governor’s reason(s) for declining business case (if appropriate)	

APPENDIX 2 - Subcontractor due diligence check - stage 1 (internal use only)

Name of subcontractor	
DD carried out by (name)	
Date	

Due diligence indicator	Risk rating score			Score
	Low	Medium	High	
	1	2	3	
Registered on ESFA's list of declared subcontractors. State UKPRN here:	Registered		Not registered	0
Registered on Companies House as active	Registered as active		Not registered as active	0
Does the subcontractor have an adequate credit rating?	Yes		No	0
Has the subcontractor not submitted their first statutory accounts?	No		Yes	0
Delivery experience of the subcontractor	More than 5 full years	2 to 5 full years	Less than 2 full years	0
Previous years' success rates	3% or more above benchmark	Within + or = 2% of benchmark	More than 20% below benchmark or no previous success data	0
Ofsted or SAR grading	Grade 1 or 2	Grade 3	Grade 4 or no grading	0
Delivery track record	Provision deemed to be low risk e.g. track record of successful delivery to EKC/CC	Medium risk e.g. some experience in managing this type of delivery at EKC/CC	Provision deemed to be high risk e.g. distance learning or challenging client group or no previous track record of success	0
Audit and QA measures	Compliant and no actions or recommendations	Mainly compliant by recommendations to improve	Not compliant and actions required to improve or no previous audit as new provision	0
				0

Total score	Risk rating and action
up to 10	Low risk - proceed to stage 2 of due diligence
11 to 16	Medium risk - refer to Director of EKC WorkHigher
17 or more	High risk - do not proceed to stage 2 of due diligence. Inform Director of EKC WorkHigher

APPENDIX 3 - SUBCONTRACTOR DUE DILIGENCE - STAGE 2

Please complete this questionnaire electronically and provide responses to **all** questions. Documentation referenced in **blue text**, must be submitted with the completed questionnaire and marked with the relevant reference number in column A. When completed, please return the questionnaire and supporting documentation to wendy.salmon@eastkent.ac.uk



Part 1: Organisational details			
Question	Response	Evidence reviewed (College use only)	Notes (College use only)
1 Trading name of organisation			
2 UKPRN			
3 Registered name as it appears on the UKRLP			
4 Legal name of organisation (if different from trading name)			
5 Legal status (Public Limited Company, Limited Company, Limited Liability Partnership (LLP), Statutory Corporation e.g FE College, Other - please specify)			
6 Address as it appears on UKRLP			
7 County			
8 Postcode			
9 Key contract name			
10 Key contact job title			
11 Key contact email address			
12 Key contact telephone number			
13 Website address			
14 Company registration number (if this applies)			
15 Charities or other registration number (if this applies)			
16 Date of registration (if this applies)			
17 Registered company address (if different from the above)			
18 Are you registered for VAT? If YES, please provide VAT registration number			
19 ICO registration number and expiry date (for the purposes of processing personal data)			
20 Name of bank			
21 Address of bank			
22 Sort code			
23 Account code			
24 Account name			
		0	

Part 2: Business standing, continuity, insurance, reliance, public funding, statutory compliance			
Question	Response	Evidence reviewed (College use only)	Notes (College use only)
25 Does your organisation currently hold or has it previously held a direct contract with the funding agency with a cumulative value in excess of £100,000 PA? (If previously held, provide brief details of the reasons that the contract(s) is/are no longer held)			
26 Do you have a business continuity strategy and plan for the subcontracted learners? If YES, please include a copy.			
27 Do you have Public Liability insurance cover to a minimum of £10m per claim? Please include certification.			
28 Do you have Employer's Liability insurance cover to a minimum of £10m per claim? Please include certification.			
29 Do you have Professional Indemnity insurance cover to a minimum of £5m per claim? Please include certification.			
30 Can you supply copies of your audited accounts for the most recent two years ? If YES, please include documentation.			
31 Have any persons occupying positions of financial authority in your organisation (Directors, Company Secretary etc) ever been or are currently in bankruptcy, insolvency, compulsory wind up, receivership or other relevant proceedings? If YES, please give further details.			
32 Has your organisation ever had a conviction or prosecution (or are there any cases pending) for a breach of legislation in relation to health and safety, data protection, employment, equality, safeguarding, anti bribery, tax, social security or other? If YES, please give details.			
33 Do you embed the principles of Prevent and ensure that there is no risk of inadvertant funding/support of extremist organisations? Please give details.			
34 Is your organisation/has your organisation been subject to intervention activities by the ESFA? If YES, please give details			
35 Has your organisation had sanctions against it imposed by an awarding body? If YES, please give details			
36 Has your organisation ever been removed from a contract prior to its intended close date for failure to meet minimum levels of performance or for any other reason? If YES, please give details.			
			0

Part 3: Awarding organisation's details, inspection outcome and Quality Assurance			
Question	Response	Evidence seen (College use only)	Notes (College use only)
37	Please provide evidence of centre approval from an Awarding Body for the qualifications that you are proposing to deliver.		
38	Have you had a full inspection or re-inspection by Ofsted ? Please give dates for the last inspection and overall grades for Leadership and Management and Overall Effectiveness		
39	Do you hold certification from relevant awarding organisations to delivery IAG or other support services ? If YES, please provide copy of certification		
40	Do you undertake an annual self assessment of training activities in accordance with a recognised quality framework and produce results in a written report? If YES, please provide a copy.		
41	Do yo have a procedure for the admissions and enrolment of students to include eligibility checks. If YES, please provide documentation		
42	Do you hold student results/achievement data for the past three years ? If YES, please provide copies.		
43	Do you directly employ staff? Can you provide evidence of the fact that you do not subcontract?		
44	Do you produce a continuous improvement plan based on your annual self assessment?		
45	Do you have established process to identify and support learners with additional needs ?		
46	Do you have an established process for the initial assessment of learners ?		
47	Do you have an established process for monitoring the progress of learners and for identifying and managing learners who are at risk of not achieving?		
48	What IAG do you give to the learner a) at the start b) during the course c) when they complete/leave?		
			0

Part 4 - other information to be provided by the subcontractor. *Items 66 and 67 will be requested after a contract is signed. However, please confirm here that your organisation will be able to provide this information if it is contracted.

Type	Response	Evidence seen (College use only)	Notes (College use only)
49	Organisational structure including names of Directors, Finance Accounting Officers and other relevant positions		
50	Name, address, contact telephone number and email address of two business referees, one of which must be a current College		
51	Health and Safety Policy		
52	Health and safety risk assessments, fire risk assessments, premises safety certification (fire, electricity etc)		
53	Safeguarding and Prevent Policy		
54	Quality Assurance Policy		
55	Equality and Diversity (or Equal Opportunities) Policy		
56	Environmental and Sustainability Policy		
57	Data Protection Policy		
58	Anti-Bribery Policy		
59	Student Disciplinary Policy		
60	Complaints Procedure		
61	Learning Support Policy		
62	List of all staff who are delivering training/assessment at least 20 days prior to the start of the programme confirming each is an employee fo the Partner and paid through the Partner's PAYE scheme		
63	CVs for all staff delivering training/assessment		
64	List of delivery venue addresses		
65	Proof of centre approval/direct claim status (most recent certificate/letter of approval per proposed qualification) if applicable		
66	DBS clearance details for members of the delivery team		
67	Signed disclosure safeguarding form and copies of the delivery team's certificates for Safeguarding and Prevent		
68	IV details		
69	Quality kitemarks/Matrix certificate		
70	Details of other subcontractor agreements you have in place with other Colleges/providers or written confirmation if you have entered into any		

0

Due diligence check - College use only

	Score	Notes
Part 1		0 Must be equal to or greater than 48
Part 2		0 Must be equal to or greater than 24
Part 3		0 Must be equal to or greater than 24
Part 4		0 Must be equal to or greater than 42

- 2 = Met in full
- 1 = Met in part
- 0 = Not met

Appendix 4 – Subcontracting reference request

Referee name and address:		Reference request for:	
		Insert subcontractor name and address here	
Questions		Your responses	
1. In which year did you commence contracting with the partner?			
2. Which funding streams did you contract with them for?			
3. Did the partner meet your contracted value? If not, within what % did they achieve the contract?			
4. Please state their retention, achievement and timely success rates for the following: a. Previous contract year b. Current contract year			
5. Who is your nominated contact within the organisation?			
6. Where the partner uses their own learners' paperwork, how does this meet quality and audit requirements?			
7. How frequently do you carry out quality/audit monitoring checks/visits?			
8. Have there been any action points as a result of these checks/visits and have they been completed within the agreed timescales?			
9. Are teaching and learning walk throughs (including digital) carried out and if so have there been any issues?			
10. Does the partner complete training reviews/self assessment reports?			
11. Have they hit profiled targets by month/total/year for learners' starts/completions?			
12. How do they compare to other partners you work with in terms of performance?			
13. Would you be prepared to re-contract with the partner?			
14. How would you rate their EQA reports and any actions carried out?			
15. Are you aware if this partner is working with any other funding provider?			
16. Are there any other comments you wish to make in regard to your working relationship with this partner?			
Declaration			
I confirm that all the information I have provided is to the best of my knowledge, accurate and correct			
Print name			
Signature			
Date			



(1) EKC Group

(2)

Learning Provision Sub-Contract Agreement

Between

EKC Group and

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THIS AGREEMENT is made on [redacted]

Between

- (1) **EKC Group** (the “Group”) whose registered office is Ramsgate Road, Broadstairs CT10 1PN
- (2) [redacted] a company registered in England with company registration number whose registered office is at [redacted].(the “Partner”)

UKPRN: [redacted]

each a “Party” and together the “Parties”.

Introduction and Recital of Intention

- (A) The Group is a Further Education establishment concerned with the provision of education and training to learners.
- (B) The Partner is in a position to assist the Group in providing education and training to Learners (as defined below).
- (C) The Group wishes to provide education and training to certain Learners by making use of the services of the Partner.
- (D) The Group and the Partner have agreed that the provision of services by the Partner 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 Evidence**’ means evidence produced by the Partner to the Group in a form satisfactory to the Group and comprising either: (a) the original certificates produced by an external examination body for each Learner who has attained a Qualification; or (b) for Partner accredited programmes, a record of Achievement, Partner certification and/or progress reports indicating Achievement;

‘**Achievement**’ means achievement of a Qualification or a group of Qualifications (including under a framework) by a Learner as evidenced by the provision of ‘Achievement Evidence’;

‘Additional Services’ means any ancillary and/or related services required to be undertaken by the Group for the benefit of the Partner, the Group and/or the success/completion of a Programme(s) in accordance with **clause 7.7** and Schedule 7.

‘Agency’ means the Education and Skills Funding Agency, or successor body/bodies or other approved funding body;

‘Agreement’ means all parts of this Agreement and includes the Schedules and the Appendices incorporated into it;

‘Attendance’ means the attendance of a Learner on a Programme as evidenced by the completion of a Group approved Register of Attendance;

‘ASBO’ means an anti-social behaviour order as defined in the Crime and Disorder Act 1998;

‘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 Partner in accordance with **clause 19**;

‘Group Background Intellectual Property’ means any and all Background Intellectual Property owned by or licensed to the Group;

‘Commencement Date’ means as set out in Schedule 3;

‘Contract Manager’ means the persons identified in Schedule 6 acting for the Group and for the subcontractor.

‘Confidential Information’ means all information in respect of the business of the Group 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 Group, and information concerning the Group’s relationships with actual or potential clients, customers or suppliers and the needs and requirements of the Group and of such

persons and any other information which, if disclosed, will be liable to cause harm to the Group;

‘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);

‘Data Controller’ means the natural or legal person or organisation which determines the purposes and means of processing personal data;

‘Data Processor’ means the natural or legal person or organisation which processes personal data on behalf of a controller;

‘Data Processing’ means the collection, input, storage, rectification and deletion of data;

‘Disclosure and Barring Service’ means the bureau established replacing the Disclosure and Barring Service;

‘Due Diligence Assurance Gateway’ means the due diligence process that the Agency requires sub-contractors to undertake in order to be placed on the Register of Training Providers.

‘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 Group has notified the Partner that such Learner has been enrolled with the Group, and 'Enrol' and 'Enrolling' will be construed accordingly;

‘Enrolment Guidelines’ means such enrolment guidelines as the Group notifies in writing to the Partner from time to time as may be required from time to time in accordance with the requirements of the Group or the Agency;

‘Enrolment Paperwork’ means the Group’s relevant enrolment information form to be completed in respect of each Learner prior to Enrolment of such Learner by the Group;

‘Fee’ means the Group’s management fee for managing the contract that will be inclusive of VAT;

‘Force Majeure’ 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; or
- (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;

‘Funded Learner’ means a Learner whose education and training is intended to be funded in part or in full by the Agency or other approved funding body;

‘Funding’ means the funding provided to the Group by the Agency 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 for from time to time laid down by the Agency for use by the Group in applying for the Funding as applicable to the Programme(s) for the relevant Academic Year as amended and supplemented by the Agency (including through any guidance notes) from time to time including but not limited to the Agency’s documents “the Common Accord” and “Supply Chain Management – a good practice guide for the post 16 sector”;

‘Intellectual Property’ or **‘IP’** means patents, Know-How, registered trade marks, registered designs, utility models, applications for and rights to apply for any of the foregoing, unregistered design rights, unregistered trade marks, 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;

‘Know-How’ means any and all non-patented information, knowledge, data and expertise of the Group provided by the Group to the Partner in connection with this Agreement;

‘Learner’ means a person who is Enrolled and who receives the education and training comprised in a Programme from the Partner;

‘Learning Agreement’ means the learning agreement between the Group and a Learner as specified in Agency guidance from time to time or in the form determined by the Group;

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

‘Matrix Standard’ means the matrix Standard accreditation as accredited by emqc Limited or any successor body thereto;

‘Month’ means a calendar month;

‘Partner Background Intellectual Property’ means any and all Background Intellectual Property owned by or licensed to the Partner;

‘Payments’ means the payments due under the terms of this Agreement from the Group to the Partner in relation to the Programme(s);

‘Premises’ means the premises listed in Schedule 4 to the Agreement or such other premises as are agreed between the parties from time to time;

‘Price’ means the sums payable by the Group to the Partner in relation to the Programmes or part of the Programme(s) which sums are calculated in accordance with Schedule 1 to this Agreement.

‘Programme’ means an individual learning programme provided by the Partner and approved by the Group which programme will lead to the Learner achieving the Qualification(s) or other achievement(s) identified in Schedule 1A to this Agreement;

‘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 Group 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 Group or the Partner, 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 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;

‘Quality Standards for Training’ means the Group's statement of the quality expected in education and training delivered by the Group (at the cost of the Partner).. In the absence of any such statement Quality Standards for Training shall mean the standard expected of a skilled and competent Partner 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 the Office for Standards in Education, Children’s Services and Skills from time to time;

‘Register of Attendance’ means a register of Learners in the form required by the Group from time to time of who attend each Programme (which may include Programme Registers, Records of Guided Learning Hours or other forms of register notified to the Partner by the Group), which register is to be compiled contemporaneously with every session of training/assessment given as part of a Programme;

‘Replacement Partner’ means any Partner who, following the expiry or earlier termination of this Agreement, provides services or activities for the Group which are the same or similar to the Programmes or any part of them;

‘SAR Report’ means the annual self assessment report produced by the Provider 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 Form’ means the form that the Group is required to provide to the Agency detailing its current sub-contracting arrangements;

‘Suspended Programme’ means a Programme which has been suspended by the Group pursuant to **clause 15**;

‘Suspension Notice’ means a notice served on the Partner by the Group 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 Partner, under the direct employment of the Partner as employees engaged partly or wholly in delivering training/assessment of the Programme to Learners.

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

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

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

- 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 Partner will provide the Programme(s) to the Learners on behalf of the Group in accordance with the terms of this Agreement and the Funding Rules. For the avoidance of doubt, the Partner must, where eligible, be at the Commencement Date and remain for the duration of this Agreement fully registered on:
- 2.1.1 the UK Register of Learning Providers (UKRLP) and hold a valid UKPRN;
and
- 2.1.2 the Register of Training Organisations (RTO)
- in accordance with the requirements of the Agency.
- 2.2 The Programme(s) will be as set out in Schedule 3.
- 2.3 The Group will pay the Partner 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 Schedule 3 on which they have Enrolled.
- 2.4 The Partner shall, if it has not done so before the Commencement Date, notify the Group within 5 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 Partner when funds have been paid to it by the Group (or any other further education institution);
 - 2.4.2 sanctions imposed on the Partner by any awarding organisation;
 - 2.4.3 a grade (defined by Ofsted as inadequate) being received by the Partner from Ofsted;
 - 2.4.4 serious complaints and/or allegations by individuals working for or on behalf of the Partner and/or learners working with the Partner and/or other third parties involved in the delivery or receipt of any Programme (or similar programmes agreed to be delivered by the Partner on behalf of other further education institutions); or
 - 2.4.5 allegations of fraud.
- 2.5 The Partner shall upon the reasonable written request of the Group promptly provide all information or documentation requested by the Group to enable the Group to complete the Subcontractor Declaration Form.
- 2.6 The Partner shall if it has not done so before the Commencement Date, provide the Group with written evidence that it has successfully passed the Due Diligence Assurance Gateway. The Partner shall successfully pass the Due Diligence Assurance Gateway every year.
- 2.7 The Partner shall use its best endeavours to:
- 2.7.1 secure enrolments upon such Programmes meeting the learner enrolment profile set out in **Schedule 2** (where the profile is not met by the Partner, a revised learner enrolment profile may be substituted by the Group and **Schedule 2** amended accordingly);
 - 2.7.2 achieve the key performance indicators as set out in **Schedule 2**; and
 - 2.7.3 not exceed the maximum number of Learners set out in **Schedule 2**.
- 2.8 The Partner shall ensure that learners and employers supported through this Agreement know about the parties' respective roles and responsibilities in providing learning.
- 2.9 The Partner shall retain "Active" status on the register of companies at Companies House.
- 2.10 The Partner shall not:
- 2.10.1 (without the prior written consent of the Group, such consent not to be unreasonably withheld or delayed) enter into contracts with any party

other than the Group for the provision of education and/or training services or Programme(s) within the county of Kent;

- 2.10.2 have an above average risk warning from a credit agency;
- 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.

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 (1st January 2018) ending at the end of the Academic Year ending (31st July 2018) unless otherwise terminated in accordance with the terms of this Agreement.

4. **PAYMENT TERMS**

- 4.1 Subject to the Group receiving all necessary paperwork from the Partner and subsequent payment in full from the Agency, the Group will pay to the Partner, by BACS to a bank account nominated by the Partner, such part of the Price due to the Partner as relates to each Programme or fraction of a Programme completed in respect of the preceding Month. Payment shall be made by the Group to the Partner within 30 calendar days of receipt of valid paperwork from the Partner. The Group 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 Partner in a preceding Month.
- 4.2 The Price will be calculated in accordance with Schedule 1 and dependent upon the Partner 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 3).
- 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;
 - 4.3.2 is a person considered under the Funding Rules to be fully funded by a source other than the Agency or is enrolled on a Programme being taught to individuals funded in such a manner or is or has been funded by the Agency 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 4 weeks and/or about whom the Partner is unable to provide evidence of such attendance upon demand (to the reasonable satisfaction of the Group). In such circumstances the Group 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 Partner 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 Group 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 Group will not be under any obligation to make payment to the Partner 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 3.
- 4.6 If the Group has paid the Price to the Partner in relation to any Learner who is subsequently deemed by the Agency not to be eligible in whole or part for payment of the Funding by the Agency, the Group will be entitled to be fully refunded the amount of the Price in relation to each ineligible Learner paid, by the Partner. At the sole discretion of the Group such refund will either be (i) payable upon demand within 30 days of notice by the Group to the Partner or (ii) may be deducted by the Group from the Price payable in relation to the subsequent Month.
- 4.7 If the Agency, for any reason whatsoever refuses or fails to pay the fees of any Funded Learner, the Group shall be under no obligation to pay any part of the Price relating to that Funded Learner to the Partner and any part of the Price relating to the said Funded Learner which has been paid to the Partner by the Group shall be fully

refunded to the Group by the Partner 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 paid by the Agency to the Group, the Group shall apply the change in Funding to the Price paid to the Partner from the date on which the Funding rate is changed by the Agency.
- 4.9 If the Funding Rules require an Employer to make a compulsory contribution to the Funding of a Learner, the Partner must collect these contributions from the Employer. The Partner must provide evidence to the Group of the level of such Employer contributions and that such Employer contributions have been paid to the Partner. If such evidence is not provided to the Group promptly when requested or otherwise in accordance with this Agreement, the Group will be entitled to withhold Funding from the Partner for the relevant Learner(s) until such evidence is provided. For the avoidance of doubt, the Partner is not entitled to suspend any Programme(s) as a result of any Employer contributions being unpaid.
- 4.10 Unless the Group agrees otherwise, the Group shall not be liable to make (or as the case maybe to continue to make) payments of the Price unless a claim by the Partner for an instalment shall:
- 4.10.1 be submitted in the form (and with all appropriate supporting documentation) required by the Group 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 Partner may not submit more than one claim each Month. The Partner may (and is encouraged to) submit paperwork throughout the Month to evidence any claim.
- 4.12 The Group shall not be obliged to make any payment to the Partner 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 Agency for that Programme; and
- 4.12.2 the Group has received Funding in respect of such Learner from the Agency.
- 4.13 Any payment of Price to the Partner by the Group shall be payments on account. Such payments are not a representation by the Group that any Learners in respect of which payment are made are eligible for Funding.

4.14 The Group may suspend payment of any part of the Price payable from the time that any audit is notified to the Group 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 Partner to any Employer (or Learner) must be approved in advance by the Group in writing. Such discounts shall be borne by the Group and the Partner equally in proportion to each parties 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 Group to comply with its obligations to the Agency, to obtain Funding and to give effect to the provisions and the spirit of this Agreement, the Partner agrees that it will co-operate fully with the Group to enable the Group to comply with any requirements of the Agency and in particular the Partner will procure that all relevant forms, agreements, applications or other documents which are required by the Group (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 Partner by the Group in respect of the collection of tuition fees from co-funded Learners.

5.2 The Partner shall ensure it has a full understanding of the Funding Rules and that the Funding Rules are fully applied by the Partner in undertaking its rights and obligations set out in this Agreement.

5.3 The Partner will not do anything which will cause the Group to be in breach of its funding agreement with the Agency (as those obligations are set out from time to time in the Funding Rules) or which will result in any of the general conditions of funding as set out in the Funding Rules not being met by the Group.

5.4 The Partner will notify the Group 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 Agency or to be funded by the Agency more than once in respect of the same Programme, or to be in any other way ineligible for Funding.

5.5 Where required, the Group is responsible for ensuring that the Programme(s) is (are) a programme(s) approved by the Secretary of State and the Partner shall comply with any requirements of the Group reasonably necessary to ensure that each Programme is and remains a programme funded by the Agency. In accordance with the requirements of the Funding Rules, for the duration of this Agreement the Partner shall not:

5.5.1 use any Funding to make bids or claims from any European source of funding on its own behalf or on behalf of the Group or Agency without

obtaining consent in writing from the Chief Executive of the Agency that it may do so; and

- 5.5.2 hold any right to use payments made by the Group under this Agreement as match funding for European Structural and Investment Fund Co-Financing Projects (as defined in the Funding Rules).
- 5.6 Where notified in writing by the Group that European Structural and Investment Funding applies to the provision of the Programme(s) the Partner shall, as soon as reasonably practicable:
- 5.6.1 provide any information and documents that the Group requests to enable the Group to comply with its obligations relating to the European Structural and Investment (ESIF) Fund;
 - 5.6.2 inform Learners that the services delivered under this Agreement have been financed in whole or part by the European Structural and Investment Fund;
 - 5.6.3 display the 2014-2020 European Structural and Investment Fund logos and emblems on any materials relating to funding by the ESIF or, where the use of logos in a document or other form of communication for promotional purposes is not practicable, the following wording shall be included: “This programme is part funded by the European Union through the European Structural and Investment Fund”;
 - 5.6.4 ensure that all Learners are aware of the support of the ESIF in respect of the Services being delivered under this Agreement;
 - 5.6.5 provide any information required by the Group regarding the eligibility of Learners for ESIF funding. General eligibility for ESIF participants is set out in guidance on the following link: <https://www.gov.uk/european-structural-investment-funds>; and
 - 5.6.6 ensure that where the use of logos in a document or other form of communication for promotional purposes is not practicable, the following wording is included: “This programme is co-financed by the Education and Skills Funding Agency”.

6. PROVISION OF RECORDS AND INFORMATION

- 6.1 Throughout the term of this Agreement, the Partner will keep the following records and information:
 - 6.1.1 a Register of Attendance (or equivalent document approved/provided by the Group 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 Group) by 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 Group from time to time;
- 6.1.2 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 Group from time to time;
- 6.1.3 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;
- 6.1.4 upon the request of the Group, the Partner will provide a record of any other partnership or sub-contracting agreements entered into by the Partner with other education institutions (or directly with the Agency, 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 Partner to the Group 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 Partner;
- 6.1.5 a record of its estimated success rates for that Academic Year against the minimum levels of performance set out in Schedule 3;
- 6.1.6 upon the request of the Group, the Partner will provide, 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 Group on request within any Academic Year;
- 6.1.7 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 Group to enter into, renew or extend any contractual obligations with the Partner;

- 6.1.8 any other records and information specified elsewhere in this Agreement, including any records and reports received by the Partner from any awarding organisation(s) and as otherwise required by the Funding Rules and Enrolment Guidelines;
 - 6.1.9 suitable records as required (including any records reasonably requested by the Group) to allow the Group to adequately assess the performance of the Partner against the Common Inspection Framework published by Ofsted (and/or any successor bodies to it) and as amended from time to time;
 - 6.1.10 any other records and information as the Group may from time to time reasonably require the Partner to keep, such requirements to be notified in writing to the Partner including all said records and information specified in Schedule 3;
 - 6.1.11 any other records as may from time to time be required by the Group for the purposes of the Funding, or upon the request of the Agency; and
 - 6.1.12 any pre-contractual information requested by the Group at the beginning of any Academic Year (including any updates or amendments made to policies of the Partner which affect the provision of any Programme.
- 6.2 A copy of the note of complaint made by Learners and/or Employers and the other documents referred to in **clause 6.1.3** above must be sent by the Partner to the Group as soon as possible after such complaint is made.
- 6.3 The Partner shall ensure where relevant that, Learners have access to a personal online learning space during their Programme with 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 Partner 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 Partner shall provide a copy of its SAR Report to the Group 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 Partner shall consult the Group during the preparation of the SAR Report and the Group shall assist the Partner with target

setting and shall provide suggestions for improving the Programme for the next Academic Year.

- 6.5 The information and records referred to in **clause 6.1** above must be provided or made available by the Partner (as the Group shall determine) to the Group (or any of its authorised representatives) or to the Agency (or any of its authorised representatives) at the time and in the format reasonably notified by the Group from time to time by written notice to the Partner. The Partner 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 Group and/or Agency, where necessary.
- 6.6 All documents to be provided by the Partner to the Group 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 Group provided the Partner 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 Partner shall inform the Group of any conflicts or issues of concern which the Partner 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 Partner or any such partner may be subject.
- 6.8 All information which shall be provided by the Partner to the Group in accordance or connection with this Agreement shall be completed and provided truthfully, fully, accurately and promptly.
- 6.9 The Partner shall submit to the Group correctly completed:
- 6.9.1 Enrolment paperwork and supporting documentation to the Group 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 Group and the Partner will not be eligible to receive Funding under this Agreement in respect of Learners the subject of such enrolment forms within that month;
- 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 Group and no completion payment of Funding will be payable in respect of such Programmes within that month; and

- 6.9.3 Review documentation in the form specified by the Group and at such intervals as the Group may require.
- 6.10 In the event of any Learner not completing the Programme which such Learner has commenced the Partner 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 Group 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 Partner shall provide to the Group 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 Group 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 Group to the Partner) be sent to the address and for the attention of the person specified in **clause 28** (Notices) below.
- 6.13 The Partner warrants that all information provided or made available to the Group and/or the Agency pursuant to this **clause 6** or any other clause of the Agreement will be true and accurate in all material respects.
- 6.14 The Partner further warrants that all information and representations regarding the Partner's past experience and other matters which were disclosed to the Group in order to enable the Group to assess whether to enter into this Agreement (including, without limitation, references provided by the Partner, details of the Partner's past experience and the results of a quality audit, all of which information the Partner acknowledges was relied on by the Group) was true and accurate in all material respects and that nothing which would reasonably be likely to alter the Group'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 Group in deciding whether or not to continue and/or review this Agreement, the Partner shall have a continuing obligation to inform the Group of such changes.
- 6.15 The Partner acknowledges that the Group may apply to a credit reference agency or other body in order to carry out such financial checks in respect of the Partner as the Group may deem necessary prior to the Commencement Date or during the term of this Agreement.

6.16 The Partner shall use its reasonable endeavours to procure the provision of information from Employers when such information is requested by the Group or the Agency.

6.17 The Partner shall confirm to the Group where it has entered into any agreement(s) with any other Group(s) and whether this Agreement is the “most valuable” to it. The “most valuable” agreement shall be the agreement which delivers the highest total amount of funding to the Partner. If this Agreement is the “most valuable”, the Group recognises it may have additional responsibilities in accordance with the Funding Rules from time to time.

7. **CONTROL OF THE PROGRAMME(S)**

7.1 The Group is at all times to be in control of all aspects of the Programme(s). The Partner will comply with and implement at no cost to the Group unless and to the extent the Group agrees otherwise in writing the Group's reasonable requests in respect of any aspect of the Programme(s). Without prejudice to the generality of the foregoing, the Partner shall comply with the following obligations and are subject to the Group's Learner policies and procedures.

7.2 **Marketing**

7.2.1 The Partner is responsible for the promotion, advertising and marketing of the Programmes, at its own expense.

7.2.2 All promotional material referring to the Group must be approved in writing by the Group, 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 Group, and do not represent the Partner as being part of the Group.

7.3 **Enrolment**

7.3.1 Once the Partner has received details of a potential Learner, the Partner shall send the Group any paperwork and make such other arrangements as deemed necessary in the reasonable opinion of the Group for the Group to determine the Learner's eligibility for Enrolment. Subject to the Group confirming eligibility of the Learner, the Learner will be Enrolled as Learners of the Group by the Partner. The Partner acknowledges that it is not the Group'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 Group alone (in its sole and absolute discretion). The Group alone has the right to suspend or expel any Learner.

- 7.3.2 The Group may, in its absolute discretion, from time to time allow the Partner to select potential Learners, for consideration in accordance with the process set out in **clause 7.3.1** above without prejudice to the Group's right to accept or reject persons for enrolment as Learners as it sees fit and the Partner 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 Partner. The Group may, in its absolute discretion, from time to time carry out such initial guidance and assessment of Learners and potential Learners. The Group 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. The terms of the Learning Agreement shall form part of the specification of the Programme(s).
- 7.3.4 The Partner 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 Group.
- 7.3.5 Upon the request of the Group, the Partner shall submit to the Group an organisation needs analysis in the format specified by the Group 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 It shall be the responsibility of the Partner to register Learners with the relevant awarding body for the Programme(s) for which such Learners are Enrolled.
- 7.3.7 It shall be the responsibility of the Partner to apply to the relevant awarding body for certificates for Qualifications in respect of Learners who have successfully completed.
- 7.3.8 Upon the written request of the Group, the Partner shall use all reasonable endeavours to supply the Group with evidence in respect of compliance with **Clauses 7.3.6** and **7.3.7**.

7.4 Provision

Trainer Approval

- 7.4.1 The Partner shall, at least (7) Working Days before the date on which the Partner first provides any of the Programmes, give the Group 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 Partner, each Trainer is paid through the Partner's PAYE scheme, which Programme(s) each

Trainer will be working on and giving such other particulars as the Group may require, including but not limited to such evidence of the employment relationship between the Partner and the Trainer, For the avoidance of doubt, self-employed Trainers shall not be used by the Partner at any time during this Agreement.

- 7.4.2 The Partner shall use its reasonable endeavours to update this information as and when any such individuals are replaced or complemented by others, not less than twenty (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 Partner 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 Partner 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 Group after being properly notified to the Group in accordance with the terms of **clause 7.4.1** (Trainer Approval) and is a Trainer in respect of whom checks have been made with the Disclosure and Barring Service and provided to the Group in accordance with **clause 7.4.8** (Disclosure and Barring Service).
- 7.4.3 The Group 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 Group, the Trainer presents a risk to themselves or any other Learner. The decision of the Group on whether any person is to be refused approval to perform the Programme shall be final and conclusive and the Group shall not be obliged to give reasons for its decision.
- 7.4.4 The provision of the Programme(s) shall be as specified by the Group at Schedule 3. The Group 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 3 at any time, provided that such right shall not be unreasonably exercised.
- 7.4.5 The Partner must co-operate fully with the Group to enable the Group 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 Group. In particular, the Partner must give to each Learner, as part of the Enrolment process, a Learner Handbook, a copy of the Partner's Equality and Diversity policies Scheme and Safeguarding (including child protection) & Preventing Extremism and Radicalisation

Policy to any Learner that requests it, whether before he/she is Enrolled or at any time thereafter.

- 7.4.6 The Partner shall procure that all Trainers obey the reasonable instructions of the Group in respect of the Programme(s) and participate in any induction training the Group feels is reasonably required from time to time.

Conduct of Trainer

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

7.4.7.1 instruct the Partner 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 himself or is incompetent or negligent in his duties (in which case the Group shall co-operate with any disciplinary proceedings and shall be advised in writing of the outcome); or

7.4.7.2 where the Group 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.

Disclosure and Barring Service

- 7.4.8 The Partner shall procure that before any Trainer begins to perform any of the Programmes:

7.4.8.1 each Trainer is questioned as to whether he or she has any Convictions; and

7.4.8.2 the results of a check of the most extensive available kind made with the Disclosure and Barring Service are obtained in respect of each Trainer; and

7.4.8.3 each Trainer has the necessary qualifications, and necessary and relevant experience, to enable them to properly perform the Programme(s); and

7.4.8.4 a copy of the results of such checks as are referred to in **clause 7.4.8.2** are notified to the Group

(if the Partner believes that, having regard to the Trainer's role, a less extensive check is required under **clauses 7.4.8.2 or 7.4.8.3**, it will notify the Group in advance and seek their agreement to proceed in this way).

- 7.4.9 The Partner shall procure that no person who appear 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.
- 7.4.10 The Partner shall procure that no person who discloses any Convictions or ASBOs, 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 Group's prior written consent (such consent not to be unreasonably withheld or delayed).
- 7.4.11 The Partner shall procure that the Group is kept advised at all times of any Trainer who, subsequent to his/her commencement of employment as a Partner Employee, receives a Conviction or ASBO or whose previous Convictions or ASBOs become known to the Partner (or any employee of a sub-Partner 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 Partner shall procure that such Trainer immediately ceases to be engaged in the performance of the Programmes.
- 7.4.12 The Partner shall ensure that appropriate arrangements are in place for the initial and ongoing development and training of the Partner's staff involved in the delivery of the Programme(s) (including the attendance, if necessary, by each such staff member of the Group's safeguarding training within one month of the date of this Agreement or, in respect of staff employed by the Partner following the date of this Agreement, within one month of the commencement of that individual's employment by the Partner) and shall make such information available concerning the staff, their qualifications and arrangements for development as the Group shall reasonably require and shall inform the Group in writing as soon as reasonably practicable of any changes to such staff. The Partner agrees to comply with any reasonable instructions of the Group requiring additional training/development of any staff involved in the delivery of the Programme(s).
- 7.4.13 Whilst they are receiving a Programme, the Partner acknowledges that the Learners are subject to the rules of the Group, including the Group's disciplinary rules. The Partner in particular undertakes that it will comply with such rules and no Learner who makes a complaint to the Group relating to a Programme shall suffer any disadvantage as a result.
- 7.4.14 The Partner shall ensure that all Learners are aware of:

- 7.4.14.1 their status as Learners of the Group;
 - 7.4.14.2 the fact that they are subject to the rules of the Group including the disciplinary rules from time to time (copies of which are available upon request);
 - 7.4.14.3 the fact that they are subject to the terms of the Learning Agreement and the Group's enrolment conditions;
 - 7.4.14.4 their right to complain to the Group about any aspect of a Programme;
 - 7.4.14.5 how such a complaint may be made; and
 - 7.4.14.6 the fact that complaints made in good faith cannot lead to action being taken against the Learner by the Partner.
- 7.4.15 The Partner will notify the Group in writing immediately if any Learner withdraws from a Programme. The Partner shall provide written evidence of the date that the Learner withdrew from the Programme in accordance with **clause 6.10**.
- 7.4.16 The Partner acknowledges that the Group shall be entitled to expel, suspend or otherwise discipline any Learner in accordance with the Group's policies, procedures, rules and codes of conduct.
- 7.4.17 Where the Programme(s) include the provision of information and advice to Learners regarding understanding the opportunities and support available to them in relation to education, training or connected matters (including employment), the Partner will:
- 7.4.17.1 provide high quality and easily accessible information and advice in respect of such matters;
 - 7.4.17.2 achieve the Matrix Standard, and provide the Group with written evidence of such achievement, within 12 months of the Commencement Date.
- 7.4.18 The Partner must co-operate fully with the Group and any third party undertaking an external verification visit during the course of and following such visit.
- 7.4.19 The Partner shall ensure that all systems, processes and procedures implemented by the Group which the Partner is obliged to follow under the terms of this Agreement are adhered to by the Partner at all times in order

to support the Group's objective of obtaining and maintaining the Quality Standards for Training.

- 7.4.20 If at any time the Partner has not, in the Group's reasonable opinion, met the Quality Standards for Training or if the Partner has not provided evidence of achievement of the Matrix Standard in accordance with **clause 7.4.17.2**, then the Group will notify the Partner in writing of that fact and give reasons for its opinion. The Partner 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 Group may specify in writing) after receiving notice from the Group, it has not remedied the failure to the Group's reasonable satisfaction the Group will be entitled to terminate this Agreement immediately upon written notice to the Partner. If the Agreement is terminated in accordance with this clause then the provisions as to the consequences of termination as set out this Agreement at **clause 17** will apply.

7.5 **Assessment**

The Partner shall carry out an assessment of Learners in respect of the progress on the Programme or more generally, if the Group requires it. All aspects of the assessment of the Learners by the Partner shall be carried out in accordance with the requirements of any relevant awarding body and any directions given from time to time by the Group. The Group 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 Partner's staff.

7.6 **Warranty**

- 7.6.1 The Partner warrants on a continuing basis to the Group that it will perform its obligations under this Agreement to such high standards of quality as it is reasonable for the Group to expect in all the circumstances.
- 7.6.2 The Partner warrants that it has and will have on a continuing basis the right to pass all records, information and personal data to the Group as envisaged by this Agreement for the Group to use accordingly.

7.7 **Additional Services**

- 7.7.1 The Group 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 Group shall notify the Partner of its proposal for Additional Services in writing to the person nominated in **clause 2827.1**.

7.7.2 Both parties agree to meet to discuss any such proposal in good faith within 20 days of the receipt by the Partner of the notice referred to in **clause 7.7.1**.

7.7.3 For the avoidance of any doubt, any charges for Additional Services imposed by the Group and agreed by the Partner shall be separate from and in addition to the Price under this Agreement, and where applicable will be VAT chargeable.

7.7.4 Details of any agreed Additional Services at the date of this Agreement are set out in Schedule 7 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 7 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**.

8. MONITORING, AUDITING AND COMPLIANCE

8.1 The Partner will at all times, and acknowledges that such monitoring may be, with or without the reasonable prior notice of the Group, allow any authorised representative of the Group including auditors appointed by the Group or funding body and/or the Agency, the Secretary of State and his agents, any awarding body for any Qualification, the Department for Education , the Department for Work and Pensions, the National Audit Office, Representatives of the European Commission and the Europe Court of Auditors, the Audit Commission and the Inspectorate (in respect of each and any such body reference to them shall include any success or entities of any of them):

8.1.1 to attend during the provision of any part of a Study Programme, or during any activity relating to the provision of a Study 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 Partner; 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; and

8.1.4 facilitate any request by the Group to speak to any Learner or Employer,

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 Group to give directions to the Partner under **clause 7.1** above; monitoring the standard of any part of the Programme(s) and the way in which it is provided; and/or conducting an audit of the Partner's management and/or financial procedures and controls. The Partner 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 Group which may be notified in writing to the Partner from time to time. The Group may carry out spot checks at any time to monitor the Partner's compliance with this clause.

8.2 The Group may organise such external verification visits during the term of this Agreement as it in its sole discretion sees fit. The Partner shall at the request of the Group procure that such of its staff as the Group may specify attend such external verification visits as may be specified by the Group.

8.3 The Partner shall operate and annually review policies and procedures in relation to equal opportunities of staff, health and safety and safeguarding and PREVENT which are the same as or comparable to those operated by the Group and shall make them (and any changes to them) available to the Group.

8.4 In the event that the Partner does not have in place a suitable health and safety policy, equality and diversity policy and safeguarding and PREVENT policy at the Commencement Date the Partner shall inform the Group and shall adopt and apply the Group's relevant Policies in respect of the provision of the Programmes and in all dealings with Learners.

8.5 Upon request, the Partner shall provide the Group with a copy of all materials, including but not limited to Programme Materials, used by the Partner in the provision of the Programmes in order that the Group may assess the quality and suitability of such materials.

8.6 The Group may appoint an independent third party to monitor the quality control systems of the Partner to assess the Partner's compliance with the minimum requirements of each awarding body relevant to the provision of the Programmes.

8.7 The parties agree to attend meetings in accordance with **Schedule 6**.

9. **HEALTH AND SAFETY AND LIABILITY**

9.1 The Partner 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 Partner shall notify the Group of the identity of this qualified member of staff and provide evidence of their qualifications upon reasonable

notice from the Group. Copies of all relevant Health and Safety documentation must be made available to the Group for the duration of the Agreement.

9.2 The Partner will notify the Group immediately upon the occurrence of any of the following:

9.2.1 any incident (including, without limitation, any breach of the Group's health and safety policies) which may need to be notified by the Partner to its insurers to enable the Group 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 Partner and/or the Group may be liable, wholly or partly, for such injury, loss or damage.

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

9.3 The Partner 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 Partner. The Partner will continue to have this liability irrespective of any health and safety inspection which the Group may have made at the Premises from time to time.

9.4 The Partner 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 Group in writing to the Partner from time to time.

9.5 The Partner 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 Partner confirms that its practices comply with the legislation referred to but not limited to the above. The Partner 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 Group is also able to comply with its duties in respect of equal opportunities, for example, by agreeing to provide information to the Group as is necessary to enable the Group 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 Group may have, the Partner will indemnify and keep indemnified the Group, 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 Partner 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 Group except to the extent that such Liability is due to a negligent act or omission or wilful default on the part of the Group.

10. **SPECIFIC LEARNER INCIDENT REPORTING REQUIREMENTS**

10.1 The Partner shall inform the Group 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) 1995 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 Group by telephone or fax immediately the Partner becomes aware of the event; and

10.1.2 all RIDDOR events - sending to the Group a completed Learner incident record form within 10 days of the Partner becoming aware of the event.

10.2 The Partner 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 Partner 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 Partner shall also monitor, and act on, any other harm to Learners to the extent that the Partner 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 Partner shall co-operate with the Group for the purposes of the Analogous Industrial Injuries Scheme in respect to those Learners to which it applies.

11. **INSURANCE**

11.1 The Partner will maintain adequate public liability, third party and occupier's liability insurance with a minimum cover per claim as specified in **Schedule 5** and any other insurance it may be required by law to hold.

11.2 The Partner will maintain adequate insurance to cover the risks specified in **Schedule 5**. Such insurance will be taken out with a minimum cover per claim as specified in **Schedule 5**.

11.3 The Partner will, upon request by the Group, immediately produce to the Group 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 Group and the Partner agree to use their respective reasonable endeavours to meet regularly on the date and at the place specified in **Schedule 6** 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 6** will continue to apply) in order to discuss any matters arising from this Agreement and the provision of the Programme(s).

12.2 The Partner shall specify a nominated person who will represent the Partner and manage the Agreement on behalf of the Partner.

12.3 The Partner acknowledges that as Learners will be Enrolled with the Group, the Group's reputation is at stake and, accordingly, the Partner agrees that:

12.3.1 it will not do anything which brings the reputation of the Group into disrepute or which is calculated or which is reasonably likely to bring the reputation of the Group into disrepute;

12.3.2 it will provide the Programme(s) in accordance with current best working practice subject always to the Group'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 Group;

12.3.4 it will comply with all requirements of the Group 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 Group 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 Partner to comply with the terms of this Agreement.

12.4 In return for the Partner providing the Programme(s) in accordance with the terms of this Agreement the Group agrees that it will provide the Partner with such reasonable support and assistance as the Partner reasonably requests from time to time provided that, for the avoidance of doubt, the Group will not be obliged to the Partner 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 5 Working Days before the end of the Month following the publication of results of a completed Programme the Partner will send electronic copies to the Group showing the Achievement Evidence in relation to each Learner who has attained a Qualification and such supporting evidence as may be specified by the Group from time to time.

13.2 As soon as reasonably practicable and in any event no later than 5 Working Days before the end of each Month the Partner will send to the Group the Achievement Evidence and such supporting evidence as may be specified by the Group from time to time, signed by a duly authorised representative of the Partner, 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 Partner 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 Partner by the Group from time to time.

14.2 In the event that the Partner determines that a Learner requires additional learning support the Partner will retain the risk of and shall indemnify the Group against such additional support costs in the event that such support is considered ineligible for funding by the Agency or fails to be approved by the Group. This obligation will survive termination or expiry of this Agreement.

15. **INTERVENTION**

15.1 The Group 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 Group has the right (whether or not it exercises it) to terminate this Agreement under **clause 16**;
 - 15.1.2 the Group is instructed by the Agency or is required by applicable law to exercise its rights under this **clause 15**;
 - 15.1.3 the Partner has given notice to the Group 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 Group wishes to exercise its right to suspend the Programmes in accordance with **clause 15**;
 - 15.1.5 the Partner 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 Group 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 Partner requiring that the provision of the Programmes (or such part of them as the Group will nominate) by the Partner be suspended.
- 15.3 Following service of a Suspension Notice the Partner will:
- 15.3.1 co-operate (and procure that any Trainers and/or an Employer co-operate) and in the exercise by the Group 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 Group;
 - 15.3.3 grant, and procure that any necessary third parties grant, to the Group those rights (including any IP, rights to use premises, equipment and personnel) that any of them may need in order that the Group may fully enjoy the rights granted to it pursuant to this **clause 15**; and
 - 15.3.4 at the Group's request from time to time, ensure that appropriately senior and informed personnel of the Partner meet with the Group, 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 Partner will cease to perform the Suspended Programmes, but will continue to provide all other Programmes; and
 - 15.4.2 the Group 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 Group may (at its sole discretion and at any time) revoke a Suspension Notice by giving to the Partner not less than 28 days' notice. The Partner will resume provision of the Suspended Programmes at the date and time specified in the Suspension Notice.
- 15.6 If the Partner 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 Partner may serve written notice (a "**Resumption Notice**") on the Group requesting that the Partner resume provision of the Suspended Programmes. The Partner will provide the Group with all information that the Group reasonably requires in order to verify that the Partner will be able to provide the Suspended Programmes to the Group's reasonable satisfaction and ensure proper and sustained compliance with all service levels and other provisions set out in this Agreement. If the Group is satisfied that the Partner will be able to provide all of the Suspended Programmes to the Group's satisfaction, the Group will serve not less than 10 Working Days' notice (a "**Confirmation Notice**") requiring the Partner to resume provision of such Programmes on the date and at the time specified in such Confirmation Notice and the Partner 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 Group pursuant to **clause 15.5**) and:
- 15.7.1 the Partner 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 Partner 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 Group 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 Group may (at its sole discretion) terminate this Agreement pursuant to **clause 15**.

15.8 During any Suspension Period the Group will not be obliged to make any payments to the Partner 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 Group of its discretion under **clause 15.1.4**.

15.9 There will be no limit on the number of times the Group may exercise its rights pursuant to this **clause 15**.

16. **TERMINATION**

16.1 The Group may terminate this Agreement by written notice to the Partner if:

16.1.1 there is a material adverse change in the amount or nature of the Agency's funding of the Group or Funding is reduced or no longer available in respect of a Programme;

16.1.2 the Partner fails to achieve the minimum Learner Achievement levels and other key performance requirements specified in Schedule 3;

16.1.3 the Group, in its reasonable opinion, has serious concerns about the ability or suitability of the Partner to deliver the Programmes as a result of information received from the Partner (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 Partner of the terms of this Agreement and such breach is incapable of remedy or, where the breach is capable of remedy, the Partner fails to remedy such breach to the satisfaction of the Group within 14 days' service of a written notice from the Group to the Partner specifying the breach and requiring it to be remedied;

16.1.5 the quality of documentation supplied to the Group by the Partner does not meet the requirements of the Agency;

16.1.6 the Partner 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;

- 16.1.7 the Partner (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;
- 16.1.8 the Partner ceases, or appears in the reasonable opinion of the Group likely to or is threatening to cease to trade within 30 days;
- 16.1.9 in the reasonable opinion of the Group, the Partner acts in a manner which is in breach of **clause 12.3.1**;
- 16.1.10 the Partner is inspected by OFSTED and fails to achieve at least an OFSTED grade 2 rating;
- 16.1.11 the Agency requires termination of this Agreement;
- 16.1.12 the Partner has any distraint, execution or other process levied or enforced on any of its property; or
- 16.1.13 where, for any reason, the Agency declines to fund all or any of the Enrolled Funded Learners.

Such termination may take effect either immediately or at the end of the Academic Year as the Group 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 Group may in its absolute discretion terminate this Agreement by giving the Partner not less than one month prior written notice.
- 16.3 The Partner may terminate this Agreement by written notice to the Group if:
 - 16.3.1 there is a repudiatory breach by the Group 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 Group of the terms of this Agreement which breach is capable of remedy but which is not remedied to the reasonable satisfaction of the Partner within one Month after the Partner has given written notice of the breach to the Group requiring it to be remedied (provided that the notice terminating this Agreement is given by the Partner 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 Partner shall (upon notice to the Group) 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 Partner 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 Partner to the Group shall become immediately payable by the Partner;

17.3.2 the Partner shall cease to promote, market or advertise the Programme, and shall cease to make use of any of the Group 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 Partner to the Group together with any other materials which were supplied by the Group to the Partner which are requested by the Group to be

returned including but not limited to any documentation which may be required by the Group for auditing or inspection purposes; and

- 17.3.6 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 Group and/or Partner (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 Group and the Partner 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 Group, the Partner 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 Group and the Partner.

18. **FORCE MAJEURE**

- 18.1 If the Group or the Partner 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 all 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 **clause 18**, the Group 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 Partner is subject to the Group receiving payment in full from the Agency.

19. **BUSINESS CONTINUITY**

19.1 The Partner will, at all times, maintain a 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 Partner 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 20 working days after each such update the Partner will submit the revised Business Continuity Plan to the Group for approval. The Partner will amend the revised Business Continuity Plan so as to incorporate all of the Group's comments. The amended Business Continuity Plan will be promptly re submitted to the Group for approval and the process contained in this **clause 19** will be repeated until the Group approves the draft Business Continuity Plan. The Partner 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 Partner 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 Group with a written report detailing the results of that test and any actions it proposes to take to address those results. The Group 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 Partner in writing of any actions or remedial measures that it requires the Partner to implement as a result of such tests and the Partner will be bound to promptly implement the same.

19.4 The Partner 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 Partner will notify the Group 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 Group to the Partner under the terms of this Agreement are inclusive of any value added tax, where applicable (or like tax of a similar nature).
- 20.2 The Partner is responsible for making all relevant tax payments, where applicable in relation to the Learners and will indemnify and keep indemnified the Group in respect of any claims or demands that may be made against the Group in relation to such payments.
- 20.3 The Partner 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 Partner acknowledges that, for the avoidance of doubt, all Trainers are the responsibility of the Partner 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 Group in relation to the arrangements under this Agreement. The Partner will indemnify and keep indemnified the Group against any Liabilities the Group may incur in respect of any failure by the Partner 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 Group or any Replacement Partner:
- 21.3.1 within 20 Working Days of becoming aware of that effect or allegation, the Group or Replacement Partner may terminate such person's contract of employment; and
 - 21.3.2 the Partner will keep the Group or any Replacement Partner 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 Group 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 Group; and

21.3.2.3 any claims for failure to inform and consult under Regulation 13 of TUPE.

22. DATA PROTECTION AND FREEDOM OF INFORMATION

22.1 In this clause "Personal Data", "Sensitive Personal Data", "Data Processor" and "Data Controller" are as defined in the Data Protection Act 2018 ("DPA") and the General Data Protection Regulations (GDPR), save limited to this Agreement and the Programme(s).

The Partner is required to demonstrate commitment to and compliance with Schedule 7 of this Agreement.

22.2 Where the Learners are students of the Group and the Partner acts as a Data Processor for the Group (which acts as Data Controller) the provisions of this **clause 22.2** shall apply:

22.2.1 the Partner acknowledges that under the terms of this Agreement it will act as a Data Processor for the Group and will only process Personal Data and Sensitive Personal Data received from the Group ("Agreement Data") as required to fulfil its obligations under this Agreement on instruction from the Group and not further or otherwise;

22.2.2 the Partner will ensure all Agreement data is kept accurate and up to date and will not collect any Agreement Data on behalf of the Group other than that which it needs to comply with the Funding Rules and the terms of this Agreement;

22.2.3 the Partner will not pass any Agreement Data to any third party whether as Data Processor or otherwise other than as permitted by this Agreement;

22.2.4 the Partner will keep the Agreement Data confidential and will take such security measures as are required by the Group or are otherwise needed to keep the Agreement Data secure as required by the seventh data protection principle in the DPA and the GDPR (nothing in this clause is intended to restrict the Partner from complying at all times with its information sharing and other disclosure requirements to the Group or the Agency in accordance with the Funding Rules or this Agreement);

- 22.2.5 the Group may upon reasonable written notice to the Partner check on the Partner's use of Agreement Data and record keeping and security arrangements relating thereto from time to time to ensure the Partner complies with these terms; and
 - 22.2.6 pass all subject access requests which relate to Agreement Data (in whole or in part) to the Group immediately upon receipt and co-operate with the Group to answer the same in compliance with the relevant legislation (and not deal independently itself).
- 22.3 Where the Partner acts as Data Controller, it warrants (at the date of this Agreement and on a continuing basis) that it does and will continue to process Personal Data (including all Agreement Data) in accordance with the DPA and the GDPR when they come into force.
- 22.4 The Partner warrants and undertakes to the Group that it shall and shall procure that its agents shall:
- 22.4.1 promptly notify the Group of any actual or suspected incident of accidental or unlawful destruction or accidental loss, alteration, unauthorised or accidental disclosure of or access to the Agreement Data or other breach of this clause 19 made by any of its staff, any other identified or unidentified third party, or otherwise (a "Security Breach");
 - 22.4.2 promptly provide the Group with all material information in its possession reasonably required by the Group to comply with the informal or formal security breach management and reporting obligations recommended or required by the office of the Information Commissioner from time to time concerning any Security Breach (being at the date of this Agreement; type of Agreement Data / other information involved; number of records involved/people affected; circumstances of breach; mitigation and actions taken; investigation details; details of reports to and reactions from other relevant bodies of the breach; and remedial action taken and action to avoid repeats); and
 - 22.4.3 not make any announcement or publish or otherwise authorise any broadcast of any notice or information about a Security Breach (a "Breach Notice") without the prior written consent of and prior written approval of the Group of the content, media and timing of the Breach Notice.
- 22.5 For the purposes of this **clause 22**:
- 22.5.1 "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 or the Department for Environment Food and Rural Affairs (including in each case its successors or assigns) in relation to such legislation;

22.5.2 “Information” means information recorded in any form held by the Group or by the Partner on behalf of the Group; and

22.5.3 “Information Request” means a valid request for any Information under the FOI Legislation.

22.6 The Partner acknowledges that the Group:

22.6.1 is subject to the FOI Legislation and agrees to assist and co-operate with the Group to enable the Group to comply with its obligations under the FOI Legislation; and

22.6.2 may be obliged under the FOI Legislation to disclose Information (including information provided to the Group by the Partner even where considered confidential or commercial prejudicial by the Partner) without consulting or obtaining consent from the Partner.

22.7 Without prejudice to the generality of **clause 22.5**, the Partner shall and shall procure that its agents and or partners (if any) shall:

22.7.1 transfer to a person as may be notified by the Group to the Partner 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

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

22.8 The Group 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 Partner 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 Group.

23. CONFIDENTIALITY

23.1 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:

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

23.1.2 (in the case of the Group) to the Agency and any other organisation or person having jurisdiction over the Group;

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

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

23.2 Both parties will use their reasonable commercial endeavours to ensure that this Clause 23 is complied with by their employees, agents and authorised contractors.

23.3 The Partner acknowledges that:

23.3.1 the Know-How is confidential; and

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

23.5 The Partner will immediately notify the Group if, during the term of this Agreement or any renewal of it, the Partner becomes aware of any breach of any unauthorised disclosure of:

23.5.1 any Know-How; or

24. INTELLECTUAL PROPERTY RIGHTS

24.1 With regard to intellectual property rights, the basic starting point is that these vest in the creator. Therefore the copyright in work such as programme design and materials created by the Group staff is owned by the Group, and programme design and materials created by staff of the Partner is owned by the Partner.

24.2 Each party warrants that it is the owner of or is licensed to use the intellectual property in any material provided by it under the terms of this Agreement and the use of any such intellectual property by either party will not breach or infringe the rights of any person in the world. For the purposes of this Agreement only, each party shall grant the other party an automatic non-exclusive, royalty-free licence to use the intellectual property in the programme materials as is necessary to allow the delivery of the programmes in accordance with this Agreement.

24.3 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. **IMPROVEMENTS**

25.1 The Partner shall provide/adhere to the principle of continuous improvement and enhancement of the Programme(s) (or the way in which such are provided) must inform the Group 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 Group 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 Partners.

25.2 The Group 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 Group. The Partner 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 Group specifying the changes to be made. For the avoidance of doubt, the Group shall own all Intellectual Property in Programme Materials and any alterations thereto.

26. **GENERAL PROVISIONS**

26.1 This Agreement does not constitute a partnership, contract of employment or joint venture arrangement between the Group and the Partner and the Partner must not act or purport to act as an agent of or seek to bind the Group.

26.2 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.

26.3 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.

- 26.4 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.
- 26.5 This Agreement is personal to the Partner and it may not assign, sub-contract, 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 Group.
- 26.6 In the event that the Partner 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.
- 26.7 The Group 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.
- 26.8 The Partner may only sub-contract its rights hereunder with the prior written consent of the Group and the consent of the Agency (which shall be requested by the Partner through the Group in writing), in accordance with the Funding Rules.
- 26.9 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 Partners) to enforce the terms of this Agreement pursuant to the Contracts (Rights of Third Parties) Act 1999 are hereby excluded.

27. **GOVERNING LAW AND JURISDICTION**

- 27.1 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.
- 27.2 Subject to **clause 27.3** the Parties to this Agreement submit to the exclusive jurisdiction of the English Courts.
- 27.3 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 Partner”). To initiate mediation, a party must give notice in writing (“the mediation notice”) to the other party to the dispute in accordance with **clause 28**.

27.4 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.

28. NOTICES

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

28.1.1 (in the case of the Group) the Group at the address shown in this Agreement and marked for the attention of: Lindsey Biggs, Head of Apprenticeships, Work Based Learning and Partner Provision.

28.1.2 (in the case of the Partner) the Partner at the address shown at the start of this Agreement and marked for the attention of:

29. THE AGENCY

29.1 The Group may vary the terms of this Agreement to the extent that it is necessary for the Group and the Agreement to comply with the requirements of the Agency 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.

29.2 The Partner undertakes to comply with any requirements of the Agency from time to time directly or indirectly affecting the obligations of the Partner under this Agreement.

29.3 The parties acknowledge that this Agreement may be amended unilaterally as dictated by the Agency from time to time.

30. MODERN SLAVERY

30.1 The Partner undertakes to comply with the Modern Slavery Act 2015, or the EKC Group’s own policies and procedures, which embed good practice and provide resolution for individuals concerned about any potential instance of modern slavery in any part of the Group’s business.

30.2 The Partner shall ensure a high level of understanding of the risks of modern slavery and human trafficking and provide relevant training to their staff, suppliers and providers. The Home Office Guidance on Modern Slavery training can be located using the following link: <https://www.gov.uk/government/publications/modern-slavery-training-resource-page/modern-slavery-training-resource-page>

30.3 The Partner will be removed from EKC Group's list of suppliers and will not be considered for future supply to the Group unless they can demonstrate that the compliance requirements under clause 30.1 and 30.2 are met.

SCHEDULE 1

Calculation of Price

Part 1

1. In this Schedule the following words shall mean:

“Funding Rate” amount of money received by the Group from the Agency 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 Group to the Supplier [as set out in Schedule 1A].

1.1 Subject to paragraph 1.6 below, clause 4, the Funding Rules and the terms of the Agreement, the Group shall pay the Partner the proportion of Fees due in respect of the information submitted to the Agency by the Group 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 Partner 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 3. The Partner 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 3 (where the profile is not met by the Partner, a revised Learner Enrolment Profile may be substituted by the Group and Schedule 3 amended accordingly);

1.3.2 achieve the target number of individual Learners as defined in this Schedule 1; and

1.3.3 not exceed the maximum number of Learners set out in Schedule 3.

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

1.5 The Group is not obliged to make payment to the Partner over and above the maximum Contract Value as further described within Schedule 3.

1.6 In accordance with clause 4.10 the Partner shall provide the following completed paperwork to the Group to confirm income generated by Learners:

- 1.6.1 The Group's enrolment form completed and signed by the Partner and the Learner and such other supporting documentation as may be required by the Group 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 Group;
- 1.6.6 Health and Safety form (one per Employer); and
- 1.6.7 Learner reviews completed and sent to the Group at periods specified to the Partner by the Group (as updated from time to time) whilst the Learner is enrolled on a Programme.

SCHEDULE 1A

[Funding Rates for each Programme – To be updated by the Group]

Qualification Title	Awarding Body	Qualification Level	Funding Value per Learner

The above fees represent the maximum available for a successful learner and will be paid to the Partner at the rate of **80%** of the funding received by The Group from the Agency for enrolled learners, subject to the Partner's compliance with its obligations under this Agreement

SCHEDULE 2

Health and Safety

1. The Partner shall:
 - 1.1 Deliver health and safety training for Learners before commencement of the Programme and make each Learner aware of the Partners 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.

SCHEDULE 3

LEARNERS

1. **Commencement Date:** **2018**

The Group shall notify the Partner 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 Partner each month in respect of each Programme.

2. **Key Performance Indicators**

Minimum performance level: **90%** Learner Timely Achievement rate.

Minimum performance level: **90%** Learner Starts

Minimum performance level: **90%** Learner Retention

3. **Surveys**

Minimum response rate of **90%** Learner Satisfaction surveys

A minimum score of **65%** learner satisfaction rate from returns received to be satisfactory or better

Minimum response rate of **75%** from Employer satisfaction surveys

Minimum score of **85%** overall Employer satisfaction from return to be satisfactory or better

4. **Observation of Teaching and Learning**

All delivery staff to achieve, as a minimum a satisfactory grade with **90%** grades to be good or better

5. **Equality & Diversity**

Achievement gaps for learners should not exceed a 5% tolerance against any EDIMS grouping

This will be based on the performance of the Partner and subject to Group performance and any changes in the Agency's requirements and audit.

6. **Additional Requirements**

Learner Enrolment Profile:

	March 2018	April 2018	May 2018	June 2018	July 2018
Qualification Title	No. of starts	No. of starts	No. of starts	No. of starts	No. of starts
Totals					

Programmes:

Learning Aim Reference num	Qualification Title	Awarding Body	Qual Level

Maximum numbers of learners for each Programme is:

Qualification Title	Maximum number of starts

Maximum Contract Value:

SCHEDULE 4

Premises

Programme(s) covered by this Agreement as detailed in Schedule 1 will normally occur within the premises controlled by the Partner. However, should it be necessary the Programme(s) may be conducted within suitable alternative premises which are rented or hired by the Partner and at the sole expense of the Partner.

List of Premises:

Delivery Locations
.....

SCHEDULE 5

Insurance

(a) Minimum cover per claim

Employers Liability	£10,000,000.00
Public Liability	£10,000,000.00
Professional Indemnity	£5,000,000.00
Others	£1,000,000.00

(b) Risks to be insured against ALL

SCHEDULE 6

Meeting Arrangements

Meeting dates: A meeting will take place at a minimum of once per term and will be arranged between the Partner and Group Contract Managers. An agenda will be drawn up for each meeting to ensure the quality delivery of the programmes.

The Group 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 Group.

Agenda items to include but not limited to –

- Monitoring of learner enrolment profiles
- Learner withdrawals
- Progress of delivery and learner progress
- Progress against agreed KPIs i) % of Learner Timely Achievement rate, ii) Learner Starts and iii) % Learner Retention
- Review of organisational policies and external quality assurance reports
- Identification of any issues with Safeguarding, Prevent, Equality and Diversity
- Health and Safety
- Business Continuity Plan
- Learner Voice including learner complaints with regards to the programme, against trainers, quality of programme, premises, H & S, safeguarding, E & D etc.

SCHEDULE 7

Data Protection legislation

1. The subject matter and duration of the processing

XXXX is contracted to process data in respect of learners on XXXX programme between XXXX date and XXXX date.

2. The nature and purpose of the processing

Input details here

3. The type of personal data and categories of data subject

Input details here

4. The obligations and rights of the controller

To carry out audits, checks and inspections to verify the Data Processor's compliance with data protection legislation.

5. Definitions

Data Controller (the "Group")

The natural or legal person or organisation which determines the purposes and means of processing personal data;

Data Processor (the "Partner")

The natural or legal person or organisation which processes personal data on behalf of a controller

Data Processing

The collection, input, storage, rectification and deletion of data

6. The Data Processor must comply with the following terms:

- 6.1 Only act on the written instructions of the controller (unless required by law to act without such instructions)
- 6.2 Ensure that people processing the data are subject to a duty of confidence; this includes staff directly employed by the Data Processor and temporary and agency staff;
- 6.3 Ensure that people processing the data are trained and competent in respect of the requirements of the data protection legislation; provide the Data Controller with evidence of GDPR training for all staff who process personal data;
- 6.4 Take appropriate technical and organisational measures to ensure the security of processing and the integrity of the data;
- 6.5 Only engage a sub-Data Processor with the prior consent of the Data Controller and a written contract;
- 6.6 Assist the Data Controller in providing subject access and allowing data subjects to exercise their rights under the GDPR;

- 6.7 Assist the Data Controller in meeting its GDPR obligations in relation to the security of processing, the notification of personal data breaches and data protection impact assessments;
- 6.8 Delete or return all personal data to the controller as requested at the end of the contract;
- 6.9 Submit to audits and inspections, provide the controller with whatever information it needs to ensure that they are both meeting their Article 28 obligations, and tell the controller immediately if it is asked to do something infringing the GDPR or other data protection law of the EU or a member state.
- 6.10 Nothing within the contract relieves the Data Processor of its own direct responsibilities and liabilities under the GDPR;
- 6.11 The Data Processor will indemnify the Group against professional loss, damage, costs and expenses which the Group may incur as a consequence of any act, omission, negligence or default of the Data Processor in connection with the performance of the services. The Data Processor will provide evidence of indemnification.
- 6.12 Keep records of its processing activities in accordance with Article 30.2;
- 6.13 Notify any personal data breaches to the Data Controller within 48 hours of the data breach being known about;
- 6.14 Employ a Data Protection Officer where required in accordance with Article 37;
- 6.15 Appoint (in writing) a representative within the European Union if required in accordance with Article 27.

7. The Data Processor should also be aware that:

- 7.1 It may be subject to investigative and corrective powers of supervisory authorities (such as the ICO) under Article 58 of the GDPR;
- 7.2 If it fails to meet its obligations, it may be subject to an administrative fine under Article 83 of the GDPR;
- 7.3 If it fails to meet its GDPR obligations it may be subject to a penalty under Article 84 of the GDPR;
- 7.4 If it fails to meet its GDPR obligations it may have to pay compensation under Article 82 of the GDPR.

SCHEDULE 8

Additional/Other Services

Costs for any additional/other services will be agreed and a variation to contract issued as appropriate.

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

For and on behalf of EKC Group

Signature:

Name: Graham Razey

Position: EKC Group Principal and Chief Executive

Date:

For and on behalf of

Signature:

Name:

Position:

Date:

Appendix 6

Subcontractor Monitoring Record / Franchise & Subcontractor Spot Check Summary / Quarterly Subcontractor – College Meeting Agenda

EKC/CC Representative		Signature
Provider Representative		Signature
Date of meeting		
Contract Type & Value		

Topic	Updates	Actions and timelines
Funding performance: <ul style="list-style-type: none"> • Funding values • Numbers on programmes • Potential new starts • Withdrawals/leavers dues 		
Quality performance: <ul style="list-style-type: none"> • Success rates • In-year retention • At risk students • Improvement plan • Self-assessment • Register of Attendance • Records of each scheduled training/assessment session with a programme that is cancelled if any, 		

Topic	Updates	Actions and timelines
<p>and a note setting out in full the reasons for cancellation and the proposed date of the reschedule session</p>		
<p>Observations:</p> <ul style="list-style-type: none"> • Internal observations • EKC observations • Improvements planned • Walkthroughs 		
<p>Staff development:</p> <ul style="list-style-type: none"> • Training planned • Prevent updates • Capability • Appraisals 		
<p>Learner Support:</p> <ul style="list-style-type: none"> • Prevent • Safeguarding • H&S • E&D • Additional Support requirements 		
<p>Learner & Employer satisfaction:</p>		

Topic	Updates	Actions and timelines
<ul style="list-style-type: none"> • Methods of collection • Analysis of results • Complaints received 		
<p>Funding compliance:</p> <ul style="list-style-type: none"> • File checks • Enrolment forms • Registers • Invoicing 		
<p>General :</p> <ul style="list-style-type: none"> • Marketing • Further opportunities • Case studies 		

Date of next monitoring visit:

Appendix 7 - Franchise and Subcontractor Spot Check Summary

Date	
Subcontracting partner	
Course and code	
Course dates	
Tutor	

Number on register		
Number marked as present		
Number attending		
Register reflects GLH on contract		
Number enrolled matches number on register		
Correct register codes being used		
Register has been initialled by tutor every day		
Any withdrawals have been actioned		
All learners are enrolled & meet correct eligibility criteria		

Actions:	By whom	By when
1.		
2.		
3.		
4.		
5.		
6.		

Appendix 7 - Franchise and Subcontractor Spot Check Summary

Date	
Subcontracting partner	
Course and code	
Course dates	
Tutor	

Actions:	By whom	By when
7.		
8.		
9.		

Carried out by College staff member

Name

Appendix 8 – Quarterly Subcontractor/College meeting agenda

DATE, TIME & ROOM:

MEMBERSHIP:

CHAIR:

SUB-CONTRACTOR:

MINUTES: Minutes Secretary -

AGENDA

- 1 APOLOGIES

- 2 MINUTES OF MEETING
Minutes to be agreed.

- 3 MATTERS ARISING

- 4 PROGRESS AGAINST CONTRACT
 - i. Learner Numbers vs contracted profile
 - ii. Forecasted achievement
 - iii. Contract Value
 - iv. Other

- 5 QUALITY ACTIVITY
 - i. Teaching and Learning Issues
 - ii. Retention
 - iii. Monitoring Feedback
 - iv. Learner Voice
 - v. Awarding Body Feedback

- 6 ANY OTHER BUSINESS

- 7 DATE OF NEXT MEETING:

APPENDIX 9 - Subcontractor annual due diligence check (internal use only)

Name of subcontractor	
DD carried out by (name)	
Date	

Due diligence indicator	Risk rating score			Score
	Low	Medium	High	
	1	2	3	
Registered on ESFA's list of declared subcontractors. State UKPRN here:	Registered		Not registered	0
Registered on Companies House as active	Registered as active		Registered as inactive	0
Credit rating acceptable?	Yes		No	0
Prosecutions (or action pending) for breaches of legislation?	No		Yes	0
Awarding body accreditation up to date?	Yes		No	0
Any failings in safeguarding procedures?	No		Yes	0
All insurances up to date and certification provided?	Yes		No	0
Any significant issues raised during the last year's contract period?	No	Some, but these were dealt with satisfactorily	Yes	0
Previous years' success rates	3% or more above benchmark	Within + or = 2% of benchmark	More than 20% below benchmark or no previous delivery	0
Ofsted or SAR grading	Grade 1 or 2	Grade 3	Grade 4 or no grading	0
Delivery track record	Provision deemed to be low risk e.g. track record of successful delivery to EKC/CC	Medium risk e.g. some experience in managing this type of delivery at EKC/CC	Provision deemed to be high risk e.g. distance learning or challenging client group or no previous track record of success	0
Audit and QA measures	Compliant and no actions or recommendations	Mainly compliant by recommendations to improve	Not compliant and actions required to improve or no previous audit as new provision	0
				0

Total score	Risk rating and action
up to 13	Low risk - continue with contract
14 to 17	Medium risk - refer to Director of EKC WorkHigher
18 or more	High risk - do not proceed with contract. Inform Director of EKC WorkHigher