



Sub-contracting Agreement
Relating to Apprenticeship Training
Version 1.2

THIS AGREEMENT is made on

201[]

BETWEEN:

London Design & Engineering UTC incorporated and registered in England and Wales with company number 08283657 whose registered office is at 15 University Way, London, E16 2RD (the **Main Contractor**); and

[FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (the **Sub-Contractor**).

each 'a Party' and together 'the Parties'

1 Definitions and Interpretation

The definitions and rules of interpretation set out in Schedule 1 shall apply in this Agreement.

2 Commencement and Duration

- 2.1 This Agreement shall commence on the Commencement Date and shall continue unless terminated in accordance with clause 11.
- 2.2 The Main Contractor may at any time provide the Sub-Contractor with a written order for Sub-Contracted Services substantially in the form set out in Schedule 3 or in any other form that the parties may agree from time to time (an **Order**).
- 2.3 The Main Contractor shall be entitled to amend or withdraw an Order by giving the Sub-Contractor notice in writing in relation to any Services where performance has not commenced.
- 2.4 Unless clause 2.5 applies, each Order shall constitute a binding obligation on the Sub-Contractor to supply the Services in accordance with the terms of the Order and this Agreement.
- 2.5 The Sub-Contractor shall not accept any Order where the Order will cause the Sub-Contractor to exceed the Threshold Amount.
- 2.6 Where the Sub-Contractor receives an Order to which clause 2.5 applies, the Sub-Contractor shall notify the Main Contractor immediately in writing.

3 Agreement of the Sub-Contractor

- 3.1 The Sub-Contractor agrees to perform the Sub-Contracted Services in compliance with:

- 3.1.1 the terms of the Main Contract governing performance of the Training Services;
 - 3.1.2 the reasonable instructions of the Main Contractor;
 - 3.1.3 Good Industry Practice;
 - 3.1.4 the ESFA Rules; and
 - 3.1.5 all applicable laws.
- 3.2 The Sub-Contractor agrees to be bound by, and undertakes to the Main Contractor to comply with, all applicable terms of the Main Contract, as further defined and agreed in this Agreement, so that the Main Contractor is able to fulfil its obligations to the Employer under the Main Contract.
- 3.3 The Sub-Contractor shall collaborate and co-operate with the Main Contractor and the Employer including attending such meetings and providing such reports as the Main Contractor may require from time to time.
- 3.4 The Sub-Contractor shall allow the Main Contractor, the Employer and/or the ESFA or any of their authorised representatives or nominated persons such access to its premises, staff, accounts and records and any other information relating to their delivery of Apprenticeships or performance of the Sub-Contracted Services as may be requested from time to time for the purpose of monitoring performance of the Sub-Contracted Services, including (but not limited) for the purpose of audit pursuant to the ESFA Rules.
- 3.5 The Sub-Contractor warrants and represents that it is and shall, for the duration of this Agreement, meet one of the following criteria:
- 3.5.1 It is on the published register of apprenticeship training providers; or.
 - 3.5.2 It is not on the published register of apprenticeship training providers but will deliver less than £100,000 of apprenticeship training and on-programme assessment under contract across all main providers and employer-providers (the **Threshold Amount**) between 1 May 2017 and 31 March 2018 and thereafter in any 12 month period ending 31 March or such other period as defined in the ESFA Rules.
- 3.6 Without prejudice to the generality of clauses 3.1 to 3.4, the Sub-Contractor shall:
- 3.6.1 provide the Main Contractor with all ILR data so that the Main Contractor's returns to the ESFA accurately reflect delivery information;
 - 3.6.2 provide the Main Contractor such information in such form as the Main Contractor may reasonably require from time to time to enable the Main Contractor to:

- (a) assess the Sub-Contractor's performance against Ofsted's Common Inspection Framework or the requirements of the QAA Quality Code (as defined in the ESFA Rules); and
 - (b) prepare its self-assessment report as required by ESFA Rules;
- 3.6.3 ensure that all personnel engaged in performing the Sub-Contract Services have the appropriate skills, training and qualifications to perform the tasks allocated to them;
- 3.6.4 co-operate with the Main Contractor to ensure that there is continuity of learning for apprentices if this Agreement expires or terminates for any reason;
- 3.6.5 Immediately notify the Main Contractor in writing if evidence of irregular financial or delivery issues arises, including, but not limited to, non-delivery of training when funds have been paid, sanctions imposed by an awarding organisation, allegations of fraud, an inadequate Ofsted grade, not meeting relevant QAA Quality Code indicators, allegations or complaints by apprentices, employers, staff members or other relevant parties;
- 3.6.6 not use ESFA funding to make bids for, or claims from, any European funding on their own behalf or on our behalf; and
- 3.6.7 not use payments made under this Agreement as match funding for ESF projects.

4 Changes to Services

- 4.1 If the Main Contractor wishes to change this Agreement or the Sub-Contract Services, it may at any time request such change in accordance with the Change Procedure set out in Schedule 7 to the Main Contract.
- 4.2 Notwithstanding any other provisions of this Agreement, where the Main Contractor reasonably considers that a change to the Sub-Contracted Services is required in order to comply with a change to the Main Contract or the Training Services, the Main Contractor shall be entitled by notice in writing to the Sub-Contractor ('a Mandatory Change Notice') to make such changes as it may reasonably decide are necessary to comply as specified in such Mandatory Change Notice with effect from a time specified in that notice, subject to the Main Contractor paying to the Sub-Contractor its reasonable additional costs (if any) of providing any additional services.

5 Invoicing and Payment

- 5.1 The Main Contractor agrees to pay the Sub-Contractor the Payments for the Sub-Contracted Services, subject to the Sub-Contractor performing its obligations under this Agreement satisfactorily and within the time scales set by the Main Contractor and subject to the Main Contractor having received payment under the Main Contract.

- 5.2 The Payments include all taxes and employers' contributions, and shall be payable against submission of invoices from the Sub-Contractor.
- 5.3 If the Employer or the ESFA :
- 5.3.1 refuses to pay the Main Contractor for any of the Sub-Contracted Services undertaken by the Sub-Contractor under this Agreement; and/or
 - 5.3.2 claims money back from the Main Contractor in respect of any of the Sub-Contracted Services ; and/or
 - 5.3.3 requires that any or all of the Sub-Contracted Services undertaken by the Sub-Contractor be performed again to such a standard as it may reasonably require under the Main Contract or the ESFA Rules;

the Sub-Contractor undertakes to indemnify the Main Contractor for any and all costs associated with such action by the Employer or the ESFA .

6 Ownership of intellectual property

- 6.1 Nothing in this Agreement shall affect the ownership of Intellectual Property Rights owned by either Party and existing prior to this Agreement or generated outside the Training Services or Sub-Contracted Services and which the respective Party agrees to make available to the other in the course of the Training Services or Sub-Contracted Services (**Background IPR**).
- 6.2 If one Party makes any Background IPR available to the other Party in the course of the Sub-Contracted Services, the Party receiving such Background IPR shall treat it as Confidential Information disclosed under clause 7.1 below, and shall not disclose it to a third party nor use it for any purposes other than that for which it was made available to that Party. Each Party agrees to make any Background IPR which is relevant to the Sub-Contracted Services available to the other solely for the purposes of undertaking the Sub-Contracted Services and the Training Services.
- 6.3 Any Intellectual Property Rights arising out of, or generated by the Sub-Contractor solely for the purpose of undertaking, the Sub-Contracted Services shall be owned by the Main Contractor. For the avoidance of doubt, the ownership of Intellectual Property Rights as described in this clause 6.3 shall apply whether such Intellectual Property Rights have been made by any one of the Main Contractor and Sub-Contractor or by the two Parties. The provisions of this clause 6.3 shall be subject to the provisions of the Main Contract.

7 Confidential information

- 7.1 In the event of either Party ('the Disclosing Party') making available to the other ('the Receiving Party') Confidential Information, the Receiving Party shall maintain the confidentiality of such information, and shall not disclose it to any third party save as permitted by this clause 7.
- 7.2 Each Party may disclose the other Party's Confidential Information:
- 7.2.1 to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the Party's rights or carrying out its obligations under or in connection with this Agreement provided that such Party shall procure that its employees, officers, representatives or advisers to whom it discloses the other Party's Confidential Information comply with this clause 7 and
 - 7.2.2 as may be required to be disclosed by law, regulation or order of a court of competent jurisdiction ('Operation of Law').
- 7.3 The Main Contractor may disclose Confidential Information of the Sub-Contractor to the Employer or the ESFA if required to do so pursuant to the Main Contract or the ESFA Rules.
- 7.4 The obligations in clause 7.1 shall not apply to data or information which the Receiving Party can clearly demonstrate:
- 7.4.1 was known to the Receiving Party otherwise than under any obligation of confidentiality prior to disclosure; or
 - 7.4.2 was in or enters the public domain through no fault of the Receiving Party; or
 - 7.4.3 becomes available to the Receiving Party by an unconnected third party with the lawful right to make such a disclosure;
 - 7.4.4 has been independently developed or conceived by it.
- 7.5 If required to make a disclosure by Operation of Law, the Receiving Party will immediately notify the Disclosing Party in writing of any request or requirement for disclosure and of all relevant surrounding circumstances. If the Receiving Party is unable so to notify the Disclosing Party before such disclosure is required it will notify the Disclosing Party immediately after the disclosure has been made. The Receiving Party will use all reasonable endeavours to resist any requirement for disclosure (and to assist the Disclosing Party in resisting the requirement for disclosure) and to maintain the confidentiality of the Confidential Information.

8 Data Protection and Data Processing

- 8.1 Both parties shall comply with the applicable requirements of Data Protection Law at all times during the term of this Agreement. This clause is in addition to and does not relieve, remove or replace, a party's obligations under Data Protection Law
- 8.2 Without prejudice to the generality of clause 8.1, the Sub-Contractor shall in relation to any personal data of the Main Contractor (including any Apprenticeship Personal Data as defined in Schedule 4) processed by the Sub-Contractor in connection with the Services process such personal data in accordance with the provisions of Schedule 4.
- 8.2 Without prejudice to the generality of clause 8.1, the Main Contractor will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of personal data to the Sub-Contractor for the duration and purposes of this Agreement..

9 Limitation of Liability

- 9.1 Nothing in this Agreement shall limit or exclude either Party's liability for:
- 9.1.1 death or personal injury caused by its negligence;
 - 9.1.2 fraud or fraudulent misrepresentation; or
 - 9.1.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); or
 - 9.1.4 any other liability which cannot be limited or excluded by applicable law.
- 9.2 Subject to Clause 9.3, no Party shall be liable to any other Party for any indirect, special or consequential Loss.
- 9.3 The Sub-Contractor agrees that it shall not exclude or limit its liability arising out of or in respect of any indemnity given pursuant to this Agreement.
- 9.4 The Sub-Contractor acknowledges that Main Contractor may, amongst other things, recover from the Sub-Contractor the following Losses incurred by the Main Contractor to the extent that they arise as a result of a default by the Sub-Contractor:
- 9.4.1 any additional operational and/or administrative costs and expenses incurred by the Main Contractor including costs relating to time spent by or on behalf of Main Contractor in dealing with the consequences of the default; and
 - 9.4.2 the additional cost of procuring replacement services for the remainder of the Sub-Contract Work Period.

10 Sub-Contractor Indemnity

- 10.1 Subject to clause 10.2, the Sub Contractor shall indemnify and hold harmless the Main Contractor and the Employer (the Indemnified Parties) and where applicable shall release and discharge the Indemnified Parties, on demand from and against all Losses suffered or incurred by such Indemnified Party (including without limitation as a result of third party actions, claims, or demands arising or brought against such Indemnified Party) which may arise out of, or in consequence of the performance or non-performance by the Sub-Contractor the Sub-Contracted Services or any act, omission, breach, negligence or breach of statutory duty on the part of the Sub-Contractor in relation to this Agreement or the Sub-Contracted Services.
- 10.2 The Sub-Contractor shall not be responsible nor obliged to indemnify the Main Contractor under clause 10.1 for any Loss caused solely and directly by the negligence or wilful misconduct of the Main Contractor or by the breach by the Main Contractor of its obligations under this Agreement.
- 10.3 The Sub-Contractor undertakes to maintain at its own cost an insurance policy to cover full liability in respect of any act, omission or default for which it may become liable in undertaking the Sub-Contracted Services or to indemnify the Main Contractor under the terms of this Agreement.

11 Termination

- 11.1 Each Order shall continue for the Sub-Contract Work Period unless terminated in accordance with this clause.
- 11.2 This Agreement will terminate forthwith if the Main Contract is terminated.
- 11.3 If the Sub-Contractor undergoes a change of circumstances that the Main Contractor, acting reasonably, believes will affect the Sub-Contractor's ability to continue to deliver the Sub-Contracted Services, the Main Contractor may on written notice to the Sub-Contractor suspend the Sub-Contracted Services and all related payments under any or all Orders, and make alternative delivery arrangements for each Apprentice affected by this, in agreement with their employer. "**Change of circumstances**" includes going into liquidation, administration, key delivery staff leaving the organisation, or removal from the register of apprenticeship training providers. The Sub-Contractor shall notify the Main Contractor in writing immediately on becoming aware of any actual or potential change of circumstances.
- 11.4 Without affecting any other right or remedy available to it, either Party may terminate this Agreement or any Order with immediate effect by giving written notice to the other Party if:
- 11.4.1 the other Party commits a material breach of any term of this Agreement and such breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;

- 11.4.2 the other Party repeatedly breaches any of the terms of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement;
- 11.4.3 the other Party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986.
- 11.5 Without affecting any other right or remedy available to it, the Main Contractor may terminate this Agreement with immediate effect by giving written notice to the Sub-Contractor if there is a change of Control of the Sub-Contractor.
- 11.6 On termination or expiry of this Agreement howsoever caused the Sub-Contractor shall promptly return all of the Main Contractor's Equipment and Materials including the Learner Records to the Main Contractor.
- 11.7 Termination or expiry of this Agreement shall not affect any rights, remedies, obligations or liabilities of the Parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiry.
- 11.8 Provisions which either expressly provide or by their very nature are intended to survive termination of this Agreement shall do so.

12 Non-solicitation

Except as otherwise expressly agreed between the Parties in writing, neither Party for the duration of this Agreement or for a period of 12 months after completion of the Sub-Contracted Services or termination of this Agreement shall, directly, by or through itself, its agent or otherwise, whether for its own benefit or for the benefit of any other person:

- 12.1 solicit or induce, or endeavour to solicit or induce any Restricted Employee of the other Party;
or
- 12.2 employ or engage or offer to employ or engage a Restricted Employee of the other Party without the written consent of the other Party save that either Party may employ or engage any Restricted Employee of the other Party who has responded directly to a bona fide recruitment drive, wither through an agency or advertisement in the press and not directly or indirectly as a result of any solicitation or inducement by the other Party.

13 General

- 13.1 Subject to 13.3, neither Party may assign, transfer, mortgage, charge, declare a trust over or deal in any other manner with any of its rights and obligations under this Agreement without the consent of the other Party (such consent not to be unreasonably withheld or delayed).
- 13.2 The Sub-Contractor shall not subcontract the Sub-Contracted Services or any part of its apprenticeship training and/or on-programme assessment services to a second level.
- 13.3 If the Sub-Contractor undergoes a change of circumstances that affects its ability to continue to deliver any of the Services, the Main Contractor shall be entitled to make such alternative delivery arrangements for each affected Apprentice as it may reasonably decide.
- 13.4 No variation of this agreement shall be effective unless it is in writing and signed by the Parties (or their authorised representatives).
- 13.5 A waiver of any right or remedy under this Agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default.
- 13.6 A failure or delay by a Party to exercise any right or remedy provided under this Agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this Agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- 13.7 If any provision or part-provision of this Agreement is invalid, illegal or unenforceable, the Parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 13.8 This Agreement constitutes the entire Agreement between the Parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 13.9 Each Party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement. Each Party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.
- 13.10 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between either of the Parties, constitute either Party the agent of the other, or save as otherwise expressly provided authorise either Party to make or enter into any commitments for or on behalf of the other.
- 13.11 Each Party confirms it is acting on its own behalf and not for the benefit of any other person.

- 13.12 No one other than a Party their successors and permitted assignees, shall have any right to enforce any of its terms.
- 13.13 Any notice given to a Party under or in connection with this Agreement shall be in writing and shall be delivered by hand or by pre-paid first-class recorded or other next Business Day signed for delivery service at its registered office (if a company) or its principal place of business (in any other case). Any notice shall be deemed to have been received: on signature of a delivery receipt. This sub-clause does not apply to the service of any proceedings or any documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
- 13.14 If a dispute arises out of or in connection with this Agreement or the performance, validity or enforceability of it the Parties shall follow the procedure set out in the Main Contract.

14 Governing law and Jurisdiction

- 14.1 This Agreement and any dispute or claim arising out of, or in connection with it, its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the laws of England and Wales.
- 14.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of, or in connection with, this Agreement, its subject matter or formation (including non-contractual disputes or claims).

AGREED by the parties on the date set out at the head of this agreement

Signed by [insert full name of director/)
authorised signatory] for and on behalf of) [Director OR Authorised signatory]

and

Signed by [insert full name of director/)
authorised signatory] for and on behalf of) [Director OR Authorised signatory]



SCHEDULE 1

DEFINITIONS

1.1 Except where expressly provided otherwise, the definitions and rules of interpretation set out in the Main Contract shall apply in this Agreement.

1.2 In this Agreement the following words shall have the following meanings:

Commencement Date means *[insert date]*

Confidential Information means all non-public information (whether oral, written or electronic form) given by one Party to the other or otherwise obtained by the other's business, finance or technology, know-how, intellectual property, assets, strategy, products and clients, including without limitation information relating to management, financial, marketing, technical and other arrangements or operations of any person, firm, or organisation associated with that Party (or, in the case of the Main Contractor, the Employer);

Data Protection Law means the European Union Data Protection Directive 95/46/EC, any national laws or regulations implementing that Directive, including the Data Protection Act 1998 (**DPA**); the General Data Protection Regulation EU 2016/679 (**GDPR**) (when applicable) and any national laws or regulations constituting a replacement or successor data protection regime to that governed by GDPR;

Employer means *[insert the name address and company number of the Employer]*;

Losses means all losses, liabilities, damages, costs, expenses (including legal fees), disbursements, costs of investigation, litigation, settlement, judgement, interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise and "Loss" shall be interpreted accordingly;

Main Contract means the contract entered into between the Main Contractor and the Employer and dated *[insert date of the main contract]* as set out Annexe 2;

Order	has the meaning given in clause 2.2;
Payments	means the sums to be paid by Main Contractor and the Sub-Contractor as specified in Schedule 3;
Restricted Employee	means a person employed or engaged, or otherwise acting on behalf of either Party, for a continuous period of three months, or a person previously employed or previously engaged (provided that they had been employed or engaged for a continuous period of three months prior to the date on which their employment or engagement ceased), and such employment or engagement has ceased to exist for a continuous period of less than 6 months, who: (i) was employed or engaged in the provision of the Training Services or the Sub-Contracted Services pursuant to Schedule 2; or (ii) who had material contact with the other Party with respect to the Training Services or Sub-Contracted Services ; provided, however, such person is not an 'administrative' personnel;
Security Breach	means in relation to Training Data: <ul style="list-style-type: none"> (a) accidental or unlawful destruction, loss, damage and/or alteration; (b) unauthorised disclosure and/or access; and/or (c) all other unauthorised or unlawful forms of processing;
Sub-Contracted Services	means the services set out in Schedule 3;
Sub-Contract Work Period	means the period set out in Schedule 3;
Threshold Amount	has the meaning given in clause 3.5.2.
Training Services	means the training services contracted to be provided by the Main Contractor to the Employer under a Request for Services pursuant to the Main Contract.
Training Data	Has the meaning given in clause 0.

- 1.3 In the event of a conflict arising between the terms of this Agreement and those of the Main Contract the terms of this Agreement shall prevail.

SCHEDULE 2

The Sub-Contractor Services and Charges

SCHEDULE 3

Form of Order For Sub-Contracted Services.

- 1 *Sub-Contracted Services: [LIST THE SERVICES TO BE PROVIDED].*
- 2 *Start date and term: [SPECIFY WHEN THE SERVICES WILL BEGIN AND END].(the “**Sub-Contract Work Period**”)*
- 3 *Accreditation*
- 4 *Awarding Organisation/End Point Assessment Organisation*
- 5 *Employer Materials: [LIST THE MATERIALS TO BE PROVIDED BY THE EMPLOYER/MP, as applicable].*
- 6 *Timetable: [SET OUT THE TIMETABLE FOR EXAMINATION]*
- 7 *Charges: [INSERT THE TOTAL AMOUNT DUE AS STATED IN SCHEDULE 2 AND THE COMPLETION PAYMENT OR REFER TO THE PAYMENT SCHEDULE]*
- 8 *The name of the Contract Manager and the Services Manager.*
- 9 *Who will bear the costs of resits*
- 10 *Whether the Requested Services are Levy Funded.*

Data Protection Wording

The definitions set out at Schedule 1 of this Agreement shall apply to this Schedule 4. In addition, the following definitions shall also apply:

Agreed Purposes: means the purposes set out in Annexe 1 to this Schedule and such other purpose as the Parties may agree in writing from time to time.

Apprenticeship Personal Data: means any Personal Data provided to the Sub-Contractor by or on behalf of the Main Contractor or otherwise accessed by the Sub-Contractor or any person acting on behalf of the Sub-Contractor for the purpose of providing the Sub-Contracted Services, including but not limited to Personal Data about apprentices of the Employer;

Data Breach: means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data transmitted, stored or otherwise Processed;

Data Controller: means the natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the Processing of Personal Data; where the purposes and means of such Processing are determined by Union or Member State law, the Data Controller or the specific criteria for its nomination may be provided for by Union or Member State law;

Data Processor: means a natural or legal person, public authority, agency or other body which Processes Personal Data on behalf of the Data Controller;

Data Protection Law: means the European Union Data Protection Directive 95/46/EC, any national laws or regulations implementing that Directive, including the Data Protection Act 1998 (**DPA**); the General Data Protection Regulation EU 2016/679 (**GDPR**) (when applicable) and any national laws or regulations constituting a replacement or successor data protection regime to that governed by GDPR;

Data Subject: means an identified or identifiable natural person about whom Personal Data is processed; an identifiable natural person is one who can be identified, directly or indirectly, by reference to the Personal Data;

Personal Data: means information relating to a Data Subject such as a name, an identification number, location data, online identifier or one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that person, including opinions about a Data Subject;

Processing: means any operation or set of operations which is performed on Personal Data or on sets of Personal Data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction;

Relevant Occurrence: any of the following:

- i. any communication from the Information Commissioner's Office concerning any Processing by the Sub-Contractor of Personal Data or concerning any Processing the Apprenticeship Personal Data;
- ii. any complaint, enquiry or other communication from a Data Subject;

- iii. any actual or suspected Data Breach concerning the Apprenticeship Personal Data.

1 Relationship of the Parties

- 1.1 The parties acknowledge that for the purposes of Data Protection Law, the Main Contractor is the Data Controller and the Sub-Contractor is the Data Processor of the Apprenticeship Personal Data.
- 1.2 The Sub-Contractor shall Process Apprenticeship Personal Data as required for the performance of the Sub-Contracted Services and the scope, nature and purpose of such Processing by the Sub-Contractor is described in more detail at Annexe 1.

2. The Sub-Contractor's obligations

- 2.1 The Sub-Contractor shall only Process Apprenticeship Personal Data on documented instructions from the Main Contractor, including with regard to transfers of Personal Data to a third country, a country outside of the EEA, or an international organisation, unless required to do so by applicable law to which the Sub-Contractor is subject; in such a case, the Sub-Contractor shall inform the Main Contractor of that legal requirement before Processing, unless that law prohibits such information on important grounds of public interest.
- 2.2 The Sub-Contractor shall ensure that persons authorised to Process the Apprenticeship Personal Data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.
- 2.3 Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, the Sub-Contractor shall implement appropriate technical and organisational measures to ensure a level of security appropriate to the risk, including inter alia as appropriate:
 - 2.3.1 the pseudonymisation and encryption of Personal Data;
 - 2.3.2 the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services;
 - 2.3.3 the ability to restore the availability and access to Personal Data in a timely manner in the event of a physical or technical incident;
 - 2.3.4 a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the Processing.
- 2.4 In assessing the appropriate level of security referred to above, account shall be taken in particular of the risks that are presented by Processing, in particular from accidental or

unlawful destruction, loss, alteration, unauthorised disclosure of, or access to the Apprenticeship Personal Data transmitted, stored or otherwise Processed.

- 2.5 The Sub-Contractor shall take steps to ensure that any person acting under the authority of the Sub-Contractor or otherwise who has access to the Apprenticeship Personal Data does not Process them except on instructions from the Main Contractor, unless he or she is required to do so by applicable law.
- 2.6 The Sub-Contractor shall ensure that all personnel who have access to and/or process Apprenticeship Personal Data are obliged to keep the Apprenticeship Personal Data confidential.
- 2.6 The Sub-Contractor shall not engage another Data Processor (a Sub-Processor) without prior written consent from the Main Contractor. The Main Contractor hereby consents to the engagement of the Permitted Sub-Processors (as defined at Annexe 1).
- 2.7 Where the Sub-Contractor engages a Sub-Processor for carrying out specific Processing activities on behalf of the Main Contractor, the same data protection obligations as set out in this agreement shall be imposed on that Sub-Processor by way of a contract or other legal act under applicable law, in particular providing sufficient guarantees to implement appropriate technical and organisational measures in such a manner that the Processing will meet the requirements of Data Protection Law. The Sub-Contractor shall remain fully liable to the Main Contractor for the performance of that Sub-Processor's obligations.
- 2.8 Taking into account the nature of the Processing, the Sub-Contractor shall assist the Main Contractor by appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of the Main Contractor's obligation to respond to requests for exercising the Data Subject's rights laid down in Chapter III of the GDPR.
- 2.9 The Sub-Contractor shall assist the Main Contractor in ensuring compliance with the obligations pursuant to Articles 32 to 36 of the GDPR taking into account the nature of Processing and the information available to the Sub-Contractor.
- 2.10 The Sub-Contractor shall unless instructed to do otherwise by the Main Contractor or an applicable law requires storage of the Personal Data by the Sub-Contractor: (a) return all Apprenticeship Personal Data to the Main Contractor after the end of the provision of services relating to the Processing and; (b) ensure that it has not kept any copy of any the Apprenticeship Personal Data.
- 2.11 The Sub-Contractor shall make available to the Main Contractor all information necessary to demonstrate compliance with the obligations laid down in the GDPR and this Agreement and allow for and contribute to audits, including inspections, conducted by the Main Contractor or another auditor mandated by the Main Contractor.
- 2.12 The Sub-Contractor shall immediately inform the Main Contractor if, in its opinion, an instruction infringes Data Protection Law or other applicable data protection provisions.

- 2.13 The Sub-Contractor shall not transfer any Apprenticeship Personal Data outside of the European Economic Area unless the prior written consent of the Main Contractor has been obtained and the following conditions are fulfilled:
- (i) the Sub-Contractor has provided appropriate safeguards in relation to the transfer and has notified the Main Contractor of these safeguards;
 - (ii) the Data Subject has enforceable rights and effective legal remedies;
 - (iii) the Sub-Contractor complies with its obligations under the Data Protection Law by providing an adequate level of protection to any Personal Data that is transferred; and
 - (iv) the Sub-Contractor complies with all reasonable instructions notified to it in advance by the Main Contractor with respect to the Processing of the Personal Data.

3 **Data Subject Rights**

- 3.1 Without prejudice, and in addition to the requirements set out in paragraph 2.9 of this Schedule, the Sub-Contractor shall notify the Main Contractor within three clear calendar days if it is contacted by a Data Subject seeking to exercise one or more of the Data Subject's rights in their Personal Data laid down in Data Protection Law.
- 3.2 The Sub-Contractor shall provide the Main Contractor with full co-operation and assistance in relation to any request made by a Data Subject regarding the Data Subject's rights in their Personal Data laid down under Data Protection Law. This paragraph 3.2 shall apply to the Apprenticeship Personal Data only.
- 3.3 The Sub-Contractor shall notify the Main Contractor within three clear calendar days if a Data Subject raises any concern or complaint about how the Sub-Contractor or the Main Contractor has handled the Apprenticeship Personal Data. The Sub-Contractor shall provide full co-operation and assistance in relation to any concern or complaint raised.
- 3.4 Save as expressly provided for in this Agreement, the Sub-Contractor shall not disclose the Apprenticeship Personal Data to any Data Subject or to any other person without the prior written consent of the Main Contractor.
- 3.5 If a Relevant Occurrence happens the Sub-Contractor shall notify the Main Contractor within three clear calendar days and provide full co-operation in relation to any questions raised by the Main Contractor about the Relevant Occurrence, save that if the Relevant Occurrence is any actual or suspected Data Breach concerning the Apprenticeship Personal Data then the Sub-Contractor's obligation to notify shall be reduced to one day.

4. **Duration of Sub-Contractor's Obligations,**

- 4.1 The provisions of this Schedule shall survive termination of this agreement and shall continue for so long as the Sub-Contractor Processes Apprenticeship Personal Data.

- 4.2 The Main Contractor may terminate the Agreement or, at its discretion, suspend the Sub-Contracted Services if
- a) the security of any Apprenticeship Personal Data has been compromised by the actions or omissions of the Sub-Contractor or any Sub-Processor in breach of this agreement or otherwise; or
 - b) the Sub-Contractor has breached this Agreement and such breach has, or could, in the Main Contractor's reasonable opinion, put the Main Contractor in breach of Data Protection Law.
- 4.3 The Sub-Contractor agrees to indemnify and keep indemnified and defend at its own expense the Main Contractor against all costs, claims, damages, or expenses (including reasonable legal costs) incurred by the Main Contractor, or for which the Main Contractor may become liable, due to any failure by the Sub-Contractor or its employees or agents or any Sub-Processor to comply with any of its obligations under this Agreement or Data Protection Law.

ANNEXE 1

Data Processing Particulars

Scope:	Processing of Personal Data by the Sub-Contractor under the terms of this Agreement whereby the Sub-Contractor provides the Sub-Contracted Services to the Main Contractor.
Nature:	The collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of Apprenticeship Personal Data in connection with the Sub-Contractor providing the Sub-Contracted Services to the Main Contractor,
Purpose:	<p>The provision by the Sub-Contractor of the Sub-Contracted Services.</p> <p>Communication between the Sub-Contractor and the Main Contractor in relation to the provision by the Sub-Contractor of the Sub-Contracted Services.</p> <p>[Other]</p>
Period for which Personal Data will be retained:	Apprenticeship Personal Data shall be retained in accordance with the Main Contractors Data Retention Policy [TBC].
Types of Personal Data:	[the Main Contractor to insert types of Personal Data to be processed including Special Categories - e.g. name, address, date of birth, email address, telephone number, health details, academic results and progress...]

<p>Categories of Data Subject:</p>	<ul style="list-style-type: none"> • Apprentices of the Employer. • Staff of the Main Contractor. • Staff of the Employer • Other sub-contractors engaged by the Main Contractor • Staff of End Point Assessment provider • [OTHERS - PLEASE COMPLETE].
<p>Permitted Sub-Processors</p>	<ul style="list-style-type: none"> • [list]

ANNEXE 2

The Main Contract.