



Skills Funding  
Agency



**European Union**  
**European Social Fund**  
Investing in jobs and skills

# Conditions of Funding (Grant)

## Employer

# **Conditions of Funding (Grant) Employer**

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## Conditions of Funding (Grant) Employer

This Funding Agreement is made this 1<sup>st</sup> day of August 2014

### BETWEEN:

- (1) The Chief Executive of Skills Funding is a statutory post and corporation sole established by section 81 of the Apprenticeship, Skills, Children and Learning Act 2009 and whose functions relate to England only (the Chief Executive) acting on behalf of the Crown, and
- (2) [name of Employer, registered office and, where appropriate, company registration number] (the Employer)

### RECITALS

**WHEREAS** the Chief Executive will pay an amount of funding to the Employer to enable the Employer to provide Learning Programmes to Learners pursuant to the terms of this Agreement

**WHEREAS** the Employer shall use the funding provided pursuant to this Agreement for the provision of agreed Learning Programmes to Learners in accordance with the terms of this Agreement

**NOW THEREFORE** for good and valuable consideration the Chief Executive and the Employer agree as follows

#### 1 Definitions

**“Agreement”** means these Conditions of Funding, the attached Appendices to the Conditions of Funding and any documents or parts thereof, policies or guidance specified in this Agreement and any variation to the Agreement agreed in writing and signed by both Parties pursuant to Clause 21 of this Agreement;

**“Chief Executive”** refers to the Chief Executive of Skills Funding and the staff of the Chief Executive who have been granted delegated authority to act on behalf of the Chief Executive;

**“Confidential Information”** means a non-exhaustive list including all designs, data, specifications and all other technical business and similar information relating to the Provision including all readable or computer or other machine readable data or material and any material relating to or comprising software which may be part of the Provision made, originated or developed during the course of or otherwise related to the Provision;

**“Employer”** means the firm, company or organisation with whom the Chief Executive enters into the Agreement;

**“Funding Rules”** means the document providing, inter alia, detailed requirements in respect of each Learning Programme, as amended from time to time, as set out in the Skills Funding Agency Funding Rules 2014/15 located at

<https://www.gov.uk/government/publications/sfa-funding-rules>

**“Learners”** means any third party including the Employer’s employees, or employees of their Supply Chain, or employees of Franchisees or any student, apprentice, trainee or similar provided with education or training funded under this Agreement.

**“Learning Programme”** means the education and training programmes to be made available to Learners and funded pursuant to this Agreement, as more particularly set out in Appendix 1.

**“Maximum Value”** means the maximum amount of funding that an Employer can use to fund that particular Learning Programme under this Agreement;

**“OFSTED”** means the Office for Standards in Education;

**“Parties”** means the Chief Executive and the Employer;

**“Provider Gateway”** means a web based internet portal at [User Gateway - Log In](#) which enables the Chief Executive, OFSTED and the Employer to access information which supports quality assurance, improvement and inspection;

**“Provision”** means the education and training made available to the Learners by or on behalf of the Employer and funded under this Agreement, as more particularly set out in Appendix 1;

**“Register of Training Organisations”** means the register maintained by the Chief Executive of organisations qualified to receive funding from the Chief Executive.

**“Supply Chain”** means any organisation where there is a contractual relationship in direct connection to the Employer’s core business.

## **2 Term**

- 2.1 This Agreement is made for the period commencing 1 August 2014 to the 31 July 2015.

### **3 Funding and Payment**

- 3.1 Allocations in respect of the Provision funded under this Agreement will be made from the 16-18 Apprenticeship the 16-18 Traineeship and Adult Skills Budgets.
- 3.2 The total amount of funds which the Chief Executive agrees to pay to the Employer and the Learning Programmes to which those funds will be applied are set out in Appendix 1 and Appendix 2.
- 3.3 All payments by the Chief Executive will be made via BACS.
- 3.4 The payment will be split between the relevant specified payment period, namely 1 August 2014 up to the 31 March 2015 and/or the 1 April 2015 up to the 31 July 2015. The Chief Executive will only pay for delivery in the financial year the delivery takes place; claims made for delivery outside of the relevant financial year will not be paid.

### **4 Conditions of Funding**

- 4.1 The Provision to be delivered under this Agreement is the delivery of the specified Learning Programmes as more particularly set out in Appendix 1 of this Agreement. The detailed requirements in respect of each Learning Programme are set out in the Funding Rules, as amended from time to time by the Chief Executive, which expressly forms part of this Agreement. Learning Programmes delivered to any Learner other than the Employer's own employees, or employees of their Supply Chain or employees of Franchisees must be an Apprenticeship and/or a Traineeship.
- 4.2 The Maximum Value of each Learning Programme as shown in Appendix 1, of this Agreement may not be exceeded for any reason except by an agreed variation in writing to the Agreement pursuant to Clause 21. The Chief Executive will not be liable to make any payment in excess of the Maximum Value of each Learning Programme or as varied pursuant to Clause 21. Where the period of the Agreement is longer than one year funding for subsequent years is subject to funds being made available to the Chief Executive.
- 4.3 The Provision shall be delivered in accordance with any specific requirements agreed and recorded in this Agreement and the supporting documentation in the attached Appendices to this Agreement which sets out the activity and/or scheduled payment profiles for the Provision agreed by the Parties, which all form part of the terms and conditions of the Agreement.
- 4.4 The Employer must use the funding allocated by the Chief Executive for the purpose of delivering the Provision. Any funds not used for the intended purpose as set out in this Agreement, or as otherwise agreed, must be returned to the Chief Executive.

- 4.5 The Employer must meet the Chief Executive's requirements, as set out in the Funding Rules, for the provision of information.
- 4.6 The Employer must comply with the guidance on partner/sub-contractor Provision as detailed in the Funding Rules. The Chief Executive reserves the right to require the Employer not to enter into or to terminate any sub-contract to deliver the Provision. Sub-contracting any part of the delivery shall not relieve the Employer of any obligation to comply with the conditions of funding as set out in this Agreement and the obligation to ensure the proper delivery of the Provision.
- 4.7 The Chief Executive will not fund any Provision, or part thereof, that fails to meet the required performance and quality standards as set out in the Funding Rules.
- 4.8 Where the Employer has failed to deliver the volumes for any Learning Programme set out in Appendix 1 of this Agreement, the Chief Executive reserves the right in her absolute discretion to reduce the Maximum Value of that Learning Programme. Subject to audit and compliance with this Agreement, the Chief Executive shall make an appropriate payment to the Employer in respect of the volumes delivered in accordance with this Agreement.
- 4.9 Where the Employer has failed to deliver the minimum quality standards of this Agreement for any Learning Programme, the Chief Executive reserves the right in her absolute discretion to reduce the Maximum Value of that Learning Programme. Subject to audit and compliance with this Agreement, the Chief Executive shall make an appropriate payment to the Employer in respect of the part of the Provision delivered in accordance with this Agreement.
- 4.10 The delivery of this Agreement is restricted to the funding available up to the 31 March 2015 as detailed in Appendix 1. Where the delivery within this financial year fails to meet the minimum levels of performance (as set out in the Funding Rules) or where the delivery in this period would result in the Overall Maximum Value of the Agreement being exceeded, the Chief Executive reserves the right in her absolute discretion to vary the Agreement accordingly.
- 4.11 The Chief Executive reserves the right to terminate this Agreement with immediate effect by giving notice in writing if the Employer ceases to be on the Register of Training Organisations maintained by the Chief Executive.
- 4.12 Where the Employer sub-contracts or intends to sub-contract any duties or obligations arising out of this Agreement the Employer must provide the Chief Executive with details of all sub-contractors bi annually by fully and accurately completing the Declaration of Subcontractors form in accordance with the deadline set out in the Funding Rules. If the Employer is not sub-contracting then a nil return must be received by the deadline date. The Employer must

notify the Chief Executive of any within year changes to its sub-contractors. The Chief Executive reserves the right to require the Employer not to enter into or to terminate any sub-contract to deliver the Services under this Agreement.

- 4.13 The Employer must comply with the requirements on sub-contracting delivery of the Services set out in the Chief Executive's Funding Rules as amended and updated. Sub-contracting any part of the Agreement shall not relieve the Employer of any obligation or duty attributable to him under the Agreement. The Employer is responsible for all the actions of its sub-contractors connected to or arising out of the delivery of the Provision which it sub-contracts.
- 4.14 The delivery of Provision under this Agreement may only be sub-contracted to one level unless the Employer obtains the consent of the Chief Executive in writing.
- 4.15 Where the Employer has sub-contracted any duties or obligations arising out of this Agreement, the Employer shall ensure that there is in place a legally binding sub-contract and send copies of the sub-contract to the Chief Executive if requested in writing to do so. Where the Employer enters into a sub-contract for the purpose of performing the Agreement, the Employer shall ensure that the sub-contract includes any terms specified in the Funding Rules.
- 4.16 The Employer shall ensure that any sub-contract entered into for the purpose of delivering the Provision funded by the Chief Executive under this Agreement contains a term providing that the Chief Executive has the right to enforce the terms of the sub-contract.
- 4.17 The Employer shall ensure that subcontractors are selected fairly and have sufficient capacity, capability, quality and financial standing to deliver the Services.

## **5 Learner Health, Safety and Welfare**

- 5.1 The Employer shall ensure so far as reasonably practicable that learning takes place in safe, healthy and supportive environments, which meet the needs of learners. The Employer shall provide information to the Chief Executive, as and when specifically requested, to give assurance that adequate arrangements exist for learner health safety and welfare.
- 5.2 Where part of the learning takes place in an environment outside the direct control of the Employer, the Employer shall take all reasonable steps to ensure that adequate arrangements are in place to ensure the health and safety of Learners.
- 5.3 The Employer shall adopt recruitment processes that comply with the law and will ensure that vulnerable learners are protected. The Employer will take all



necessary actions to comply with current legal Safeguarding requirements including undertaking an adequate risk assessment to establish what checks and action is required where their employees have regular contact with vulnerable learners. Where risk assessments identify further checks are required, information should be sought from the Disclosure and Barring Service. The Employer must review its records and be able to demonstrate to the satisfaction of the Chief Executive that they have robust record-keeping procedures.

- 5.4 In working with other organisations/bodies, the Employer shall make arrangements to co-ordinate and co-operate effectively for reasons of learner health, safety and welfare. In particular, respective responsibilities shall be clearly identified and documented as appropriate, to ensure understanding.
- 5.5 The Employer shall, in circumstances where it sub-contracts the management and/or delivery of the Provision under this Agreement, ensure that all the clauses in respect of learner health safety and welfare are included in its contract with sub-contractors.
- 5.6 The Employer shall inform the Chief Executive's representative of the death of any Learner which is as a result of work undertaken whilst in employment and who is undertaking a related Learning Programme.

This shall be done by:

- 5.6.1 informing the Chief Executive's representative by telephone or email immediately the Employer becomes aware of the event;
- 5.7 The Employer shall investigate or assess the circumstances of all Learner incidents within the scope of RIDDOR. The Employer 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.
- 5.8 The Employer shall also monitor, and act on, any other harm to Learners to the extent that the Employer 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.
- 5.9 The Employer shall co-operate with the Chief Executive's representative and Department for Work and Pensions for the purposes of the Industrial Injuries Disablement Benefit (IIDB) in respect to those Learners to which it applies.

## **6 Disposal of Assets and Change of Use**

6.1 For the purposes of this section:

6.1.1 'Asset' shall mean any property, real or personal, tangible or intangible whose value exceeds £2500 at the point of disposal;

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

6.1.3 the use of any Asset shall be considered to have changed if the Employer uses it for any purpose other than for the Provision or connected with the Provision to be delivered under this Agreement;

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

6.2 The Employer shall ensure that any Asset financed by the Chief Executive is adequately insured.

6.3 The Employer shall inform the Chief Executive if it proposes to dispose of, or change the use of, any Asset that has been financed by the Chief Executive.

6.4 The Employer shall not dispose of any Asset financed by monies provided by the Chief Executive unless it has first obtained the written consent of the Chief Executive to such a disposal.

6.5 Unless otherwise agreed in writing, where the Employer disposes of the Asset financed by the Chief Executive it shall pay to the Chief Executive the greater of:

6.5.1 the amount of funding provided by the Chief Executive in respect of the Asset, or

6.5.2 the net proceeds of any disposal of the Asset, or the appropriate proportion thereof.

6.6 If the Employer changes the use of any such Asset it will be treated as a disposal and the Employer shall make a payment to the Chief Executive in accordance with clause 6.5 above.

6.7 In the event of the Employer being taken over, merging or going into liquidation, all Assets financed by the Chief Executive, or the equivalent portion of their market value, will become the property of the Chief Executive, unless otherwise agreed in writing.

6.8 The provisions of this Clause 6 shall apply during the term of this Agreement and after its termination howsoever arising. The Chief Executive reserves the right to decide when interest in Assets financed by the Chief Executive under the terms of this Agreement shall cease.

## **7 Equal Opportunities**

7.1 The Employer will, in delivering Provision under this Agreement, demonstrate that it has had regard to the duties placed on the Chief Executive by relevant equality legislation. Legislation, regulation and policy provide a framework within which the Chief Executive will strive to promote equality of opportunity for all Learners, irrespective of their age, race, gender, religion or belief, sexual orientation, gender identity or disability, including physical and learning abilities. The Employer will take all reasonable steps to ensure the observance of these provisions by all servants, employees or agents of the Employer and all sub-contractors employed to deliver the Provision.

7.2 The Employer shall ensure that equality of opportunity is built into all aspects of the Provision including, but not limited to, the business planning process and the quality improvement process. The Employer shall use analysis of data to inform future planning to improve the representation, participation and success of underrepresented and underachieving groups and challenge stereotyping. The Employer shall use appropriate, specific and measurable objectives. These will be proportionate, relevant and aligned to the Provision the Employer is funded to deliver.

7.3 The Chief Executive shall use a variety of equality information and data to inform and support judgements about the quality of the Provision and funding. These may include, but are not limited to, inspection judgements for equality and diversity, judgements from the Equality and Human Rights Commission, and the success and participation rates of different groups of Learners.

## **8 Raising Standards**

8.1 The Employer shall deliver the Provision to an acceptable standard of quality, comply with the Provider Performance Management Rules published by the Chief Executive as amended from time to time and use all reasonable endeavours;

8.1.1 to minimise drop out rates, deliver high completion, achievement and success rates and appropriate progression;

8.1.2 to at least meet the minimum quality standards that apply to the Learning Programmes delivered. These minimum quality standards and other types of underperformance will be set out by the Chief Executive;

8.1.3 to ensure competent and qualified staff deliver and assess learning. The Employer shall be responsible for the professional development

and training of its staff and for meeting any; legal requirements for its staff delivering the Provision to be qualified and trained:

- 8.1.4 to offer equality of access to learning opportunities and close equality gaps in learning and outcomes;
- 8.1.5 to provide a safe, healthy and supportive environment, which meets the needs of Learners;
- 8.1.6 to provide good management and leadership of the learning process;
- 8.1.7 to deliver value for money and financial regularity and probity; and
- 8.1.8 to ensure any sub-contractors delivering the Provision comply with the requirements set out in Clauses 8.1.1 to 8.1.7 above.

Failure to meet the requirements set out in this Clause 8.1 may result in the Chief Executive assessing the Employer to be at serious risk of failing to deliver the Provision.

- 8.2 When the Employer receives notification from OFSTED that the Provision is to be inspected, the Employer shall provide the Chief Executive with a copy of its quality improvement activity, and any other relevant information in accordance with the required timescale of OFSTED. The Employer must notify the Chief Executive of the date of the meeting at which OFSTED give feedback on the inspection and allow the Chief Executive's nominated representative to attend the meeting. The Employer must inform the Chief Executive of the outcome of the inspection within 5 working days of receiving the feedback from OFSTED.
- 8.3 Where all or any part of the Provision delivered under this Agreement is assessed by OFSTED as inadequate, the Chief Executive will regard the Employer as being at serious risk of failure to deliver the Provision.
- 8.4 The Chief Executive will issue the Employer with a Notice of Concern in the following circumstances:
  - 8.4.1 The Employer receives an inadequate OFSTED inspection rating
  - 8.4.2 All or any part of the Provision delivered under this part of the Agreement falls below the minimum quality standards or other standards which may be set by the Chief Executive.
- 8.5 The Notice of Concern will set out the reasons for the issue of the Notice of Concern and the actions the Chief Executive requires the Employer to take to address the concerns together with the timescales within which that action must be taken. The Notice of Concern may include additional conditions of funding.

- 8.6 Where the Chief Executive has served a Notice of Concern the Chief Executive has the right to require the Employer to suspend the recruitment of Learners until the Notice of Concern is lifted.
- 8.7 The Notice of Concern and any additional funding conditions will be lifted once the Employer has taken the required action to address the concerns within the timescales set out.
- 8.8 If the Employer fails to take the actions set out in the Notice of Concern within the timescales set out, the Chief Executive reserves the right to amend the Notice of Concern and add additional funding conditions or issue a Notice of Withdrawal of Funding.
- 8.9 In the event that the Employer fails to comply with the Notice of Withdrawal of Funding, the Chief Executive will issue a Confirmation of Withdrawal of Funding.
- 8.10 Once a Confirmation of Withdrawal of Funding has been issued the Employer will be removed from the Register of Training Organisations and the Chief Executive will secure another training provider to deliver the Provision.
- 8.11 The Chief Executive reserves the right to proceed straight to issuing a Notice of Withdrawal of Funding without first issuing a Notice of Concern where she considers that urgent action needs to be taken to improve the quality of the Provision to protect the interest of Learners.
- 8.12 Where appropriate the Employer shall confirm in writing to the Chief Executive that it has formal approval from relevant awarding bodies to deliver the qualifications, which form part of the Provision. The Employer must notify the Chief Executive immediately in writing if it receives any sanction from an awarding body.
- 8.13 The Chief Executive acknowledges that all standards and obligations which the Employer must meet in respect of the Provision are set out in this Agreement and no variations shall be made unless agreed in accordance with clause 21 save that where the Chief Executive is required by the Secretary of State or otherwise under a legal obligation to make variations without the need to seek the Employer's agreement.

## **9 European Funding and other Sources of Funding**

- 9.1 The Employer must not use the funding from this Agreement to make bids or claims from any European source of funding on its own behalf in respect of the Provision or on behalf of the Chief Executive without obtaining prior written consent from the Chief Executive, which shall not be unreasonably withheld or delayed.
- 9.2 Where the Employer or any of its sub-contractors has access to other funding streams, the Employer will be required to demonstrate, to the satisfaction of

the Chief Executive, that no double funding has occurred in respect of the Provision. Where the Chief Executive identifies double funding in respect of the Provision, the Employer will be liable to repay to the Chief Executive any sums paid by the Chief Executive in respect of the Provision for which the Employer has received funding from another source and the Chief Executive reserves the right to deduct such sums from any monies owed or due to the Employer under this Agreement.

- 9.3 The Chief Executive reserves the right to use payments made under this Agreement as match funding for European Structural and Investment Fund (ESIF) Projects. These funds include ESF, ERDF and EAFRD. Where requested to do so on reasonable notice in writing by the Chief Executive, the Employer shall provide such information in the form needed by the Chief Executive to enable the Chief Executive to comply with the requirements of the European Structural and Investment Funds.
- 9.4 If the Provision has been financed, in whole or in part, by the European Structural and Investment Fund, the Employer shall, if requested to do so by the Chief Executive, inform Learners or others of such financing.

## **10 Data Collection**

- 10.1 The Employer must supply the Chief Executive data on each individual Learner in accordance with the data collections framework set out in the 'ILR specification validation rules and appendices 2014 to 2015' as amended and updated which is published on the Chief Executives website at (<https://www.gov.uk/government/publications/ilr-specification-validation-rules-and-appendices-2014-to-2015> ) and in accordance with the '*Provider Support Manual*' as amended and updated.
- 10.2 The Employer must supply the Chief Executive with data in accordance with the following:
- 10.2.1 in line with agreed audit arrangements;
  - 10.2.2 in adherence with the Data Protection Act 1998;
  - 10.2.3 to support payments templates;
  - 10.2.4 to enable reconciliation to take place; and
  - 10.2.5 to support the contract management and allocation processes.
- 10.3 Data collected must be transmitted to the Chief Executive through the Chief Executive's web portal <https://www.gov.uk/government/publications/sfa-the-hub>. Access to the Chief Executives web portal is restricted and The Employer agrees to comply with the conditions of use regarding the supply of data to the Chief Executive set out in this Clause 10 and in '*Individualised*

*Learner Record Specification 2014/15 and relevant Provider Support Manual as amended and updated* available on the Chief Executive's web site (<https://www.gov.uk/government/publications/ilr-specification-validation-rules-and-appendices-2014-to-2015>)

- 10.4 In circumstances where no data has been added or updated for a given collection period the Employer must inform the Chief Executive of a 'Nil Return' through the web portal.
- 10.5 Where the Chief Executive is concerned about the quality of the data, including the completeness or accuracy of the data, provided by the Employer, the Chief Executive may require the Employer to supply further data, or data more frequently, for such period as the Chief Executive shall require.
- 10.6 The Chief Executive reserves the right to require the Employer, at its own cost, to carry out such work as the Chief Executive deems necessary to improve the quality of data.
- 10.7 The Chief Executive reserves the right to suspend payments to the Employer under the Agreement where data quality gives rise to concern about the completeness or accuracy of the data provided by the Employer.
- 10.8 Failure to transmit complete and accurate data to the Chief Executive in accordance with this Clause 10 may result in funding being withheld, recalculated or recovered.
- 10.9 Where the Employer is delivering Provision to Learners claiming out of work benefits, it must provide data to the Secretary of State with responsibility for unemployment or their nominated representative in accordance with the requirements notified to the Employer. Failure to transmit complete and accurate data under this Clause 10 will constitute a breach of the conditions of funding set out in this Agreement and may result in payments for this provision to be delayed or withheld.

## **11 Data Protection and Protection of Personal Data**

- 11.1 The Parties shall ensure that they at all times comply with the provisions and obligations imposed by the Data Protection Act 1998 and the Data Protection Principles together with any subsequent re-enactment or amendment thereof in storing and processing personal data. Both Parties hereby acknowledge that performance of a duty imposed by the Act shall not constitute a breach of any obligation in respect of confidentiality which may be owed to the other party. This Clause 11 shall not affect the Chief Executive's ability to make a search with a credit reference agency.
- 11.2 With respect to the Parties' rights and obligations under this Agreement only, the Parties agree that the Chief Executive is the Data Controller and the

Employer is the Data Processor within the meaning of the Data Protection Act 1998.

11.3 The Employer shall:

- 11.3.1 process Personal Data in respect of its Learners only in accordance with the instructions from the Chief Executive (which may be specific instructions or instructions of a general nature as set out in the Agreement or otherwise notified by the Chief Executive to the Employer during the term of the Agreement);
- 11.3.2 process the Personal Data only to the extent and in such manner as is necessary for the delivery of the Provision or as is required by Law or any Regulatory Body;
- 11.3.3 implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;
- 11.3.4 take reasonable steps to ensure the reliability of any of the Employer's Personnel who have access to the Personal Data;
- 11.3.5 obtain prior written consent from the Chief Executive in order to transfer the Personal Data to any sub-contractors or other third Parties for the delivery of the Provision;
- 11.3.6 ensure that all Personnel do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Chief Executive, for the avoidance of doubt third party does not include the Employer's employees, contractors or agents;
- 11.3.7 notify the Chief Executive within 5 working days if it receives:
  - 11.3.7.1 a complaint or request relating to the Chief Executive's obligations under the Data Protection Legislation;
- 11.3.8 provide the Chief Executive with full co-operation and assistance in relation to any complaint or request made, including by:
  - 11.3.8.1 providing the Chief Executive with full details of the complaint or request;



- 11.3.8.2 complying with a data access request within the relevant timescales set out in the Data Protection Legislation and in accordance with the Chief Executive's instructions;
  - 11.3.8.3 providing the Chief Executive with any Personal Data it holds in relation to a Data Subject (within the timescales required by the Chief Executive); and
  - 11.3.8.4 providing the Chief Executive with any information requested by the Chief Executive;
- 11.3.9 permit the Chief Executive or the Chief Executive's representative (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit the Employer's data processing activities (and/or those of its agents, subsidiaries, and Sub-contractors) and comply with all reasonable requests or directions by the Chief Executive to enable the Chief Executive to verify and/ or procure that the Employer is in full compliance with its obligations under this Agreement;
- 11.3.10 provide a written description of the technical and organisational methods employed by the Employer for processing Personal Data (within the timescales required by the Chief Executive); and
- 11.3.11 not Process Personal Data outside the European Economic Area without the prior written consent of the Chief Executive and, where the Chief Executive consents to a transfer, to comply with:
- 11.3.11.1 the obligations of a Data Controller under the Eighth Data Protection Principle set out in Schedule 1 of the Data Protection Act 1998 by providing an adequate level of protection to any Personal Data is transferred; and
  - 11.3.11.2 any reasonable instructions notified to it by the Chief Executive.

## **12 Branding and Logos**

- 12.1 The Employer shall when receiving funding from the Chief Executive for any Learning Programme, meet the requirements of the endorsement identity, available on the Chief Executive's identity guidelines website (<https://brand.skillsfundingagency.bis.gov.uk/>) on all and any promotional materials or activities in respect of the Provision. This shall include but not be limited to prospectuses, direct mail advertising, TV and radio advertising, merchandising or any other literature or products.
- 12.2 The Employer shall be given access to the current Skills Funding Agency logos and/or statements, which are to be used. This right may include but not be subject to the use of logos from other co-branding or co-funding

participants. Details will be available from the Chief Executive's website or communications team.

- 12.3 This access, when granted, shall be limited to the use of the current logos and/or statements and under no circumstances will the Employer be allowed to amend or alter the logos and/or statements, nor use it for anything not covered by this Agreement.
- 12.4 Clause 12.1 shall also apply to the Employer's sub-contractors in carrying out its responsibilities under this Agreement.
- 12.5 In respect of the Provision, the Chief Executive may seek consent in writing to use Employer's trademarks and logos. The Employer agrees not to unreasonably withhold its consent and in giving such consent may impose reasonable conditions in respect of the use by the Chief Executive of its trademarks and logos with which the Chief Executive will comply.

### **13 Feedback and Complaints**

- 13.1 The primary responsibility for receiving feedback and investigating complaints promptly and thoroughly in respect of the Provision shall rest with the Employer. The Employer shall have procedures in place, which are acceptable to the Chief Executive, to gather and act upon feedback and complaints from Learners and/or their representatives and other employers and the wider community.
- 13.2 The Employer must ensure that Learners are made aware of its procedure for dealing with complaints and that the procedure is clear and accessible to Learners who wish to complain.
- 13.3 The Employer shall be responsible for resolving complaints in accordance with its own procedures and any guidance issued by the Chief Executive.
- 13.4 Where a complaint has not been resolved to the satisfaction of the complainant the Employer will advise the complainant of his or her option to complain to the Chief Executive using the Chief Executive's complaints procedure and co-operate with any investigation carried out by the Chief Executive or their representatives and act on any recommendations made by the Chief Executive following the investigation.

### **14 Retention of Documents**

- 14.1 The Employer and its sub-contractors shall retain original invoices, management information returns and all other documents necessary to verify the Provision in relation to this Agreement for 6 years from the end of the financial year in which the last payment is made.
- 14.2 Where any payments made under this Agreement for the Provision have been used as match-funding for a European Structural and Investment Fund project

the Employer will be required to retain all documents necessary to verify the Provision delivered by itself or by its sub-contractors. Documents to support claims must be retained for a minimum of three years after the European Commission has made its final payment. For the 2007-13 ESF Programme this is expected to be until at least 31 December 2022.

- 14.3 Confirmation of the document destroy date will be notified in writing by the Chief Executive. Without prejudice to any of the other rights under the Agreement to recover funds, the Chief Executive will be entitled to recover from the Employer any sums which she is required to repay to the European Social Fund as a result of the Employers failure to comply with this Clause.
- 14.4 The provisions of this Clause shall apply during the continuance of this Contract and after its termination howsoever arising.

## **15 Access and Monitoring**

- 15.1 The Chief Executive shall give the Employer reasonable advance notice in writing of proposed visits to the Employer or its sub-contractors, to observe the delivery of the Provision.
- 15.2 For monitoring, assessment, audit and evaluation purposes, the Chief Executive, the Secretary of State and his agents, Department for Business Innovation and Skills, the Department for Work and Pensions, the National Audit Office, Representatives of the European Commission and the European Court of Auditors, the Audit Commission and the Inspectorate shall have the right to visit all or any site(s) and view operations relating to the Provision and to inspect documents that the Chief Executive or the bodies named in this clause consider relevant to the delivery of the Provision and interview Learners and the Employer's staff during these visits.
- 15.3 The Employer shall, and shall ensure that its sub-contractors shall, permit access at any reasonable time to any of the representatives listed at Clause 15.2 in order to:
- 15.3.1 examine, audit or take copies of any original or copy documentation, accounts, books and records of the Employer and its sub-contractors that relate to the delivery of the Provision;
  - 15.3.2 visit, view or assess the design, management and delivery of the Provision at any premises where those operations are carried out (including those of sub-contractors) and conduct relevant interviews, including interviews with Learners, during these visits at any reasonable time;
  - 15.3.3 carry out examinations into the economy, efficiency and effectiveness with which the Employer has used the Chief Executive's resources in the delivery of the Provision.

- 15.4 Where reasonably required, the Employer and its sub-contractors shall provide copies of any documents relevant to the delivery of the Provision required by any of the representatives listed at Clause 15.2.
- 15.4.1 The Chief Executive will allow the Employer to provide extracted records for inspection, in the first instance, however the Chief Executive's position is reserved on seeking full documentation, or further information, pursuant to clause 15.3 and 15.4.
- 15.5 The Employer shall, if required by any of the representatives stated at Clause 15.2 provide appropriate oral or written explanations relevant to the delivery of the Provision.
- 15.6 The Chief Executive reserves the right, at any reasonable time, and as it may deem necessary to require the Employer at its own cost to:
- 15.6.1 provide evidence of financial resources and the level of turnover sufficient to enable it to continue to deliver the Provision;
- 15.6.2 obtain a report by an independent accountant of the Chief Executive's choice on the financial systems and controls operated by the Employer in respect of payments claimed or received under the Agreement;
- 15.6.3 provide a copy of the Employer's latest audited Accounts;
- 15.6.4 submit any claim for payment or management information provided to support a claim for payment to be audited by an independent auditor chosen by the Chief Executive.

## **16 Review of Performance and Reconciliation of Funding**

- 16.1 For the purposes of this Agreement and the Funding Rules and any amendments thereto, the Employer shall be treated as receiving funding and as a 'training organisation and employer' as referred to in the Funding Rules.
- 16.2 Where the Employer's actual delivery will result or has already resulted in an overpayment to the Employer by the Chief Executive, the Chief Executive will withhold from, or deduct the amount owed from, payments due to the Employer under the Agreement for current or subsequent months or years accordingly. Where the Agreement has come to an end, the Chief Executive will require the repayment, within 30 days, of any overpayment identified by the Chief Executive.
- 16.3 Where the Employer's actual delivery has resulted in an underpayment to the Employer by the Chief Executive, the Chief Executive will adjust the amount due to the Employer accordingly. This adjustment shall not exceed the Overall Maximum Value set out in Appendix 1.

16.4 Should there be an under or over payment to the Employer, the Chief Executive may, at its absolute discretion require a variation to the Agreement.

## **17 Freedom of Information and Confidentiality**

17.1 The Employer acknowledges and agrees that the Chief Executive is bound by, and will act in compliance with, the provisions of the Freedom of Information Act 2000.

17.2 Confidentiality

**“Confidential Information”** means any information including Personal Data as defined by the Data Protection Act 1998, and any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel, and suppliers of the Parties including all IPRs, together with all information derived from any of the above, and any other information clearly designated as being confidential or which ought reasonably be considered to be confidential (whether or not it is marked "confidential").

The Employer hereby warrants that:

17.2.1 any person employed or engaged by it (in connection with this Agreement in the course of such employment or engagement) shall treat all Confidential Information belonging to the Chief Executive as confidential, safeguard it accordingly and only use such Confidential Information for the purposes of this Agreement; and

17.2.2 any person employed or engaged by it (in connection with this Agreement in the course of such employment or engagement) shall not disclose any Confidential Information to any third party without prior written consent of the Chief Executive, except where disclosure is otherwise expressly permitted by the provisions of this Agreement.

17.3 The Parties shall take all necessary precautions to ensure that all Confidential Information obtained from the other is treated as confidential and is not disclosed without prior approval or used other than for the purposes of this Agreement by any of its employees, servants, agents or sub-contractors.

17.4 The provisions of clauses 17.2 and 17.3 shall not apply to any information:

17.4.1 which is or becomes public knowledge (other than by breach of this Clause 17);

- 17.4.2 which was in the possession of the receiving party, without restriction as to its disclosure, before the date of receipt from the disclosing party;
- 17.4.3 which must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the party making the disclosure, including any requirements for disclosure under the Freedom of Information Act or the Environmental Information Regulations.
- 17.5 Nothing in this Clause 17 shall be deemed or construed to prevent the Chief Executive from disclosing any Confidential Information obtained from the Employer:
- 17.5.1 to any other Central Government Body, Non-Departmental or quasi Government body or agency, central or local;
- 17.5.2 to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
- 17.5.3 to any professional adviser, consultant, contractor or other person engaged by the Chief Executive directly in connection with this Agreement, provided that such information is treated as confidential by the receiving consultant, contractor or any other person;
- 17.5.4 on a confidential basis to any proposed successor body in connection with any assignment disposal of its rights, obligations or liabilities under this Agreement.
- 17.6 In order to ensure that no unauthorised person gains access to any Confidential Information or any data obtained in the course of the delivery of the Provision, the Employer undertakes to maintain adequate security arrangements that meet the requirements of professional standards and best practice.
- 17.7 The Employer will immediately notify the Chief Executive of any breach of security in relation to Confidential Information and all data obtained in the course of the delivery of the Provision and will keep a record of such breaches. The Employer will use its best endeavours to recover such Confidential Information or data however it may be recorded. The Employer will co-operate with the Chief Executive in any investigation that the Chief Executive considers necessary to undertake as a result of any breach of security in relation to Confidential Information or data.
- 17.8 The Employer shall, at its own expense, alter any security systems at any time during the period of the Agreement at the Chief Executive's request if the Chief Executive reasonably believes the Contractor has failed to comply with clause 17.6.

17.8.1 The Chief Executive reserves the right to publish details of this Agreement and the Payments made under it to comply with the Government's transparency requirements. The Chief Executive will use reasonable endeavours to give the Employer prior notice of such publication.

17.9 The provisions of this Clause 17 will apply for the duration of the Agreement and 2 years after its termination.

## **18 State Aid**

18.1 Where the rules on State Aid apply, the Chief Executive will supply to the Employer details of the records that the Employer will need to collect and retain.

18.2 The Chief Executive reserves the right to require the Employer to obtain a contribution towards the cost of the Provision from the Employer of any participant. Where a contribution is required, the Chief Executive will confirm to the Employer in writing the exact percentage of the contribution.

18.3 Where Chief Executive requires the Employer to obtain a contribution towards the cost of the Provision under clause 18.2 of this Agreement, the Employer must provide evidence that the contribution has been received.

18.4 In the event that any funding paid under this Agreement is deemed by the European Commission to amount to or contain state aid that is incompatible with the common market ("negative decision") and further decides pursuant to Article 14(1) of that Regulation that the United Kingdom shall take all necessary measures to recover the aid from the beneficiary ("recovery decision"), the Employer shall, to the extent required by the recovery decision, forthwith repay the funding to the Chief Executive without set-off or deduction plus interest.

## **19 Termination**

19.1 This Agreement may be terminated: -

19.1.1 by either Party giving not less than 3 months notice in writing to the other Party;

19.1.2 with immediate effect, by the Chief Executive, on an Event of Insolvency of the Employer;

19.1.3 if the statutory post of the Chief Executive ceases to exist and no provision is made to transfer the rights and liabilities to a successor body;

19.1.4 by either Party in the event that the other has committed a breach of the conditions of funding set out in this Agreement which is not

capable of remedy or which the other party has failed to remedy having been given written notice of such breach and, in the view of the party not in breach, reasonable time to rectify the breach;

- 19.2 For the purposes of Clause 19.1, the term “Event of Insolvency” shall mean the following:
- 19.2.1 an inability, or deemed inability to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or
  - 19.2.2 commencing negotiations with all or any class of creditors with a view to rescheduling any debts or entering into any composition or arrangement with creditors generally; or
  - 19.2.3 an order being made or a resolution being passed, or a notice being issued convening a meeting for the purpose of passing a resolution, or any analogous proceedings are taken for winding up, administration or dissolution; or
  - 19.2.4 any liquidator, trustee in bankruptcy, receiver, administrative receiver, administrator or similar officer being appointed over, or in respect of, any part of the Employer’s business or assets.
- 19.3 On termination of the Agreement the Chief Executive will recover any funds which have not been spent, or for which the required evidence has not been provided, in accordance with this Agreement.
- 19.4 The Employer shall, upon termination of the Agreement within a reasonable time deliver up to the Chief Executive all correspondence, documents, specification papers and other property belonging to the Chief Executive, which may be in its possession or under its control.
- 19.5 Termination of this Agreement for any reason shall not affect any rights and liabilities accrued up to and including the date of the termination.



## **20 Transfer of Responsibility on Expiry or Termination**

- 20.1 The Parties agree that if upon termination of this Agreement or any part of the delivery of the Provision, circumstances arise in which the Transfer of Undertakings (Protection of Employment) Regulations 2006 are applicable, the Parties shall in good faith co-operate with each other in the disclosure of information and the provision of other assistance so as to facilitate such outcome in relation to the relevant employees as may be acceptable to the Parties.
- 20.2 The Parties agree that on termination or expiry of this Agreement for any reason, the continuity of the Provision is of paramount importance. The Employer shall do its utmost to minimise disruption caused to Learners and to assist the implementation of any contingency plan proposed by the Chief Executive either prior to or after the termination or expiry of this Agreement to deal with the effects of such termination or expiry in so far as it is practicable to do so.
- 20.3 On termination or expiry of this Agreement for any reason the files for Learners who are not the Employer's employees will become the property of the Chief Executive. The Employer shall allow the Chief Executive her servants or agent to have access to its premises to remove these files or otherwise comply with a request by the Chief Executive to transfer the files to any third party nominated by the Chief Executive.
- 20.4 The Employer shall, at no cost to the Chief Executive, promptly provide such assistance and comply with such timetable as the Chief Executive may reasonably require for the purpose of ensuring an orderly transfer of responsibility for the Provision (or its equivalent) upon the expiry or other termination of this Agreement. The Employer shall use all reasonable endeavours to ensure that its employees and its sub-contractors are under a similar obligation. The Employer shall be entitled to require the provision of such assistance both prior to and after the expiry or other termination of this Agreement.
- 20.5 Such assistance may include, (without limitation) delivery of documents and data in the possession or control of the Employer or its sub-contractors, which relate to performance, monitoring, management and reporting of the Provision including the documents and data, if any, referred to in the Schedules.
- 20.6 The Employer undertakes that it shall not knowingly do or omit to do anything which may adversely affect the ability of the Chief Executive to ensure an orderly transfer of responsibility for the Provision.

## 21 The Agreement

- 21.1 This Agreement constitutes the entire agreement between the Parties in relation to its subject matter and supersedes all previous understandings, commitments, representations, agreements, draft agreements, arrangements, undertakings or prior collateral contracts of any nature made by the Parties, whether written or oral, relating to its subject matter. The Agreement shall not be varied except by an instrument in writing signed by the Parties.
- 21.2 The failure by either Party to enforce at any time or for any period any one of more of the terms and conditions of this Agreement shall not be a waiver of them or of the right at any time subsequently to enforce all terms and conditions of the Agreement.
- 21.3 The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement. No person other than the Employer and the Chief Executive shall have any rights under it and it shall not be enforceable by anyone other than the Employer and the Chief Executive.
- 21.4 Each Party acknowledges and agrees that in entering into this Agreement it has not relied upon, and shall have no rights or remedies (whether in tort, under statute or otherwise) in respect of any statements, collateral or other warranties, assurances, undertakings or representations (whether innocently or negligently made) of any person (whether party to this Agreement or not) in relation to the subject matter of this Agreement except for those contained in this Agreement.
- 21.5 Nothing in this Agreement excludes or restricts the liability of either Party to the other arising out of pre-contract fraudulent misrepresentation or fraudulent concealment.
- 21.6 Neither Party shall be liable for failure or delay in the performance of its obligations caused by or resulting from force majeure which shall include, but not be limited to, events which are unpredictable, unforeseeable or irresistible, such as any extremely severe weather, flood, landslide, earthquake, storm, lightning, fire, subsidence, epidemic, acts of terrorism, outbreak of military hostilities (whether or not war is declared), riot, explosions, strikes or other labour unrest, civil disturbance, sabotage, expropriation by governmental authorities and any other act or any event that is outside the reasonable control of the concerned Party.
- 21.7 The following documents referred to in the Agreement are expressly incorporated in full, unless otherwise specifically stated, into the Agreement.
- 21.7.1 The Funding Rules as amended from time to time by the Chief Executive.
- 21.7.2 The Provider Performance Management Rules as amended from time to time by the Chief Executive

In the event of there being a conflict, confusion or ambiguity between provisions in the Agreement or any document which is incorporated into the Agreement, the Parties shall work together to identify the conflict, confusion or ambiguity and, where appropriate, effect the necessary variation to the Agreement, pursuant to clause 20 of the Agreement.

## **22 Counterparts**

- 22.1 This Agreement may be entered into in any number of counterparts and by the Parties on separate counterparts, all of which taken together shall constitute one and the same instrument.

## **23 Governing Law and Jurisdiction**

- 23.1 This Agreement and any non-contractual obligations arising out of or in connection with it shall be governed by, and interpreted in accordance with, English law.
- 23.2 Each party irrevocably submits to the exclusive jurisdiction of the English courts in relation to all matters arising out of, or in connection with, this Agreement.

## **24 Partnership**

- 24.1 Nothing in this Agreement is intended to create a partnership or joint venture or legal relationship of any kind that would impose liability upon one Party for the act or failure to act of the other Party or to authorise either Party to act as agent for the other.

**APPENDIX 1**

**SUMMARY OF PROGRAMME FUNDING 2014/2015** [Provider  
Performance Adviser to insert CCM Appendix 1 here]

**APPENDIX 2**

**FUNDING AGREEMENT(S)** [Provider Performance Adviser to insert CCM Funding Agreements here]