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Leading learning and skills

SAMPLE

**Conditions of Funding
(Grant)**

Conditions of Funding (Grant)

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Conditions of Funding (Grant)

1 Introduction

- 1.1 This Agreement is made between the Learning and Skills Council (the Council) and **[***Name of the Body***]** (CM: *insert short descriptor of the Body e.g. local authority (Authority)/Ministry of Defence (MOD)/Department of Health (Department) Sector Skills Council*) regarding the amount of funding to be paid by the Council to the Body for Learning Provision (Provision) for the period commencing 1 August 2009 to the 31 July 2010.
- 1.2 The funding allocation(s) by the Council is made subject to the conditions set out in this Agreement and any documents referred to herein.

2 Funding and Payment

- 2.1 The total amount of funds which the Council agrees to pay to the Body is set out in the Appendix 1 and Appendix 2 up to the overall maximum value which is attached to and forms part of this Agreement.
- 2.2 The learner numbers covered by this Agreement are set out in Appendix 1 and Appendix 2.
- 2.3 All payments by the Council will be made via BACS, and will be made within *[contract manager to insert]* X working days of the end of each month.
- 2.4 Where the Body delivers Employer Responsive provision, the payment will be split between the 1 August 2009 up to the 31 March 2010; and the 1 April 2010 up to the 31 July 2010. The Council 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.

3 Conditions of Funding

- 3.1 The Provision to be delivered under this Agreement is the delivery of the Learning Programmes as set out in the Summary of Programme Funding at Appendix 1 and Appendix 2 of this Agreement. The detailed requirements in respect of each Learning Programme are set out in the Funding Requirements for 2009/10 as amended from time to time by the Council and which form part of the terms and conditions of this Agreement.
- 3.2 The maximum value for each Learning Programme as shown in Appendix 1 may not be exceeded for any reason except by an agreed variation in writing to the Agreement. The Council will not be liable to

make any payment in excess of the maximum values set out above or as varied in writing. Where the period of the Agreement is longer than one year funding for subsequent years is subject to funds being made available to the Council.

- 3.3 The Provision is to be delivered in accordance with any specific regional requirements, any tender document submitted by the Body and the Supporting Documentation as attached at Appendix 2 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. The Body is not permitted to vire funding between Learning Programmes except by way of an agreed variation in writing to the Agreement.
- 3.4 The Body must use the Council's funding solely for the purpose of delivering the Provision agreed in Appendix 1 and Appendix 2 of this Agreement. Any funds not used for the purposes intended must be returned to the Council.
- 3.5 The Body must meet the Council's requirements for the provision of information and audit certificates.
- 3.6 For the avoidance of doubt the overall maximum values for each Learning Programme at Appendix 1 takes precedence. Where the Body considers that the combination of funding rates, as published on the Learning Aims Database and volumes would result in the overall maximum value being exceeded, the Body must notify the Council and the Parties will either agree a variation to the volumes, funding rates or to the maximum value for the Learning Programme to ensure the Body remains within the agreed maximum value.
- 3.7 The Body may not sub-contract the delivery of the Provision otherwise than with the prior written consent of the Council. Sub-contracting any part of the delivery shall not relieve the Body 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.
- 3.8 Where the Council identifies that the Body is failing to deliver the volumes for any Learning Programme set out in Appendix 1 and Appendix 2 of this Agreement, it reserves the right in its absolute discretion to reduce the overall maximum value for that Learning Programme.
- 3.9 The Council will restrict delivery of this Agreement against the funding available up to the 31 March 2010 as detailed in Appendix 1 and Appendix 2. Where the delivery within this financial year fails to meet the minimum levels of performance or where the delivery in this period would result in the overall maximum value being exceeded, the Council reserves the right at its absolute discretion to vary the Agreement accordingly.

4 Specific Learner Incident Reporting Requirements

- 4.1 The Body shall inform the Council of injuries and diseases to 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:
- 4.1.1 in the case of fatal accidents and 'major injuries' (as defined in RIDDOR) - informing the Council by telephone or fax immediately the Body becomes aware of the event; and
 - 4.1.2 all RIDDOR events - sending to the Council a completed learner incident record form within 10 days of the Body becoming aware of the event.
- 4.2 The Body shall investigate or assess the circumstances of all learner incidents within the scope of RIDDOR and follow HSE guidance 'Investigating Accidents and Incidents: A Workbook for Employers, Unions, Safety Representatives and Safety Professionals' (HSG245) ISBN 0717628272. The Body 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.
- 4.3 The Body shall also monitor, and act on, any other harm to learners to the extent that the Body 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.
- 4.4 The Body shall co-operate with the Council and Department for Works and Pensions (DWP) for the purposes of the Analogous Industrial Injuries Scheme in respect to those learners to which it applies.

5 Learner Health, Safety and Welfare

- 5.1 The Body shall co-operate with and provide information to the Council, as requested, to give assurance that adequate arrangements exist for learner health and safety, to enable the Council to review learner incidents, and to assist the Council with regard to its policy on learner health and safety.
- 5.2 The Body shall ensure that learning takes place in safe, healthy and supportive environments, which meet the needs of learners, and in doing so shall:
- 5.2.1 operate an effective health and safety management system, which continually seeks to raise standards. The Council will use health and safety executive (HSE) publication HSG65

‘Successful Health and Safety Management’ as a benchmark when evaluating the arrangements of the Body. Where the Body is required to carry out self-assessment of the quality of learning provided, learner health and safety shall be included in accordance with the requirements of the Council and the Common Inspection Framework;

- 5.2.2 promote good practice and in particular, the concept of the ‘safe learner’. This includes learners, through the quality of their learning, gaining an understanding of health and safety, the identification and control of risk, and developing a set of safe behaviours;
- 5.2.3 where part of the learning takes place in an environment outside the direct control of the Body, for example, with another employer, the Body shall make an informed judgement about health and safety suitability prior to learning being delivered with that employer/in that environment. To be suitable employers and environments shall at least meet the Council’s health and safety procurement standard for learner health and safety. The Body shall periodically review suitability as an integral part of the quality of the learning being delivered;
- 5.2.4 ensure it has access to persons sufficiently competent in health and safety and the occupational area to meet its obligations in respect of learner health safety and welfare and in particular to be able to make the informed judgement of health and safety suitability under clause 5.2.3
- 5.2.5 maintain adequate records in relation to learner health and safety including; assessments of employer/environment suitability; agreements or commitments on health and safety with employers and learners; information relating to harm to learners; and records of assessments, monitoring and reviews of learner health and safety understanding/capabilities;
- 5.2.6 take account of relevant Health and Safety Executive guidance and other sources of good practice;
- 5.2.7 ensure learners receive effective and timely information, instruction and training and effective supervision based on an assessment of risk. In the case of learners below the minimum school leaving age, learners under 18 and/or learners with special needs, the environment in which the learning is delivered should be such that risks have been reduced to the lowest level practicable;
- 5.2.8 ensure that learners’ health and safety understanding and practical capabilities are periodically assessed based on an assessment of risk.

- 5.3 The Body shall adopt recruitment processes that comply with the law and will ensure that children and vulnerable adult learners are protected. The Body will take the necessary actions in order to comply with current vulnerable groups legislation and safeguarding requirements will register with the criminal records bureau where their employees may have regular contact with learners under 18 or other vulnerable learners and make the appropriate checks to ensure that employment that involves regular contact with young people under the age of 18 or other vulnerable learners is not offered to or held by anyone who has been convicted of certain specified offences, or whose name is included on lists of people considered unsuitable for such work held by the Department for Children Families and Schools and the Department of Health. The Body will carry out criminal records bureau checks on all overseas applicants for employment and seek additional information about an applicant's conduct. The Body must review its records and be able to demonstrate that they have robust record-keeping procedures through checks on record keeping undertaken.
- 5.4 In working with other organisations/bodies, the Body 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 Body shall, in circumstances where it sub-contracts the management and/or delivery of the services under this Agreement, ensure that all the clauses in respect of specific learner incident reporting requirements and learner health safety and welfare are included in its contract with sub-contractors.

6 Disposal of Assets and Change of Use

- 6.1 In respect of Assets whose value exceeds £2,500 including VAT the following provisions shall apply.
- 6.2 For the purposes of this section:
- (a) 'Asset' shall mean any property, real or personal, tangible or intangible;
 - (b) an Asset shall be considered to have been financed by the Council if it has been acquired wholly or partly with funds provided by the Council;
 - (c) the use of any Asset shall be considered to have changed if the Body uses it for any purpose other than for the Provision or connected with the Provision of Services under the Agreement;

- (d) 'the appropriate proportion thereof' shall be the proportion represented by the amount of funding provided by the Council 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.
- 6.3 The Body shall ensure that any Asset financed by the Council is adequately insured.
- 6.4 The Body shall inform the Council if it proposes to dispose of, or change the use of, any Asset that has been financed by the Council.
- 6.5 The Body shall not dispose of any Asset financed by monies provided by the Council unless it has first obtained the written consent of the Council to such a disposal.
- 6.6 Where the Body disposes of the Asset it shall pay to the Council whichever is the greater either the amount of funding provided by the Council in respect of the Asset or the net proceeds of any disposal of an Asset, or the appropriate proportion thereof, to the Council unless otherwise agreed with the Council.
- 6.7 If the Body changes the use of any such Asset it will be treated as a disposal and the Body shall make a payment to the Council in accordance with clause 6.6 above.
- 6.8 In the event of the Body being taken over, merging or going into liquidation, all Assets financed by the Council, or the equivalent portion of their market value, will become the property of the Council.
- 6.9 The provisions of this clause shall apply during the term of this Agreement and after its termination howsoever arising. The Council shall reserve the right to decide when its interest in Assets financed by the Council under the terms of this Agreement shall cease.

7 Equal Opportunities

- 7.1 The Body will, in delivering Provision under this Agreement, demonstrate that it has had regard to the duties placed on the Council by the Learning and Skills Act 2000, (sections 13 and 14) and relevant equality legislation. Legislation, regulation and policy provide a framework within which the Council will strive to promote equality of opportunity for all learners, irrespective of their age, race, gender, religion or belief, sexual orientation, disability including physical or learning abilities. The delivery of Provision should comply with the principles set out in the Council's National Single Equality Scheme 2007/10. The Body will take all reasonable steps to ensure the observance of these provisions by all servants, employees or agents of the Body and all sub-contractors employed to deliver the Provision.

- 7.2 The Body shall ensure that equality of opportunity is built into all aspects of Provision; the business planning process; the self assessment process and that its strategic plan identifies SMART priorities in this area.
- 7.3 The Body shall use analysis of data to inform future planning to improve the representation, participation and success of underrepresented and discriminated groups and challenge gender stereotyping. The Body shall use appropriate SMART improvement measures. These will be proportionate, relevant and aligned to the Provision the Body is funded to deliver.

8 Raising Standards

- 8.1 The Body shall deliver the Provision to an acceptable standard of quality as defined by the Council and shall:
- 8.1.1 minimise drop out rates and deliver high completion, achievement and success rates, and appropriate progression;
 - 8.1.2 at least meet the minimum levels of performance that apply to the programmes delivered. These minimum levels of performance and other types of underperformance will be set out by the Council;
 - 8.1.3 meet the requirements of inspection criteria as assessed by OFSTED;
 - 8.1.4 ensure competent and appropriately qualified staff deliver and access learning;
 - 8.1.5 offer equality of access to learning opportunities and close equality gaps in learning and outcomes;
 - 8.1.6 provide a safe, healthy and supportive environment, which meets the needs of learners;
 - 8.1.7 provide good management and leadership of the learning process;
 - 8.1.8 deliver value for money and financial regularity and probity; and
 - 8.1.9 ensure any sub-contractors delivering the Provision funded under this Agreement comply with the requirements set out in 8.1.1 to 8.1.8 above.

Failure to meet the requirements set out in clauses 8.1.1 to 8.1.9 may result in the Council assessing the Body to be at serious risk of failing to deliver the Services under this Agreement.

- 8.2 The Body shall continuously seek to improve the Provision it delivers and raise standards to benefit the learner. The Body shall have the primary responsibility for improving standards and will need to demonstrate to the Council's satisfaction that it has an effective quality assurance system based on annual self-assessment and the implementation of its own associated quality improvement process. The Body must provide evidenced continuous improvement. Failure to demonstrate improvement in the quality of the Provision may result in the Council assessing the Body to be at serious risk of failing to deliver the Provision.
- 8.3 The Body shall take all reasonable steps to meet the relevant requirements of the Framework for Excellence as outlined in the latest version of the Provider Guide (June 2009) and any subsequent revisions.
- 8.4 The Body shall conduct continuous self-assessment of its Provision against the quality requirements shown in Quality Improvement and Self-Assessment (May 2005), Annex B of Planning for Success (which includes the requirements under the Common Inspection Framework published by OFSTED) and Self-assessment: Updated Guidance for the Further Education System (October 2008) and any relevant subsequent documentation published by the Council, the Learning and Skills Service and/or Ofsted. The Body shall annually submit a self-assessment report electronically onto the Provider Gateway by a specified date and where required, evidence shall be provided to the Council or OFSTED in support of statements made in the self-assessment report.
- 8.5 If the Council assesses the Body to be at serious risk of failure to deliver the Provision agreed with the Council the Council may in its absolute discretion:
- 8.5.1 require the Body to meet improvement indicators to improve the quality of its Provision. The Council will meet with the Body to discuss and reach agreement on implementation of these actions and improvement indicators and to agree arrangements for monitoring and reviewing progress. In such cases reviews will take place at the frequency specified by the Council and in agreement with the Body:
 - 8.5.2 agree detailed improvement plans and measures that set out clearly the expected timescale for improvement;
 - 8.5.3 agree arrangements for more frequent monitoring of quality improvement plans:
 - 8.5.4 cease funding all or part of the Provision or:

- 8.5.5 terminate the Agreement.
- 8.6 The Council may at its discretion agree a programme of support for the Body to assist it in taking action to improve the quality of its Provision.
- 8.7 When the Body receives notification from OFSTED that the Provision (including leadership and management) is to be inspected, the Body shall provide the Council with a copy of its quality improvement activity, and any other relevant information in accordance with the required timescale of OFSTED. The Council will refer in turn to the Body's latest self-assessment report using the Provider Gateway.
- 8.8 Following any inspection by OFSTED of the Provision delivered under this Agreement, the Body will set out in writing how it will develop the strengths and address the areas for improvement identified in the inspection. The Body will update and agree with the Council revisions to any current action plans setting out how it intends to implement its quality improvement actions.
- 8.9 Where all or any part of the Provision (including leadership and management) delivered under this Agreement is assessed by OFSTED as inadequate, the Council will regard the Body as being at serious risk of failure to deliver the Provision, and paragraph 8.5 will apply.
- 8.10 Where it is identified that the Provision delivered is not meeting the minimum levels of performance, the Council will regard the Body as being at serious risk of failure to deliver the Provision, and the provisions set out at paragraph 8.5 will apply.
- 8.11 Where appropriate the Body shall confirm in writing to the Council that it has formal approval from relevant awarding bodies to deliver the qualifications, which form part of the Provision.
- 8.12 The Body shall ensure that appropriately qualified and trained staff will deliver the Provision. The Body shall be responsible for the professional development and training of its staff and for meeting any minimum requirements of the Council for the proportion of its staff to be appropriately qualified. The Body will ensure that its staff are trained in accordance with the Further Education Teachers Qualification (England) Regulations 2007 and the Further Education Teachers Continuing Professional and Registration (England) Regulations 2007 and LLUK Standards.

9 European Funding and Other Sources of Funding

- 9.1 The Body must not use the funding from this Agreement to make bids or claims from any European source of funding on its own behalf or on behalf of the Council without obtaining consent in writing from the Council, any such requests will not be unreasonably withheld.

- 9.2 Where the Body or any of its sub-contractors has access to other funding streams, the Body will be required to demonstrate that no double funding has occurred in respect of the Provision funded under this Agreement. Where the Council identifies double funding in respect of the Provision funded under this Agreement, the Body will be liable to repay to the Council any sums paid by the Council in respect of the Provision for which the Body has received funding from another source and the Council reserves the right to deduct such sums from any monies owed to the Body under this Agreement.
- 9.3 The Council reserves the right to use payments made under this Agreement as match funding for European Social Fund Co-Financing Projects. Where requested to do so in writing by the Council, the Body shall provide such information in the form needed by the Council to enable the Council to comply with the requirements of the European Social Fund. The Body shall, if requested to do so by the Council, inform Learners or others that the Services provided have been financed in whole or part by the European Social Fund.

10 Data Collection

- 10.1 The Body must supply to the Council's Data Service, data on each individual learner, in accordance with the data collections framework set out in the 'Specification of the Individualised Learner Record 2009/10 as amended and updated which is published on the Information Authority's website (www.theia.org.uk) and in accordance with the 'Provider Support Manual 2009/10' as amended and updated.
- 10.2 The Body must supply the Council 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;
 - 10.2.3 to support payments received on profile;
 - 10.2.4 to enable reconciliation to take place; and
 - 10.2.5 to support the contract management and allocation processes.
- 10.3 The Body shall transmit data for each part of the Provision specified in Appendix 1 to the Council in one of the following ways:
- 10.3.1 data is entered online using the provider online system specified by the Information Authority; or

- 10.3.2 data is sent to the Information Authority electronically in a batch file specified by the Information Authority (provider batch).
- 10.4 The Body must agree with the Council the data transmission method to be used for each part of the Provision. The Body will not change from one method to another unless agreed in writing by the Council. The Council reserves the right to require the Body to move to another form of data transmission.
- 10.5 Data collected must be transmitted to the Council through the Council's web portal <http://providers.isc.gov.uk>. Access to the Council's web portal is restricted and the Body agrees to comply with the conditions of use regarding the supply of data to the Council set out in this Clause 10 and in 'Specification of the Individualised Learner Record For 2009/10 and Provider Support Manual 2009/10' and subsequent editions.
- 10.6 In circumstances where no data has been added or updated for a given collection period the Body must inform the Council of a 'Nil Return' through the web portal.
- 10.7 The Body must ensure that data is received by the Council in accordance with the requirements of the 'Specification of the Individualised Learner Record For 2009/10 and 'Provider Support Manual 2009/10' and subsequent editions.
- 10.8 Where the Council is concerned about the quality of the data, including the completeness or accuracy of the data, provided by the Body, the Council may require the Body to supply data more frequently for such period as the Council shall require.
- 10.9 The Council reserves the right to require the Body, at its own cost, to carry out such work as the Council deems necessary to improve the quality of data.
- 10.10 The Council reserves the right to suspend payments to the Body under the Agreement where data quality gives rise to concern about the accuracy of the data provided by the Body.
- 10.11 Failure to transmit complete and accurate data to the Council in accordance with Clause 10.7 above may result in funding being withheld or recovered.
- 10.12 The Body shall provide to University for Industry (Ufi) details of the learning opportunity information procured under the terms of this Agreement for inclusion on the Ufi national learning directory (www.learndirect-advice.co.uk/nrs/provider/) and ensure that the information provided is current. The Council is committed to ensuring

that all the information on learning opportunities, LMI and funding support is made available to potential learners.

- 10.13 The Body shall, where applicable, advise Connexions as soon as possible if a young person does not enrol for a place they have accepted, or if they leave before completing their Learning Programme.

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, and all personal data acquired by either party from the other shall be returned to the disclosing party on request. Both parties hereby acknowledge that performance of a duty imposed by the Act shall not constitute a breach of any obligation in respect of confidentiality which may be owed to the other party. The clause shall not affect the Council's ability to make a search with a credit reference agency.

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

- 11.3 The Body shall:

11.3.1 Process Personal Data only in accordance with the instructions from the Council (which may be specific instructions or instructions of a general nature as set out in the Agreement or otherwise notified by the Council to the Body 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 Contractor Personnel who have access to the Personal Data;

11.3.5 Obtain prior written consent from the Council 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 Council;

11.3.7 Notify the Council within 5 working days if it receives:

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

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

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

11.3.8.1 providing the Council 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 Council's instructions;

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

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

11.3.9 Permit the Council or the Council's representative (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit the Body's data processing activities (and/or those of its agents, subsidiaries, and Sub-contractors) and comply with all reasonable requests or directions by the Council to enable the Council to verify and/ or procure that the Body 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 Body for processing Personal Data (within the timescales required by the Council); and

11.3.11 not Process Personal Data outside the European Economic Area without the prior written consent of the Council and, where the Council consents to a transfer, to comply with:

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 Council.

12 Branding and Logos

12.1 The Body shall when receiving funding from the Council for any programme, meet the requirements of the endorsement branding guidelines, available on the Council's brand website, on all and any promotional materials or activities. This shall include but not be limited to prospectuses, direct mail advertising, TV and radio advertising, merchandising or any other literature or products.

12.1.1 the Body shall be given access to the current Council logos and statements, which are to be used. This requirement may include but not subject to the use of logos from other co-branding or co-funding participants. Details will be available from the Council's website or communications team;

12.1.2 this access when granted shall be limited to the use of the current logos and statements and under no circumstances will the the Body be allowed to amend or alter the logo on statements, nor use it for anything not covered by this Agreement. Failure to meet with this requirement could lead to a reduction in funding.

12.2 All the terms of clause 12.1 shall also apply to the Body's sub-contractors in carrying out its responsibilities under this Agreement.

13 Feedback and Complaints

13.1 The primary responsibility for receiving feedback and investigating complaints promptly and thoroughly in respect of the services shall rest with the Body. The Body shall have procedures in place, which are acceptable to the Council, to gather and act upon feedback and complaints from learners and/or their representatives and employers and the wider community.

13.2 The Council may issue guidance for the Body on dealing with feedback and handling complaints, and will set out the minimum standards expected.

13.3 The Body shall be responsible for resolving complaints in accordance with its own procedures and any guidance issued by the Council.

13.4 Where a complaint has not been resolved to the satisfaction of the complainant the Body will advise the complainant of his or her right to

complain to the Council and co-operate with any investigation carried out by the Council.

14 Retention of Documents

- 14.1 The Body and its sub-contractors shall maintain original invoices; management information returns and all other documents necessary to verify the Provision delivered by itself or by its sub-contractors in relation to this Agreement for 6 years from the end of the financial year in which the last payment is made using monies from the European Social Fund, or where any payments made under this Agreement for the services have been used as match-funding for a European Social Fund Co-Financing Project, the Body will be required to retain documents until 31 December 2022.

15 Access and Monitoring

- 15.1 The Council shall give the Body reasonable advance notice in writing of proposed visits to the Body or its sub-contractors, to observe the delivery of the Provision, by any person who has taken or will take no direct part in the delivery or content of the Provision.
- 15.2 For monitoring and evaluation purposes, the Council, 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 relevant documents and interview Learners and the Body's staff during these visits.
- 15.3 The Body 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 Body and its sub-contractors that relate to the Agreement;
 - 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 Body has used the Council's resources in the delivery of the Provision.

- 15.4 Where reasonably required, the Body and its sub-contractors shall provide copies of any relevant documents required by any of the representatives listed at Clause 15.2.
- 15.5 The Body shall, if required by any of the representatives stated at Clause 15.2 provide appropriate oral or written explanations.
- 15.6 The Council reserves the right, at any reasonable time, and as it may deem necessary to require the Body 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 Council's choice on the financial systems and controls operated by the Body in respect of payments claimed or received under the Agreement;
 - 15.6.3 provide a copy of the Body'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 Council.
- 15.7 The Body shall in performing the Services comply fully with all relevant rules and regulations of the Council in force from time to time especially when on Council premises.

16 Review of Performance and Reconciliation of Funding

- 16.1 Where the Body's actual delivery will result or has already resulted in an overpayment to the Body by the Council, the Council will withhold from, or deduct the amount owed from, payments due to the Body under the Agreement for current or subsequent months or years accordingly.
- 16.2 Where the Body's actual delivery has resulted in an underpayment to the Body by the Council, the Council will adjust the amount due to the Body accordingly. This adjustment shall not exceed the overall maximum value set out in Appendix 1.
- 16.3 Should there be an under or over payment to the Body, the Council may, at its absolute discretion require a variation to the profile payments.

17 Freedom of Information and Confidentiality

- 17.1 Definitions

- “Exempt Information”** means any information or class of information (including but not limited to any document, report, contract or other material containing information) relating to this Agreement or otherwise relating to the Body, which potentially falls within an exemption to FOIA (as set out therein).
- “FOIA”** means the Freedom of Information Act 2000 and all regulations made there under from time to time or any superseding or amending enactment and regulations, and words and expressions defined in the FOIA shall have the same meaning in clause 15; and
- “FOIA notice”** means a decision notice, enforcement notice and/or an information notice.

17.2 Freedom of Information

- 17.2.1 The Body acknowledges and agrees that the Council is subject to legal duties under FOIA, which may require the Council to disclose on request information relating to this Agreement or otherwise relating to the Body;
- 17.2.2 The Body acknowledges and agrees that the Council is required by law to consider each and every request made under FOIA for information;
- 17.2.3 The Body acknowledges and agrees that all decisions made by the Council pursuant to a request under FOIA is solely a matter for and at the discretion of the Council;
- 17.2.4 Notwithstanding anything in this Agreement to the contrary (including without limitation any obligations of confidentiality), the Council shall be entitled to disclose information in whatever form pursuant to a request made under FOIA, save that in relation to any information that is exempt information the Council shall use reasonable endeavours (but shall not be obliged) to consult the Body and shall not:
- a) confirm or deny that information is held by the Council; or
 - b) disclose information requested.

to the extent that in the Council's opinion the information is eligible in the circumstances for an exemption and therefore the Council may lawfully refrain from doing either of the things described in parts (a) and (b) of this clause.

17.2.5 In relation to information relating to the Body or this Agreement which the Body requests should be exempt under the FOIA the Body shall indemnify the Council for any and all costs (including legal fees) incurred by the Council in:

- a) assessing the application of any exemption under FOIA; and/or
- b) responding to any FOIA notice; and/or
- c) lodging any appeal against a decision of the information commissioner in relation to disclosure.

where such costs are incurred pursuant to efforts by the Council to withhold exempt information;

17.2.6 The Council shall in no event be liable for any loss, damage, harm or detriment, howsoever caused, arising from or in connection with the disclosure under FOIA of any exempt information or other information whether relating to this Agreement or otherwise relating to the Body;

17.2.7 The Body shall assist the Council as reasonably necessary to enable the Council to comply with its obligations under FOIA.

17.3 Confidentiality

The Body hereby warrants that:

17.3.1 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 Council as confidential, safeguard it accordingly and only use such Confidential Information for the purposes of this Agreement; and

17.3.2 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 Council, except where disclosure is otherwise expressly permitted by the provisions of this Agreement.

17.4 The Body shall take all necessary precautions to ensure that all Confidential Information obtained from the Council is treated as confidential and 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.

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

- 17.5.1 which is or becomes public knowledge (other than by breach of this Clause 17.5);
 - 17.5.2 which was in the possession of the receiving party, without restriction as to its disclosure, before the date of receipt from the disclosing party;
 - 17.5.3 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.
- 17.6 Nothing in this Clause 17 shall be deemed or construed to prevent the Council from disclosing any Confidential Information obtained from the Body:
- 17.6.1 to any other Government Department, Non-Departmental or quasi Government the Body or agency, central or local;
 - 17.6.2 to any consultant, contractor or other person engaged by the Council directly in connection with this Agreement, provided that such information is treated as confidential by the receiving consultant, contractor or any other person.
- 17.7 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 Body undertakes to maintain adequate security arrangements that meet the requirements of professional standards and best practice.
- 17.8 The Body will immediately notify the Council 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 Body will use its best endeavours to recover such Confidential Information or data however it may be recorded. The Body will co-operate with the Council in any investigation that the Council considers necessary to undertake as a result of any breach of security in relation to Confidential Information or data.
- 17.9 The Body shall, at its own expense, alter any security systems at any time during the period of the Agreement at the Council's request if the Council reasonably believes the Contractor has failed to comply with clause 17.7.
- 17.10 The provisions of this Clause 17 will apply for the duration of the Agreement and after its termination.

18 The Agreement

18.1 This Agreement constitutes the entire agreement between the parties and shall not be varied except by an instrument in writing signed by the parties.

19 Machinery of Government Changes

19.1 Subject to the passage of the Apprenticeships, Skills, Children and Learning Bill, the Council will be dissolved in April 2010. The legislation may provide for the Council 's rights and liabilities under this contract to transfer to the Secretary of State, the Chief Executive of Skills Funding Agency, the Young People's Learning Agency, a Local Authority or any other person specified in an order made by the Secretary of State.

Authorised Signatory for and on behalf of the xxxxxx (Contract manager to insert Organisation name)

.....
Signature Position

Name (Print).....

Date:.....

Authorised Signatory for and on behalf of the Learning and Skills Council

.....
Signature Position

Name (Print).....

Date:

APPENDIX 1 – SUMMARY OF PROGRAMME FUNDING 2009/10 (Contract Manager to see separate Excel Spreadsheet)

SAMPLE

Appendix 2 Supporting Documentation - AMPS Funding Agreement & Summary Statement of Activity (SSoA) [to be inserted by the Contract Manager]

SAMPLE

SAMPLE