

AGREEMENT



THIS AGREEMENT is made the day of

2019

BETWEEN:

- (1) THE BOROUGH COUNCIL OF BOLTON of Town Hall Bolton BL1 1RU (hereinafter called "the Authority")
- (2) BOLTON COLLEGE of Deane Road Campus, Deane Road, Bolton BL3 5BG (Registered Company Number: 11198091) (hereinafter called the "Provider")

WHEREAS:

- (1) Under a concession agreement relating to the transfer of Community Education Services ("CES"), the Authority granted the right to Bolton College as a Corporate Body to exploit the CES with effect from 27th April 2002 ("Concession Agreement").
- (2) All liabilities regarding the CES also transferred to Bolton College with effect from 27th April 2002.
- (3) Under clause 10.6 of the Concession Agreement, the Authority agreed to use its reasonable endeavours to assist the Provider in procuring funding for the CES. The obligation to "assist" exists for as long as the Provider provides the CES or for a maximum of 20 years from the 27th April 2002 or until the Provider can renew funding, whichever is the sooner.
- (4) In March 2018 the Education and Skills Funding Agency (ESFA) awarded Adult Education Budget (AEB) funding to the Authority for the academic year 2018/2019.
- (5) On 1st August 2018 Bolton College merged with the University of Bolton and Bolton College transferred the Concession Agreement to the Provider.
- (6) It is anticipated that the ESFA will award AEB funding to the Authority for the academic year 2019/2020 in or around March 2019.
- (7) As the sole provider of the CES under the Concession Agreement, the Authority has agreed to sub-contract to the Provider the delivery of the education and training services that are funded by the EFSA, which services are more particularly detailed in the service specification attached to this Agreement at Appendix 2 ("Specification").
- (8) The Provider has agreed to deliver the Services in accordance with this Agreement, including the terms and conditions annexed to this Agreement at Appendix 1 ("Terms and Conditions").
- (9) This Agreement is supplemental to the Concession Agreement and shall be read in conjunction with the same.

IT IS NOW AGREED as follows:-

1. This Agreement shall commence on 1st September 2018 and, unless terminated in accordance with the Terms and Conditions, shall continue for a term of 1 year ("Agreement Period"). The Authority may upon written agreement with the Provider

and subject to the ESFA awarding AEB funding to the Authority for the 2019/2020 academic year, extend the Agreement Period for a further period not exceeding 1 year. Any extended term agreed shall form part of the Agreement Period.

2. The Provider shall, during the Agreement Period, deliver the Services to the Authority in accordance with this Agreement.
3. In consideration of the provision of the Services, the Authority shall pay to the Provider the fees detailed in the Fee Schedule incorporated into the Specification ("Fees") on those payment terms detailed in this Agreement.
4. The Provider's total aggregate liability:
 - 4.1 is unlimited in respect of:
 - 4.1.1 fraud or fraudulent misrepresentation;
 - 4.1.2 death or personal injury caused by its negligence;
 - 4.1.3 breach of any obligation as to title implied by statute;
 - 4.1.4 any act or omission, liability for which may not be limited under any applicable law.
 - 4.1.5 the Provider's wilful default.
 - 4.2 is limited to the insurance limits detailed at clause 6 below in respect of:
 - 4.2.1 the indemnities in clause 22 of the Terms and Conditions;
 - 4.2.2 any breach of clause 11 of the Terms and Conditions;
 - 4.2.3 any breach of Data Protection Legislation (as defined in the Terms and Conditions).
 - 4.3 in respect of all other claims, losses or damages, whether arising from tort (including negligence), breach of contract or otherwise under or in connection with this Agreement, is limited to a sum equivalent to one hundred and fifty percent (150%) of the aggregate Fees paid or payable over the Agreement Period.
5. The Authority's maximum liability to the Provider for all claims arising in any Contract Year (other than a failure to pay any of the Fees that are properly due and payable and for which the Authority shall remain fully liable) shall not in any circumstances exceed the aggregate Fees paid or payable over the Agreement Period.
6. The Provider shall, as required under clause 21.2 of the Terms and Conditions, take out and maintain for the Agreement Period:
 - 6.1 Public liability insurance in an amount of not less than £10,000,000 for any one occurrence or series of occurrences arising during each policy year;
 - 6.2 Employers' liability insurance in an amount of not less than £10,000,000 for any one occurrence or series of occurrences arising during each policy year;

- 6.3 Professional Indemnity Insurance in an amount of not less than £5,000,000 for any one occurrence or series of occurrences arising during each policy year.
7. The Authority and the Provider shall each have the right, in accordance with clause 19.6.1 of the Terms and Conditions, to terminate the Agreement on no less than three months' written notice to the other.
8. The term "Agreement" shall mean the terms and conditions contained herein together with:
- (a) the Terms and Conditions (attached at Appendix 1) and any other document agreed between the Authority and the Provider under the Terms and Conditions;
 - (b) the Specification (attached at Appendix 2)
9. In the event of conflict the following order of priority shall apply:
- (a) the terms and conditions contained herein;
 - (b) the Terms and Conditions and any document agreed between the Authority and the Provider under the Terms and Conditions;
 - (c) the Specification; and
10. Neither the Authority nor the Provider shall be liable for any statement, representation, promise, inducement or understanding made unless expressly contained or incorporated into this Agreement.

IN WITNESS whereof the Authority and the Provider have executed this Agreement as a Deed the day and year first before written

Executed as a deed by THE
BOROUGH COUNCIL OF
BOLTON affixing its Common
Seal in the presence of:

Authorised Sealing Officer

Executed as a Deed by BOLTON
COLLEGE in the presence of:

.....
Bill Webster
Principal

.....
Andrew Roberts
Chairman of the Board

APPENDIX 1

TERMS AND CONDITIONS



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1. DEFINITIONS & INTERPRETATION

1.1 In these terms and conditions the following expressions shall have the following meanings: -

“Acquired Rights Directive” shall mean the Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States of the European Union relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses

“Agreement” shall have the meaning afforded to it in the main body of the Agreement

“Agreement Manager” the person appointed from time to time by the Authority and the person appointed from time to time by the Provider to manage the Agreement on their behalf and shall include any deputy appointed

“Agreement Period” shall mean the term specified in paragraph 1 of the main body of the Agreement

“Appropriate Pension Provision” shall, in respect of Eligible Employees, mean membership, continued membership or continued eligibility for membership of the pension scheme of which they were members, or were eligible to be members, or were in a waiting period to become a member of, prior to the Relevant Transfer

“Authority” shall have the meaning afforded to it in the main body of the Agreement

“Bolton Brand” shall mean:

- (a) Bolton Council (registered trade mark number: 2443977)
- (b) Part of the Bolton Family (registered trademark number: 2443967)
- (c) any other phrase which the Authority develops from time to time in relation to the trademarks detailed at (a) and (b) above or in relation to the operation or functions of the Authority

“Bribery Act” shall mean the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation

“Business Continuity” shall mean the ability to maintain operations and services in the face of a disruptive event

“Business Continuity Exercise” shall mean an activity in which the Business Continuity Strategy is rehearsed in part or in whole to ensure that the same contains the appropriate information and produces and achieves the desired result when put into effect

“Business Continuity Plan” shall mean a documented collection of procedures and information that is developed, compiled and maintained in readiness for use in an incident to enable the Provider to continue to deliver its critical activities at an acceptable pre-defined level

“Business Continuity Strategy” shall mean the strategy to be developed and implemented by the Provider which details how the Provider will ensure its recovery and continuity in the face of a disaster or other major incident or business disruption

“CCA” shall mean the Civil Contingencies Act 2004

“Change of Control” means a change in Control of the Provider or a sub-contractor of the Provider

“Commencement Date” shall mean the date on which the Agreement commences as specified in **paragraph 1** of the main body of the Agreement

“Confidential Information” shall mean all confidential information relating to the Purpose which the Authority or its contractors/sub-contractors or their representatives directly or indirectly discloses, or makes available, to the Provider before, on or after the Commencement Date. This includes but is not limited to:

- (a) the fact that discussions and negotiations are taking place concerning the Purpose and the status of those discussions and negotiations;
- (b) the existence and terms of this Agreement;
- (c) all confidential or proprietary information relating to:
 - (i) the business, affairs, contractors/sub-contractors, partners, suppliers, plans, intentions, or market opportunities of the Authority; and
 - (ii) the operations, processes, product information, know-how, technical information, designs, trade secrets or software of the Authority;
 - (iii) any information, findings, data or analysis derived from Confidential Information; and
 - (iv) any other information that is identified as being of a confidential or proprietary nature

but excludes Confidential Information if:

- (a) it is, or becomes, generally available to the public other than as a direct or indirect result of the information being disclosed by the Provider in breach of the Agreement (except that any compilation of otherwise public information in a form not publicly known shall still be treated as Confidential Information);
- (b) it was available to the Provider on a non-confidential basis prior to disclosure by the Provider;
- (c) it was, is, or becomes available to the Provider on a non-confidential basis from a person who, to the Provider’s knowledge, is not under any confidentiality obligation in respect of that information;
- (d) it was lawfully in the possession of the Provider before the information was disclosed by the Provider;

- (e) it is strictly required to enable a determination to be made under clause 18 below;
- (f) the parties agree in writing that the information is not confidential.

“Control” means that a person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by contract or otherwise)

“Data Protection Legislation” shall mean:

- (a) the Data Protection Act 1998 and the EU Data Protection Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 until repealed;
- (b) the General Data Protection Regulation (Regulation (EU) 2016/679);
- (c) the Data Protection Act 2018;
- (d) the Law Enforcement Directive (Directive (EU) 2016/680);
- (e) the Regulation of Investigatory Powers Act 2000;
- (f) the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000;
- (g) the Privacy and Electronic Communications (EC Directive) Regulations 2003, implementing the Electronic Communications Data Protection Directive 2002/58/EC; and
- (h) all other applicable laws and regulations relating to protection, processing and sharing of personal data and privacy (as amended), including where applicable the guidance and codes of practice issued by the Information Commissioner

“DBS” shall mean Disclosure and Barring Service

“DPA 1998” shall mean the Data Protection Act 1998

“DPA 2018” shall mean the Data Protection Act 2018

“EIR” shall mean the Environmental Information Regulations 2004

“Employment Liabilities” shall mean all claims, including claims without limitation for redundancy payments, unlawful deduction of wages, unfair, wrongful or constructive dismissal compensation, compensation for sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy or maternity, or sexual orientation discrimination, claims for equal pay, compensation for less favourable treatment of part-time workers, and any claims (whether in tort, contract, statute or otherwise), demands, actions, proceedings and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs and expenses reasonably incurred in connection with a claim or investigation (including any investigation by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory

body), and of implementing any requirements which may arise from such investigation, and any legal costs and expenses

“Exempt Information” shall mean any information or class of information (including but not limited to any document, report and contract or other material containing information) relating to the Agreement or otherwise relating to the Provider which falls within an exemption to FOIA (as set out therein)

“Existing Intellectual Property Rights” shall mean those Intellectual Property Rights vested in the Authority or the Provider prior to the Commencement Date

“Fees” shall have the meaning afforded to it in the main body of the Agreement

“FOIA” shall mean the Freedom of Information Act 2000

“Force Majeure Event” shall mean an event or circumstance which is beyond the control and without the fault or negligence of the Party affected and which by the exercise of reasonable diligence the Party affected was unable to prevent provided that event or circumstance is limited to the following:

- (a) riot, war, invasion, act of foreign enemies, hostilities (whether war be declared or not) acts of terrorism, civil war, rebellion, revolution, insurrection of military or usurped power, requisition or compulsory acquisition by any governmental or competent authority;
- (b) ionising radiation or contamination, radio activity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, radioactive toxic explosive or other hazardous properties of any explosive assembly or nuclear component;
- (c) pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds;
- (d) earthquakes, flood, fire or other physical natural disaster, but excluding weather conditions regardless of severity; and
- (e) strikes at national level or industrial disputes at a national level, or strike or industrial disputes by labour not employed by the affected Party, its subcontractors or its suppliers and which affect an essential portion of the works but excluding any industrial dispute which is specific to the performance of the works or this contract

“GDPR” shall mean the General Data Protection Regulation (Regulation (EU) 2016/679)

“Improvement Notice” shall mean a written notice served by the Authority on the Provider detailing the improvements which the Authority requires the Provider to make in relation to the delivery of the Agreement

“Intellectual Property Rights” shall mean patents, inventions, trademarks, service marks, logos, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registrable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off

“Law” shall mean any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Provider is bound to comply;

“LED” shall mean the Law Enforcement Directive (Directive (EU) 2016/680)

“Losses” shall include but not be limited to actions claims losses demands proceedings damages costs and expenses

“Material Breach” shall mean a substantial failure to perform any term or condition of the Agreement within 30 days of the Provider becoming aware of the failure (or such other period as agreed in writing by the Parties)

“Party” shall mean a party to the Agreement and **“Parties”** shall mean all the parties to the Agreement

“Personal Data” shall have the meaning afforded to it in GDPR

“Prohibited Act” shall mean the following:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage to:
 - (i) induce that person to perform improperly a relevant function or activity; or
 - (ii) reward that person for improper performance of a relevant function or activity;
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with the Agreement;
- (c) to commit any offence:
 - (i) under the Bribery Act; or
 - (ii) under section 117(2) of the Local Government Act 1972
 - (iii) under legislation creating offences concerning fraudulent acts;
 - (iv) at common law concerning fraudulent acts relating to the Agreement or any other contract with the Authority; or
 - (v) defrauding, attempting to defraud or conspiring to defraud the Authority

“Provider” shall have the meaning afforded to it in the main body of the Agreement

“Provider’s Final Staff List” shall mean the list of information specified in Part 2 of the Schedule to these terms and conditions, detailing all the Provider’s and Sub-Contractor’s staff engaged in, or wholly or mainly assigned to, the provision of the Services or any part of the Services at the Service Transfer Date

“Provider’s Provisional Staff List” shall mean the list of information specified in Part 1 of the Schedule to these terms and conditions, prepared and updated by the Provider of all the Provider’s and Sub-Contractor’s staff engaged in, or wholly or mainly assigned to, the provision of the Services or any part of the Services at the date of the preparation of the list

“Regulatory Body” shall mean any government departments and regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in the Agreement or any other affairs of the Authority

“Relevant Employees” shall mean those employees whose contracts of employment transfer with effect from the Service Transfer Date to the Authority or a Replacement Provider by virtue of the application of TUPE

“Relevant Transfer” shall mean a relevant transfer for the purposes of TUPE

“Replacement Provider” shall mean any third party supplier of any services that are fundamentally the same as any of the Services and which the Authority receives in substitution for any of the Services following the termination or expiry of the Agreement Period, whether those services are provided by the Authority internally or by any Replacement Provider

“Services” shall mean those services to be delivered to the Authority by the Provider under the Agreement as more particularly described in the main body of the Agreement

“Service Transfer Date” shall mean the date on which the Services (or any part of the Services), transfer from the Provider or Sub-Contractor to the Authority or any Replacement Provider

“Specification” shall have the meaning afforded to it in the main body of the Agreement

“Staff” shall mean employees, volunteers and agency staff

“Staffing Information” shall mean, in relation to all persons detailed on the Provider’s Provisional Staff List, in an anonymised format, such information as the Authority may reasonably request including the information that a transferor is obliged to notify to a transferee under Regulation 11(2) of TUPE and details of whether the staff are employees, workers, self-employed, contractors or consultants, agency workers or otherwise, and the amount of time spent on the provision of the Services

“Sub-Contractor” shall mean the contractors or Providers engaged by the Provider to provide goods, services or works to, for or on behalf of the Provider for the purposes of providing the Services to the Authority.

“SVGA” shall mean Safeguarding Vulnerable Groups Act 2006

“Third Party Employer” shall mean a Provider engaged by the Authority to provide some or all of the Services to the Authority before the date(s) on which the Services (or any part of the Services), transfer from the Authority and/or any Third Party Employer to the Provider or Sub-Contractor and whose employees will transfer to the

Provider on the date(s) on which the Services (or any part of the Services), transfer from the Authority and/or any Third Party Employer to the Provider or Sub-Contractor

“**TUPE**” shall mean the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246)

“**Working Day**” shall mean Monday to Friday in any week, excluding public holidays in England

1.2 In the Agreement:

1.2.1 Whenever required by the context the singular includes the plural and vice versa and words importing the masculine shall include the feminine and vice versa;

1.2.2 The headings used in these terms and conditions are for ease of reference only and shall not affect the interpretation or construction of the Agreement;

1.2.3 Unless the context otherwise requires reference to a clause or sub-clause is a reference to a clause or sub-clause of these terms and conditions; and

1.2.4 References to a specific statute include any statutory extension or modification, amendment, replacement or re-enactment of such statute and any regulations or orders made under such statute.

2. TERM OF AGREEMENT

The Agreement shall commence on the Commencement Date and continue for the Agreement Period unless terminated earlier in accordance with these terms and conditions.

3. THE FEES

3.1 The Authority shall pay the Fees to the Provider in sterling, in accordance with current legislation and within 30 days of receipt of a valid undisputed invoice. For the avoidance of doubt the Authority shall not be liable to pay the Provider for the provision of unauthorised services.

3.2 Each invoice of the Provider shall be delivered to such address as may be notified from time to time by the Authority.

3.3 Where any monies are or shall become due or recoverable from the Provider by virtue of the Agreement or any other agreement with the Authority the Authority may deduct or offset those monies from the Fees payable from time to time. The Authority’s rights under this clause 3.3 are without prejudice to any other rights or remedies available to the Authority under the Agreement or otherwise.

4. THE SERVICES

4.1 The Provider shall provide the Services to the Authority during the Agreement Period in accordance with the Agreement.

- 4.2 The Provider and the Authority shall both appoint an Agreement Manager and inform the other of his name within 3 Working Days of the Commencement Date. In the event that an Agreement Manager is replaced the relevant Party shall inform the other of the name of his replacement as soon as is reasonably practicable.
- 4.3 The Provider shall comply with:
- 4.4.1 all those reasonable directions and monitoring requirements imposed from time to time by the Authority and those requirements detailed in the Specification; and
 - 4.4.2 all reasonable guidance relating to the provision of the Services issued by the Authority and other regulatory bodies which the Provider is made aware.
- 4.5 The Provider shall permit the Authority and those authorised by it including but not limited to any regulatory body to observe the Provider's delivery of the Services at any time and to interview those members of the Provider's Staff directly or indirectly involved in the provision of the Services.
- 4.6 The Provider shall attend review meetings with the Authority at such times and at such locations as agreed between the Authority and the Provider to discuss the operation of the Agreement and any other relevant matters.
- 4.7 The Provider will develop and deliver to the Authority on request a written assessment of the quality of the Services being provided from time to time under the Agreement.
- 4.8 In the event that the Authority has concerns regarding the Provider's delivery of or ability to deliver the Services:
- 4.8.1 The Authority shall be entitled to serve an Improvement Notice on the Provider; and
 - 4.8.2 The Provider shall comply with each Improvement Notice served within the timescales detailed therein.
- 4.9 The Authority shall, where necessary, permit the Provider and those authorised by the Provider to enter onto such Authority premises as agreed between the Parties for the purpose of delivering the Services. The Provider shall require those of its Personnel using Authority premises to comply with any site rules or policies communicated to the Provider. The Authority shall have the right to refuse entry to, and remove any of the Provider's Personnel from Authority Premises if they fail to comply with any site rules or policies or if they otherwise present a security risk.
- 4.10 The Provider shall not at any time during the Agreement Period knowingly act in any capacity for any person(s), partnership, organisation or company in circumstances where a conflict of interest would or might exist between its professional duties towards such person(s), partnership, organisation or company and its duties to the Authority under the Agreement. The Provider shall inform the Authority immediately if any potential conflict arises.
- 4.11 The Provider shall at all times comply with any statutory requirements relating to the Provider's obligations under the Agreement whether such statutory requirements are

in force at the Commencement Date or enacted at any time during the Agreement Term.

- 4.12 The Provider shall not do anything by reason of which the Authority may incur or become liable to pay any penalty damages compensation costs fees or expenses.
- 4.13 The Provider shall inform the Authority promptly and in writing of any problems encountered by the Provider in delivering the Services which the Provider is unable to resolve within a reasonable period of time.

5. WARRANTIES AND REPRESENTATIONS

5.1 The Provider warrants and represents that in providing the Services:

- 5.1.1 it will exercise all the reasonable skill, care and diligence to be expected of a properly qualified and competent person experienced in the provision of services which are similar in nature to the Services; and
- 5.1.2 it will meet any targets and service levels detailed in the Specification within the timescales detailed therein; and
- 5.1.3 it will comply with the Law including but not limited to the legal requirement to pay the National Minimum Wage.

5.2 The Provider further warrants that:

- 5.2.1 it has full capacity and authority and all necessary rights and consents (including but not limited to, where its procedures so require, the consent of its parent company) to enter into and to perform the Agreement and to grant the rights to be granted hereunder and that the Agreement is executed by a duly authorised representative of the Provider;
- 5.2.2 there are no material facts or circumstances in relation to the financial position or operation or constitution of the Provider which have not been fully and fairly disclosed to the Authority in writing and which if so disclosed might reasonably have been expected to affect the decision of the Authority to enter into the Agreement;
- 5.2.3 in entering into the Agreement it is not in breach of clause 11 (Fraud and Irregularity and Corrupt Gifts);
- 5.2.4 it owns, has obtained or is able to obtain, valid licences for all Intellectual Property Rights and all permissions, authorisations, consents and permits that are necessary for the performance of its obligations under the Agreement;
- 5.2.5 no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might have a material adverse effect on its ability to perform its obligations under the Agreement;
- 5.2.6 it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under the Agreement;

5.2.7 no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Provider or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Provider's assets or revenue; and

5.2.8 in the three 3 years prior to the Commencement Date:

(i) it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;

(ii) it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and

(i) it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Agreement.

5.3 The Authority shall at any time be entitled to assign or transfer the benefit of the warranties given under the Agreement by way of legal assignment without the Provider's consent.

5.4 Except as expressly stated in the Agreement, all warranties and conditions, whether express or implied by statute, common law or otherwise (including but not limited to fitness for purpose) are hereby excluded to the extent permitted by law.

6. HEALTH & SAFETY

6.1 The Provider shall notify the Authority of any health and safety hazards which may arise in connection with the performance of the Agreement.

6.2 The Provider shall:

6.2.1 comply with all relevant health and safety legislation and any relevant guidance issued by the Authority or a government or regulatory body;

6.2.2 co-operate with and provide information to the Authority, as requested, to give assurance that adequate arrangements exist to ensure the health and safety of any members of the public affected by the provision of the Services, to enable the Authority to review any incidents involving members of the public and to assist the Authority to comply with its health and safety policies;

6.2.3 carry out health and safety risk assessments in respect of the provision of the Services, as and when necessary;

6.2.4 in relation to the environment in which the Services will be delivered, ensure that risks have been reduced to the lowest risk practicable;

6.2.5 ensure that it employs a sufficient number of Staff competent in health and safety to meet its obligations under the Agreement;

- 6.2.6 maintain adequate records in relation to health and safety, including but not limited to:
 - 6.2.6.1 assessments of Staff/environment suitability;
 - 6.2.6.2 agreements or commitments on health and safety with Staff;
 - 6.2.6.3 information relating to harm to any members of the public affected by the delivery of the Services;
 - 6.2.6.4 records of assessments, monitoring and reviews of its compliance with clause 6.2.5 above;
- 6.3 In the event that any part of the Services is provided in an environment outside the direct control of the Provider, the Provider shall carry out a risk assessment of the environment to ensure its suitability.

7. STAFF

- 7.1 The Provider shall at all times employ (or procure the employment) at its own expense sufficient Staff for the purpose of providing the Services.
- 7.2 The Provider shall ensure that all Staff engaged in the provision of the Services are suitably skilled and experienced.
- 7.3 The Provider shall set up and maintain written personnel policies and procedures for all Staff engaged in the provision of the Services covering all relevant matters (including but not limited to discipline, grievance, equal opportunities and health and safety). The Provider shall procure that the terms and implementation of such policies and procedures comply with legislation and best practice and that they are made available to the Authority on request.
- 7.4 In the event that the Authority is at any time during the Agreement Period of the reasonable opinion that any member of the Provider's Staff is unable or unfit to deliver the Services or any part of the Services the Provider will:
 - 7.5.1 Provide written details of the issue or issues to the Authority;
 - 7.5.2 Deliver to the Authority a written action plan detailing the way in which the Provider proposes to deal with the issue or issues; and
 - 7.5.3 Comply with any reasonable guidance or instructions issued by the Authority in relation to the action plan; and
 - 7.5.4 Comply with the action plan and any timescales detailed therein.
- 7.6 The Provider shall be liable for and indemnify and keep indemnified the Authority and any Third Party Employer against any failure to meet all remuneration, benefits, entitlements and outgoings for the Provider's Staff and any other person who is or will be employed or engaged by the Provider or any Sub-Contractor in connection with the delivery of the Services, including without limitation, all wages, holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions, pension contributions, termination costs and otherwise from and including the Commencement Date.

8. AUDIT AND RECORD KEEPING

- 8.1 The Provider will at all times and on reasonable notice permit for the purposes of audit the Authority and any nominated auditors access to documentation relating to the provision of the Services.
- 8.2 The Authority reserves the right, at any reasonable time, and as it may deem necessary to require the Provider at its own cost to:
- 8.2.1 provide evidence of financial resources and the level of turnover sufficient to enable it to continue to perform its obligations under the Agreement;
 - 8.2.2 provide a copy of the Provider's latest audited accounts;
 - 8.2.3 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 Authority; and
 - 8.2.4 provide any additional evidence to support payments made under the Agreement as the Authority shall reasonably require.
- 8.3 The Provider shall at all times during the Agreement Period and for 12 years thereafter, keep and maintain full and detailed records relating to the delivery of the Services delivered under the Agreement and provide copies of the same to the Authority upon request.

9. DISCRIMINATION AND THE PROMOTION OF EQUALITY

- 9.1 The Provider will:
- 9.1.1 not unlawfully discriminate directly or indirectly by way of victimisation or harassment within the meaning of any law, enactment, order, regulation or other similar instrument relating to discrimination in employment (whether in relation to race, age, gender, religion, disability, sexual orientation or otherwise);
 - 9.1.2 comply with all relevant anti-discrimination legislation, have proper regard to any relevant codes of practice and treat people fairly and equally;
 - 9.1.3 inform the Authority forthwith of any finding of unlawful discrimination against the Provider by any Court, Tribunal, the Equality and Human Rights Commission and as soon as reasonably practicable:
 - 9.1.3.1 take all necessary steps to prevent a reoccurrence of such unlawful discrimination; and,
 - 9.1.3.2 provide to the Authority full details of all steps taken.
- 9.2 The Provider shall not treat a person less favourably than another on grounds of trade union membership or trade union activities, in contravention of The Employment Relations Act 1999 (Blacklists) Regulations 2010) and, in particular, the Provider will not:
- 9.2.1 compile, supply, sell or use a Prohibited List (as defined in The Employment Relations Act 1999 (Blacklists) Regulations 2010);

- 9.2.2 refuse employment to a job applicant, to dismiss an employee, or to subject an employee to any other detriment for a reason related to a Prohibited List; and
- 9.2.3 engage with an employment agency which refuses to provide its services to an individual for a reason related to a Prohibited List.
- 9.3 The Provider shall, on request, provide to the Authority such written evidence as the Authority reasonably requires that the Provider has not breached clause 9.2 above.
- 9.4 The Provider recognises that the Authority is bound to comply with the Human Rights Act 1998 ("HRA") and that those duties imposed on it under the HRA must be met in the delivery of the Services. As a result, the Provider shall comply with the provisions of the HRA as if it were a public authority (as defined under the HRA).
- 9.5 The Provider shall at all times have a written equalities policy which shall as a minimum cover race, age, gender, religion, disability, sexual orientation and provide a copy of the same to the Authority on request ("Equalities Policy")
- 9.6 The Provider shall provide all reasonable assistance to the Authority to enable it to meet any duties imposed on it in relation to the prevention of discrimination and the promotion of equality.
- 9.7 In the event that the Provider enters into any sub-contract in connection with the Agreement it shall impose obligations on its sub-contractors in terms substantially similar to those imposed on it pursuant to this clause 9.

10. SAFEGUARDING AND PROMOTING WELFARE

- 10.1 In the event that a Regulated Activity is to be delivered by the Provider under the Agreement the Provider shall be a Regulated Activity Provider for the purposes of the SVGA with ultimate responsibility for the management and control of the Regulated Activity.
- 10.2 The Provider shall ensure that all Staff engaged in the provision of a Regulated Activity are:
 - 10.2.1 subject to a valid enhanced disclosure check undertaken through the DBS;
 - 10.2.2 subject to a check against the adults' barred list or the children's barred list, as appropriate; and
 - 10.2.3 monitored to ensure the level and validity of the checks under this clause 10.2.
- 10.2 The Provider shall renew no less than 10% of enhanced disclosure checks each year during the Agreement Period on a random sample basis, and undertake other renewals, where deemed appropriate by the Provider.
- 10.3 The Provider warrants that at all times for the purposes of the Agreement it has no reason to believe that any person who is or will be employed or engaged by the Provider in the provision of the Services is barred from the activity in accordance with the provisions of the SVGA and any regulations made thereunder, as amended from time to time.

- 10.4 The Provider shall upon immediate request provide such information to the Authority as the Authority reasonably requires in order satisfy it that the obligations of this clause 10 have been met.
- 10.5 The Provider shall not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that they would not be suitable to carry out a Regulated Activity or who may otherwise present a risk to service users.
- 10.6 The Provider shall refer information about any person carrying out the Services to the DBS where it removes permission for such person to carry out the Services (or would have, if such person had not otherwise ceased to carry out the Services) because, in its opinion, such person has harmed or poses a risk of harm to any service users, children or vulnerable adults.
- 10.7 In delivering the Services the Provider shall have due regard to all relevant parts of:
- 10.7.1 The Authority's Framework for Action for all children, young people and families in Bolton, which is available at:

<http://boltonsafeguardingchildren.org.uk/documents/2013/10/framework-for-action-2.pdf>
- 10.7.2 The Greater Manchester Safeguarding Children Procedures Manual, which is available at:

<http://greatermanchesterscb.proceduresonline.com/chapters/contents.html>
- 10.7.3 Bolton's "Safeguarding Adults Board Procedures Manual" which is available at:

<http://www.proceduresonline.com/bolton/asg/>
- 10.8 The Provider shall where required by the Authority have and comply with a child protection policy during the Agreement Period and supply a copy of the same to the Authority upon request.
- 10.9 The Provider shall as and when required work with other agencies and share information with the same to ensure the safeguarding and promotion of the welfare of children and vulnerable adults subject always to the duty of the Provider to comply with all relevant laws statutory instruments rules regulations orders or directives.

11. FRAUD AND PROHIBITED ACTS

- 11.1 The Provider shall notify the Authority immediately where it becomes aware of any instance of suspected fraud or financial irregularity in the delivery of the Agreement including, but not limited to, cases of:
- 11.1.1 collusion with Authority Staff;
- 11.1.2 computer fraud;
- 11.1.3 the submission to the Authority of inaccurate, incomplete, misleading or falsified management information; and

11.1.4 fraud involving awarding bodies

provided that nothing in this clause 11.1 shall require the Provider to do anything which may cause it to infringe any law.

11.2 Where the Authority has reasonable cause to suspect that fraud or irregularity has occurred in relation to the delivery of the Agreement and any payments made under the Agreement or in relation to any other agreement made between the Authority and the Provider, the Authority shall have the right:

11.2.1 of access to any premises of the Provider at any reasonable time with or without notice to examine and remove or copy all relevant documents and records and to interview any Staff of the Provider engaged to deliver the Agreement; and

11.2.2 to suspend payments of the Fees or any monies owed under any other agreement made between the Authority and the Provider until such time as the Authority's concerns are abated.

11.3 The Provider warrants that no commission has been paid or agreed to be paid by the Provider or on the Provider's behalf or to the Provider's knowledge unless, before the Agreement was made, particulars of any such commission and of the terms and conditions of any agreement for the payment thereof were disclosed in writing to and authorised by the Authority.

11.4 The Provider shall not offer nor give nor agree to give any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any act in relation to the obtaining or performance of the Agreement or any other agreement with the Authority or for showing or forbearing to show favour or disfavour to any person in relation to the Agreement.

11.5 The Provider:

11.5.1 shall not, and shall procure that any Staff, agents, contractors or sub-contractors of the Provider shall not, in connection with the Agreement commit a Prohibited Act;

11.5.2 warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Authority, or that an agreement has been reached to that effect, in connection with the execution of the Agreement, excluding any arrangement of which full details have been disclosed in writing to the Authority before execution of the Agreement.

11.5.3 shall, if requested, provide the Authority with any reasonable assistance, at the Authority's reasonable cost, to enable the Authority to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act;

11.5.4 shall have an anti-bribery policy (which shall be disclosed to the Authority) to prevent any Staff, agents, contractors or sub-contractors of the Provider from committing a Prohibited Act and shall enforce it where appropriate.

- 11.6 If any breach of this clause 11 is suspected or known, the Provider shall notify the Authority immediately and respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to audit books, records and any other relevant documentation.
- 11.7 The Provider acknowledges and agrees that the Authority shall be entitled to share information relating to the Provider or the Agreement with any department, office or agency of the Government or any auditor appointed by the Authority or the aforementioned public bodies for the purpose of data matching and fraud prevention (as more particularly described at www.bolton.gov.uk/website/Pages/Privacynotices.aspx) or otherwise.
- 11.8 Despite clause 18 (Dispute Resolutions), any dispute relating to:
- 11.8.1 the interpretation of this clause 11; or
- 11.8.2 the amount or value of any gift, consideration or commission,
- shall be determined by the Authority and its decision shall be final and conclusive.

12. CORPORATE REQUIREMENTS

Corporate Policies

- 12.1 The Authority shall, where appropriate, supply to the Provider details of any relevant policies (including but not limited to any safeguarding policies) and rules and on receipt of the same the Provider shall have due regard to the same in delivering the Services.

The CCA

- 12.2 The Provider recognises that the Authority is subject to legal duties under the CCA and agrees that, on receipt of a reasonable request from the Authority, it shall assist the Authority in meeting its duties under the CCA, such assistance may include but not be limited to:
- 12.2.1 developing and operating a Business Continuity Strategy during the Agreement Period;
- 12.2.2 developing and adopting a Business Continuity Plan (taking into account the CCA);
- 12.2.3 providing the Authority with a copy of those documents referred to at clauses 12.2.1 and 12.2.2;
- 12.2.4 undertaking regular risk assessments and business impact analysis in relation to the Agreement;
- 12.2.5 implementing a Business Continuity Exercise on a regular basis (for the avoidance of doubt, the Authority shall be entitled to attend any such test); and
- 12.2.6 providing the Authority with a written report on request which summarises the results of each Business Continuity Exercise carried out, which summary shall highlight any actions or remedial measures necessary as a result of the said exercises.

- 12.3 The Authority shall have the right to carry out a review of the Provider's Business Continuity arrangements subject to the Authority giving the Provider not less than 24 hours' notice of any such review. The Provider warrants that the Authority shall have unfettered access to and the ability to reproduce and retain any pertinent documentation deemed appropriate by it during such a review.

The Bolton Brand

- 12.4 In the event that the Provider is authorised to use the Bolton Brand it shall comply with all instructions issued from time to time by the Authority. The Provider shall not be entitled to reproduce or copy the Bolton Brand without written consent.

13. EFFICIENCY SAVINGS

- 13.1 The Provider recognises that the Authority is under a continuous duty to achieve savings and hereby agrees to carry out a savings review as and when reasonably requested by the Authority to, where possible:

13.1.1 identify ways in which the provision of the Services may be modernised and made more productive so as to reduce outgoings and costs; and

13.1.2 reduce third party costs and fees relevant to the provision of the Services (including, without limitation, endeavouring to source equipment and third party software from suppliers with competitive rates).

- 13.2 In the event that the Provider identifies a potential saving under this clause 13, it shall promptly inform the Authority of the same and it shall advise the Authority whether, in the Provider's professional opinion, the implementation of any change is necessary to enable the Authority to benefit from the potential saving is desirable (in view of quality, reliability and other relevant factors as well as price).

- 13.3 If the Authority shall conclude that the implementation of the necessary change identified under clause 13.2 is desirable:

13.3.1 the Authority will inform the Provider in writing to make the change; and

13.3.2 the Provider shall on receipt of written notification from the Authority implement the change within such timescales as advised by the Authority or otherwise agreed between the Authority and the Provider.

For the avoidance of doubt the Provider shall not be entitled to object to a proposed change unless the Provider acting reasonable is of the opinion that the proposed change would result in the Provider being commercially or otherwise disadvantaged. In that event the Provider shall immediately inform the Authority in writing of its objections and the Parties shall negotiate the proposed changes in good faith. If the Parties are unable to agree any changes clause 18 will apply.

- 13.4 Any benefits arising from any change made under this clause 13 (including any consequent reduction to the Fees) shall accrue solely to the Authority (subject to any costs reasonably incurred by the Provider in implementing the necessary change being taken into account).

14. COMPLAINTS

- 14.1 The Provider shall at all times operate a complaints procedure and provide details of the same to the Authority upon request.
- 14.2 The Provider shall notify the Authority of all complaints received during the Agreement Period relating in any way to the provision of the Services (including but not limited to complaints relating to any Staff of the Provider engaged in the performance of the Agreement) within two working days of receipt of the complaint by the Provider.
- 14.3 The Provider shall provide to the Authority a written report on each and every reasonable and unduplicated complaint (from whatever source) within 10 Working Days of the receipt or notification of the complaint, giving details of the complainant and on any action taken in respect thereof.

15. DATA PROTECTION

- 15.1 The Provider shall at all times during the Agreement Period comply with and maintain data in accordance with the Data Protection Legislation.
- 15.2 The Provider shall, if required by the Authority, enter into a data processor agreement with the Authority on the Authority's standard terms and conditions, which agreement will govern the way in which the Provider processes data on the Authority's behalf.
- 15.3 The Provider shall, if required by the Authority, enter into a data sharing agreement with the Authority (and any other relevant parties) on the Authority's standard terms and conditions, which will govern the way in which the parties to the agreement share Personal Data.
- 15.4 In the event that the Provider is a "Data Controller" (as defined in GDPR) the Provider shall at all times be responsible to third parties for any Personal Data held, including the individuals to whom the Personal Data relates and the Provider shall at all times during the Agreement Period have appropriate data protection and information security policies in place which demonstrate how the Provider will meet its responsibilities under the Data Protection Legislation.
- 15.5 When recording Personal Data, in whatever format, each piece of information must contain the date created or recorded and whether it comprises fact, opinion, hypotheses or a mixture of these together with the identity of the person recording the information.
- 15.6 The Provider acknowledges and agrees that the Authority shall be entitled to share any Personal Data supplied by the Provider to the Authority under the Agreement where it has a lawful and legitimate reason for doing so.
- 15.7 In delivering the Agreement, the Provider shall only share Personal Data with a third party where it has a lawful and legitimate reason for doing so.
- 15.8 On expiry of the Agreement Period, or earlier termination of the Agreement, the Provider shall immediately provide to the Authority written details of all Personal Data held by the Provider relating to the Agreement or any individual in receipt of any part of the Services under the Agreement. The Provider shall then transfer to the Authority all Personal Data requested in writing by the Authority. Personal Data shall be transferred in a secure manner in compliance with Data Protection Legislation

and any reasonable instructions issued by the Authority, including instructions relating to timescales. Where legally required to do so, the Provider shall be responsible for obtaining any individual consents needed to lawfully transfer Personal Data.

- 15.9 The Provider shall indemnify and keep indemnified the Authority against any Losses whatsoever incurred in respect of or in any way arising directly out of a breach by the Provider of this clause 15.

16. FOIA, EIR AND CONFIDENTIALITY

16.1 FOIA & EIR

16.1.1 The Provider recognises that the Authority is subject to legal duties which may require the release of information under FOIA or the EIR or any other applicable legislation or codes governing access to information (“Access Duties”) and that the Authority may be under an obligation to provide information on request. Such information may include matters arising out of or under the Agreement in any way.

16.1.2 In the event that the Authority receives a request for information under its Access Duties, the Authority is entitled to disclose all such information and documentation (in whatever form) as it is obliged to disclose under its Access Duties.

16.1.3 The Authority shall not disclose Exempt Information provided always that the Authority shall be responsible for determining at its absolute discretion what information it is obliged to disclose under its Access Duties and what is Exempt Information.

16.1.4 The Authority shall not be liable for any loss, damage, harm or other detriment however caused arising from the disclosure of any information relating to the Agreement which the Authority is obliged to disclose under its Access Duties.

16.1.5 The Provider will assist the Authority in complying with the Authority’s obligations under its Access Duties. In the event that the Authority receives a request for information under its Access Duties and requires the Provider’s assistance in obtaining the information that is subject to such request or otherwise, the Provider will respond to any such request for assistance from the Authority at the Provider’s own cost and promptly and in any event within 10 days of receiving the Authority’s request.

16.2 Confidentiality

16.2.1 Subject to its obligations under clause 16.1 above, the Provider undertakes to the Authority that it shall:

- (a) keep the Confidential Information secret and confidential;
- (b) not use or exploit the Confidential Information in any way except for the Purpose;
- (c) not directly or indirectly disclose or make available any Confidential Information in whole or in part to any person,

except as expressly permitted by, and in accordance with the Agreement;

- (d) not copy, reduce to writing or otherwise record the Confidential Information except as strictly necessary for the Purpose. Any such copies, reductions to writing and records shall be the property of the Authority;
- (e) not use, reproduce, transform or store the Confidential Information in an externally accessible computer or electronic information retrieval system or transmit it in any form or by any means outside its usual place of business;
- (f) apply the same security measures and degree of care to the Confidential Information as the Provider applies to its own confidential information, which the Provider warrants as providing adequate protection from unauthorised disclosure, copying or use;
- (g) keep a written record of:
 - (i) any document or Confidential Information received from the Authority in tangible form; and
 - (ii) any copies made of the Confidential Information;
- (h) establish and maintain adequate security measures (including any reasonable security measures proposed by the Authority from time to time) to safeguard the Confidential Information from unauthorised access or use; and
- (i) where instructed to do so by the Authority, ensure that any document or other records containing Confidential Information shall not be removed from the premises identified by the Authority.

16.2.2 Subject to the provisions of this clause 16.2.2, the Provider may disclose Confidential Information to the minimum extent required only by an order of any court of competent jurisdiction or any regulatory, judicial, governmental or similar body or any taxation authority of competent jurisdiction.

16.2.3 Before the Provider discloses any Confidential Information pursuant to clause 16.2.2 it shall, to the extent permitted by law, give the Authority as much notice of this disclosure as possible. Where notice of such disclosure is not prohibited and is given in accordance with clause 16.2.2, the Provider shall take into account the Authority's requests in relation to the content of this disclosure.

16.2.4 If the Provider is unable to inform the Authority before Confidential Information is disclosed pursuant to clause 16.2.2 it shall, to the extent permitted by law, inform the Authority of the full circumstances of the disclosure and the information that has been disclosed as soon as reasonably practicable after such disclosure has been made.

16.2.5 If so requested by the Authority at any time by notice in writing to the Provider, the Provider shall promptly:

- (a) destroy or return to the Provider all documents and materials (and any copies) containing, reflecting, incorporating or based on the Authority's Confidential Information;
- (b) erase all the Confidential Information from its computer and communications systems and devices used by it, or which is stored in electronic form; and
- (c) to the extent technically and legally practicable, erase all the Confidential Information which is stored in electronic form on systems and data storage services provided by third parties; and
- (d) certify in writing to the Authority that it has complied with the requirements of this clause 16.2.2.

16.2.6 Nothing in clause 16.2.1 shall require the Provider to return or destroy any documents and materials containing or based on the Confidential Information that the Provider is required to retain by applicable law, or to satisfy the requirements of a regulatory authority or body of competent jurisdiction or the rules of any listing authority or stock exchange, to which it is subject. The provisions of the Agreement shall continue to apply to any documents and materials retained by the Provider pursuant to this clause 16.2.6.

16.2.7 The Authority reserves all rights in its Confidential Information. The disclosure of Confidential Information by the Authority to the Provider does not give the Provider or any other person any licence or other right in respect of any Confidential Information beyond the rights expressly set out in the Agreement.

16.2.8 Except as expressly stated in the Agreement, the Authority makes no express or implied warranty or representation concerning its Confidential Information, including but not limited to the accuracy or completeness of the Confidential Information.

16.2.9 Without prejudice to any other rights or remedies that the Authority may have, the Provider acknowledges and agrees that damages alone would not be an adequate remedy for any breach of the terms of this clause 16.2. Accordingly, the Authority shall be entitled to the remedies of injunctions, specific performance or other equitable relief for any threatened or actual breach of this clause 16.2 by the Provider.

17. INTELLECTUAL PROPERTY RIGHTS

17.1 The Parties shall not cause or permit anything which may damage or endanger the Existing Intellectual Property Rights of the other or assist or allow others to do so.

17.2 Any Intellectual Property Rights created by the Provider during the Agreement Period in connection with the provision of the Services shall vest in the Authority and the Authority shall be entitled to use and reproduce all materials originated by the Provider (including basic factual data) for any purpose whatsoever whether in

connection with the Agreement or otherwise. The Provider shall not be liable in any way for use by the Authority of any materials generated under or in respect of the Agreement for any purpose other than that for which the same was prepared and provided by the Provider.

- 17.3 The Provider warrants to the Authority that to the best of its knowledge the delivery of the Agreement will not infringe, in whole or in part, any third party Intellectual Property Rights and agrees to indemnify the Authority and keep fully and effectually indemnified the Authority its Staff and agents from and against all Losses arising directly or indirectly out of any act of the foregoing, where such act is, or is alleged to be, an infringement of a third party's Intellectual Property Rights.
- 17.4 The Authority agrees that:
 - 17.4.1 it will notify the Provider in writing of any "IPR Claim", being any claim of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any Intellectual Property Right used to provide the Services or as otherwise provided by the Provider (or to which the Provider has provided access) to the Authority in the fulfilment of its obligations;
 - 17.4.2 it will allow the Provider to conduct all negotiations and proceedings and will provide the Provider with such reasonable assistance required by the Provider, each at the Provider's expense, regarding the IPR Claim; and
 - 17.4.3 it will not, without first consulting with the Provider, knowingly make an admission relating to the IPR Claim.
- 17.5 The Provider shall consider and defend the IPR Claim diligently using competent counsel and in such a way as not to bring the reputation of the Authority into disrepute.
- 17.6 The Provider shall not settle or compromise any IPR Claim without the Authority's prior written consent (not to be unreasonably withheld or delayed).
- 17.7 If an IPR Claim is made, or the Provider anticipates that an IPR Claim might be made, the Provider may, at its own expense and sole option, either:
 - 17.7.1 procure for the Authority the right to continue using the relevant item which is subject to the IPR Claim; or
 - 17.7.2 replace or modify the relevant item with non-infringing substitutes provided that:
 - 17.7.2.1 the performance and functionality of the replaced or modified item is at least equivalent to the performance and functionality of the original item;
 - 17.7.2.2 there is no additional cost to the Authority;
 - 17.7.2.3 the terms of the Agreement shall apply to the replaced or modified item.
 - 17.7.3 If the Provider elects to modify or replace an item pursuant to clause 17.7.2 above or to procure a licence in accordance with clause 17.7.1

above, but this has not avoided or resolved the IPR Claim, then the Authority may terminate the Agreement in whole or in part by written notice with immediate effect and, without prejudice to the indemnity set out in clause 21 below, the Provider shall be liable for all reasonable and unavoidable costs of the substitute item(s) including the additional costs of procuring, implementing and maintaining the substitute item(s).

18. DISPUTE RESOLUTION

- 18.1 The Authority and the Provider shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Agreement within 20 Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute ultimately to each Party's Agreement Manager (or such other person as he may direct) of each Party.
- 18.2 Nothing in this dispute resolution procedure shall prevent either Party from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.
- 18.3 If the dispute cannot be resolved by the Parties pursuant to clause 18.1 the Parties shall refer it to mediation pursuant to the procedure set out in clause 18.5 unless:
- 18.3.1 the Authority considers that the dispute is not suitable for resolution by mediation; or
 - 18.3.2 the Provider does not agree to mediation.
- 18.4 The obligations of the Parties shall not cease, or be suspended or delayed by the reference of a dispute to mediation (or arbitration) and the Provider and its Staff shall comply fully with the requirements of the Agreement at all times.
- 18.5 The procedure for mediation and consequential provisions relating to mediation are as follows:
- 18.5.1 A neutral adviser or mediator (the "Mediator") shall be chosen by agreement between the Parties, or if they are unable to agree upon a Mediator within 10 Working Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within 10 Working Days from the date of the proposal to appoint a Mediator, or within 10 Working Days of notice to either Party that he is unable or unwilling to act, apply to a mediation provider to appoint a Mediator;
 - 18.5.2 The Parties shall within 10 Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from a mediation provider to provide guidance on a suitable procedure;
 - 18.5.3 Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings;

- 18.5.4 If the Parties reach agreement on the resolution of the dispute, the agreement shall be recorded in writing and shall be binding on the Parties once it is signed by their duly authorised representatives;
 - 18.5.5 Failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative written opinion. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Agreement without the prior written consent of both Parties;
 - 18.5.6 If the parties fail to reach agreement in the structured negotiations within 60 Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the Courts.
- 18.6 Subject to clause 18.2, neither the Authority nor the Provider shall institute court proceedings until the procedures set out in clauses 18.1 and 18.3 have been completed.

19. SUSPENSION AND TERMINATION OF THE AGREEMENT

- 19.1 In the event that the Authority has concerns regarding the Provider's delivery of or ability to deliver the Services it shall, in addition to its right to serve an Improvement Notice under clause 4.8 above, be entitled to:

- 19.1.1 suspend the provision of the Services under the Agreement for such period as the Authority deems reasonably necessary; and
- 19.1.2 take such other action as the Authority deems reasonably necessary to investigate or address its concerns

For the avoidance of doubt, the Authority shall not be liable to pay any Fees during a period of suspension.

- 19.2 The Authority is entitled to terminate the Agreement forthwith in writing in the event of one or more of the following:

- 19.2.1 a material misrepresentation by the Provider during the process leading up to its appointment is discovered;
- 19.2.2 the Provider commits a Material Breach of the Agreement;
- 19.2.3 the Provider persistently breaches the Agreement;
- 19.2.4 the Provider fails to comply in any respect with an Improvement Notice served by the Authority under section 4.8 above;
- 19.2.5 the Provider fails to comply in any way with the terms of clause 9 (Discrimination and the Promotion of Equality) or clause 10 (Safeguarding and Promoting Welfare)
- 19.2.6 (i) the Provider becomes unable to pay its debts (within the meaning of Section 123 of the Insolvency Act 1986), admits its inability to pay its debts or becomes insolvent

- (ii) a petition is presented, an order made or a resolution passed for the liquidation (otherwise than for the purpose of a solvent amalgamation or reconstruction), administration, bankruptcy or dissolution of the Provider
- (iii) an administrative or other receiver, manager, trustee, liquidator, administrator or similar person or officer is appointed to the Provider and over all or any part of the assets of the Provider
- (iv) the Provider enters into or proposes any composition or arrangement concerning its debts with its creditors (or any class of its creditors) generally
- (v) anything equivalent to any of the events or circumstances stated in clauses 19.2.6(i) to 19.2.6(iv) inclusive occurs in any applicable jurisdiction

19.3 The Authority may terminate the Agreement by written notice with immediate effect if the Provider or any Staff, agents, contractors or sub-contractors of the Provider (in all cases whether or not acting with the Provider's knowledge) breaches clause 11 (Fraud and Prohibited Acts).

19.4 The Authority may terminate the Agreement by written notice without penalty if there is a Change of Control to which the Authority reasonably objects, having regard to the identity, trading interests, financial standing and intentions of the new controller or potential new controller, having afforded the Provider a reasonable opportunity to make representations in this respect and having given such representations reasonable consideration except where:

19.4.1 the Authority has given its prior written consent to the particular Change of Control, which subsequently takes place as proposed; or

19.4.2 the Provider fails to notify the Authority in writing within one month of any Change of Control taking place; or

19.4.3 the Authority has not served its notice within six months of the later of the date the Change of Control took place or the date on which the Authority was given notice of the Change of Control; or

19.4.4 there is a bona fide reorganisation within the Provider's group which results in a Change of Control.

19.5 The Provider is entitled to terminate the Agreement forthwith in writing if:

19.5.1 the Authority fails to make any payment within 30 days of the Provider notifying the Authority in writing that payment of the Fees is overdue;

19.5.2 the Authority commits any other breach of Agreement (and fails to remedy the breach within a reasonable period of it having been requested to do so) which in the reasonable opinion of the Provider justifies termination of the Agreement.

19.6 Either Party shall have the right to terminate the Agreement without consequence (financial or otherwise) if:

- 19.6.1 provision is made for the same in the main body of the Agreement;
- 19.6.2 in the reasonable opinion of the Party wishing to terminate the Agreement, the conduct of the other Party is having or may have a negative or adverse effect on the reputation of the Party wishing to terminate.

20. CONSEQUENCES OF TERMINATION

- 20.1 Upon termination in accordance with the terms of the Agreement and in addition to such consequences as are set out in other provisions of the Agreement:
 - 20.1.1 the Provider shall forthwith cease to provide the Services;
 - 20.1.2 the Authority shall be under no obligation to make any further payment to the Provider and shall be entitled to retain any payment which may have fallen due to the Provider before termination until the Provider has paid in full to the Authority all sums due or arising under the Agreement or any other agreement between the Parties; and
 - 20.1.3 the Provider shall forthwith release and handover to the Authority any and all property belonging to the Authority which may be in the Provider's possession or under its control including but not limited to records whether in the form of documents computer data or other material in any medium.
- 20.2 Upon termination in accordance with the terms of the Agreement and in addition to such consequences as are set out in other provisions of the Agreement the Provider shall fully and promptly indemnify and compensate the Authority in respect of any Losses suffered by the Authority as a result of or in any way connected with an event or events giving rise to the right to terminate the Agreement including but not limited to the cost of causing to be provided such part of the Agreement as would have been provided had the Agreement not been terminated or the right(s) of termination had not arisen.
- 20.3 Termination shall be without prejudice to the accrued rights and remedies of either Party.

21. INDEMNITY AND LIMITATION OF LIABILITY

- 21.1 The Provider shall indemnify on behalf of itself and its sub-contractors and keep fully and effectually indemnified the Authority its Staff and agents from and against all Losses whatsoever incurred in respect of or in any way arising directly out of the negligence or breach by the Provider and its sub-contractors of the Agreement except to the extent that such Losses may arise out of the act default or negligence of the Authority provided always that the Provider shall not be liable for any indirect or consequential losses.
- 21.2 The Provider shall take out and maintain during the Agreement Period those insurances and to those levels detailed in the main body of the Agreement.
- 21.3 The Provider shall supply to the Authority on request certified copies of insurance policies, cover notes, premiums, receipts and other documents deemed by the Authority to be necessary to comply with clause 21.2 above.

22. EMPLOYMENT EXIT PROVISIONS

22.1 In the event of a Relevant Transfer the Authority or Replacement Provider will inherit liabilities in respect of the Relevant Employees with effect from the relevant Service Transfer Date and the Provider indemnifies and keeps the Authority indemnified against any Employment Liabilities and costs incurred in respect of the Relevant Employees prior to the Service Transfer Date.

22.2 The Provider shall and shall procure that any Sub-Contractor shall, within 14 days of receipt of a written request from the Authority (or otherwise required by TUPE):

(a) that the Authority intends to either re-tender the Services or deliver the Services itself following expiry of the Agreement Period (or earlier termination)

(b) of termination of the Agreement

provide in respect of any person engaged or employed by the Provider or any Sub-contractor in the provision of the Services, the Provider's Provisional Staff List and the Staffing Information together with any other information required by the Authority, including information as to the application of TUPE to the Staff. The Provider shall notify the Authority of any material changes to this information as and when they occur.

22.3 At least 28 days prior to the Service Transfer Date, the Provider shall supply to the Authority, or at the Authority's direction to the Replacement Provider, the Provider's Final Staff List, which shall be complete and accurate in all respects. The Provider's Final Staff List shall identify which of the Provider's and the Sub-Contractor's Staff named are Relevant Employees.

22.4 The Authority shall be permitted to use and disclose the Provider's Provisional Staff List, the Provider's Final Staff List and the Staffing Information for informing any tenderer or other prospective Replacement Provider for any services that are substantially the same type of services as the Services (or any part of the Services).

22.5 The Provider warrants to the Authority and the Replacement Provider that the Provider's Provisional Staff List, the Provider's Final Staff List and the Staffing Information (the "TUPE Information") will be true and accurate in all material respects and that no persons are employed or engaged in the provision of the Services other than those included on the Provider's Final Staff List.

22.6 The Provider shall and shall procure that any Sub-Contractor shall ensure at all times that it has the right to provide the TUPE Information under the Data Protection Legislation.

22.7 The Authority regards compliance with this clause 22 as fundamental to the Agreement. In particular, failure to comply with clause 22.2 in respect of the provision of accurate information about the Relevant Employees shall entitle the Authority to suspend payment of the Fees until such information is provided, or indefinitely. The

maximum sum that may be retained under this clause 22.7 shall not exceed an amount equivalent to the Fees that would be payable in the three month period following the Provider's failure to comply with clause 22.2.

22.8 Any change to the TUPE Information which would increase the total employment costs of those of the Provider's Staff delivering the Services (or any part) in the six months prior to the expiry of the Agreement Period or during any termination notice period shall not (so far as reasonably practicable) take place without the Authority's prior written consent, unless such changes are required by law. The Provider shall supply to the Authority full particulars of such proposed changes and the Authority shall be afforded reasonable time to consider them.

22.9 In the six months prior to expiry of the Agreement Period or during any termination notice period, the Provider shall not and shall procure that any Sub-Contractor shall not materially increase or decrease the total number of those of the Provider's Staff delivering the Services (or any part), their remuneration, or make any other change in the terms and conditions of those employees without the Authority's prior written consent.

22.10 The Provider shall indemnify and keep indemnified in full the Authority and every Replacement Provider against all Employment Liabilities relating to:

(c) Any person who is or has been employed or engaged by the Provider or any Sub-contractor in connection with the provision of any of the Services;

(d) Any trade union or staff association or employee representative

arising from or connected with any failure by the Provider and/or any Sub-Contractor to comply with any legal obligation, whether under regulation 13 or 14 of TUPE or any award of compensation under regulation 15 of TUPE, under the Acquired Rights Directive or otherwise and, whether any such claim arises or has its origin before or after the Service Transfer Date.

22.11 The Parties shall co-operate to ensure that any requirement to inform and consult with the Staff and Staff representatives in relation to any Relevant Transfer as a consequence of a Subsequent Transfer will be fulfilled.

22.12 The Parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply to clause 22.11, to the extent necessary to ensure that any Replacement Provider shall have the right to enforce the obligations owed to, and indemnities given to, the Replacement Provider by the Provider or the Authority in its own right under section 1(1) of the Contracts (Rights of Third Parties) Act 1999.

22.13 Despite clause 22.12, it is expressly agreed that the Parties may by agreement rescind or vary any terms of the Agreement without the consent of any other person who has the right to enforce its terms or the term in question despite that such rescission or variation may extinguish or alter that person's entitlement under that right.

23. ACTIONS UNDER CONTRACT

The Provider shall pay to the Authority on an indemnity basis all costs, fees, the Fees, disbursements and expenses including, without prejudice to the generality of the above, those payable to counsel, solicitors, surveyors and bailiffs properly incurred by the Authority in relation to or incidental to the recovery of any outstanding monies due to the Authority under the terms of the Agreement.

24. FORCE MAJEURE

24.1 Neither Party will be liable for any delay in performing or failure to perform any of its obligations under the Agreement due to a Force Majeure Event.

24.2 Any delay or failure caused by a Force Majeure Event will not constitute a breach of the Agreement and the time for performance of the affected obligation shall be extended by such period as is reasonable. As regards any delay or stoppage:

24.2.1 any costs arising from the delay or stoppage shall be borne by the Party incurring those costs;

24.2.2 either Party may if the delay or stoppage continues for more than 28 days terminate the Agreement with immediate effect on giving written notice to the other Party, and neither Party shall be liable for such termination; and

24.2.3 the Party claiming the Force Majeure Event will take all necessary steps to bring the event to a close or to find a solution by which the Agreement may be performed despite the Force Majeure Event.

25. VARIATION

Save where expressed to the contrary in these Terms and Conditions, no variations or additions to the Agreement may be made unless made in writing and signed by both Parties.

26. ASSIGNMENT, NOVATION AND SUB-CONTRACTING

26.1 The Provider shall not be entitled to assign, novate or otherwise dispose of or create any trust in relation to any or all of its rights and obligations under the Agreement without the prior written consent of the Authority.

26.2 The Provider shall not be entitled to sub-contract the provision of the Services or any part thereof without the previous written consent of the Authority which consent shall not be unreasonably withheld.

26.3 In the event that any part of the Agreement is sub-contracted the Provider hereby warrants that it:

26.3.1 it shall pay all invoices issued to it by its sub-contractor(s) within 30 days of receipt of a valid invoice; and

26.3.2 it will make it a term of any contract entered into with a sub-contractor that the sub-contractor complies with the terms of the Agreement.

27. PARTNERSHIP

Nothing in the Agreement will create any joint venture or partnership between the Authority and the Provider, and the Authority shall not be liable for any actions, costs, proceedings, claims or demands arising out of delivery of the Agreement.

28. AGENCY

Neither the Provider nor its employees shall in any circumstances hold itself or themselves out as being the agent or servant of the Authority otherwise than in circumstances expressly permitted by the Agreement.

29. WAIVER

Failure by the Authority at any time to enforce the provisions of the Agreement or require performance by the Provider of any of the provisions of the Agreement shall not be construed as a waiver or any such provision and shall not affect the validity of the Agreement or any part thereof or the right of the Authority to enforce any provision in accordance with its terms.

30. NOTICES

30.1 Any notice under the Agreement must be in writing and can only be sent by recorded delivery post or personal delivery to the addresses at the head of the Agreement.

30.2 Any other communication under the Agreement must be in writing and can only be sent by recorded delivery post, personal delivery, fax or electronic mail.

31. THIRD PARTIES

Save where expressed to the contrary, the Contract (Rights of third Parties) Act 1999 shall not apply to the Agreement.

32. SURVIVAL OF TERMS

Clauses 5, 7.6, 8, 15, 16, 17, 18, 20, 21, 22, 23 and 34 shall survive the expiry or early termination of the Agreement.

33. ENTIRE AGREEMENT

The Agreement supersedes all prior agreements, arrangements and understandings between the Parties and constitutes the entire agreement between the Parties (save that neither Party seeks to exclude liability for any fraudulent pre-contractual misrepresentation upon which the other Party can be shown to have relied).

34. LAW & JURISDICTION

The Agreement shall be governed by and shall be construed in accordance with English law; and be subject to the exclusive jurisdiction of the Courts of England and Wales, to which both Parties submit.

Schedule

Introduction - Staffing Information

There are two stages:

Stage 1 (Provider's Provisional Staff List) - Information is collected from the current employer (Transferor) and disclosed to the bidders in the tender process. The information in Stage 1 should not reveal the employees' identities. The information should enable the bidders to:

- (a) present their plans for servicing the new contract (with reference to the existing workforce); and
- (b) price their bids taking into account their potential inherited employment liabilities.

Stage 2 (Provider's Final Staff List) - Contains information that is not required by the bidders for the tender stage but will be required by the new employer once it has been identified.

All information marked * in both stages is "employee liability information". This information must be provided to the transferee 28 days before the transfer date. If it has already been provided, for example, because it is included in Stage 1, it must be updated so that it is accurate on the date that falls 28 days before the transfer date.

Schedule, Part 1

Provider's Provisional Staff List – Stage 1

STAGE 1: INFORMATION FOR BIDDERS

Name of "Transferor":	
Total number of employees transferring	
Total number of employees expected to be transferred who were originally transferred from the client (if applicable)	

COMPLETION NOTES

All parties

If the information cannot be included on this form, please attach the additional information, such as relevant policies, and cross reference to the item number and employee number where appropriate.

Schedule, Part 2

Provider's Final Staff List – Stage 2

STAGE 2: INFORMATION FOR THE NEW EMPLOYER AFTER CONTRACT AWARD

Name of "Transferor":	
Total number of employees transferring	
Total number of employees expected to be transferred who were originally transferred from the client (if applicable)	

APPENDIX 2

SPECIFICATION



THE AUTHORITY'S MISSION STATEMENT

The vision for the Authority is:

“Our Adults have high aspirations, matched by high-quality education.”

(Bolton Vision 2030)

The Vision has identified its main aim for 2030 as:

“Attracting business and investment to the borough, matching our workforce’s skills with modern opportunities and employment with high aspirations, matched by high-quality education.”

To achieve this main aim, five priority themes have been identified:

1. Support Skills growth, meet the needs of local employers to reduce worklessness
2. Support achievement and attainment for adult learners
3. Support Health and Wellbeing through educational development
4. Support environmental sustainability
5. Support everyone to become more active in their community

Emanating from BIS “New Challenges, New Chances” guidance 2011, the agreed mission in respect of the Adult Education Budget (“AEB”) is,

“[to] maximise access to community learning for adults, bringing new opportunities and improving lives, whatever people’s circumstances”.

The Authority’s objectives are:

1. To focus public funding on people who are disadvantaged and least likely to participate and people with low incomes and low skills;
2. To collect fee income from people who can afford to pay and use where possible to extend provision to those who cannot;
3. To widen participation and transform people’s destinies by supporting progression relevant to personal circumstances:

Acquisition of skills preparing people for training, employment or self-employment

- a) Improved confidence and willingness to engage learning
- b) Improved digital, financial literacy and/or social well-being
- c) Parents/carers better equipped to support and encourage their children’s learning
- d) Improved/maintained health and/or social well-being

The Authority's priorities are:

1. Delivering accessible and continuously improving services
2. Being responsive to the different needs of people and communities
3. Engaging effectively with local people
4. Securing sustained improvements for future generations.

AEB planning and provision makes a significant contribution to the Authority's intention to establish and sustain high-quality professional skills with a college base, delivering a skilled workforce that is better able to meet the needs of the local economy. In respect of inclusion, the Authority's AEB programme supports the Provider to become more inclusive of learners and within the corporate business planning process, promoting opportunities for individuals to realise their full potential through participation and achievement, AEB is central. The Education and Skills Funding Agency ("ESFA") and Authority priorities are working towards the same goals.

The Authority has a duty, since the Learning and Skills Act 2000 and by contract with the ESFA, to secure adequate provision of AEB. It fulfils this duty in partnership with the Provider as its sole provider.

KEY AUTHORITY AND COLLEGE CONTACTS

The Authority	The Provider
<p>1. Director of Place Gerry Brough</p> <p>Assistant Director of Place Phil Green</p> <p>2. Head of Economic Development Steve Burns</p> <p>3. AEB Manager (BCAEM) Jane Tramontana</p>	<p>1. Chief Executive Bill Webster</p> <p>2. Vice Principal Mark Burgoyne</p> <p>3. Director of Adults & Higher Education Kate Westsmith</p>

INTRODUCTION AND POSITION STATEMENT

The Authority's AEB Manager (BCAEM) works with the Provider collaboratively and with stakeholder partners in a variety of ways to achieve its mission and statement of purpose. The general and individual arrangements between the Authority and its partner are set out in this agreement and are drawn up in a spirit of mutual co-operation to serve local communities of Bolton.

This document specifies the contribution of each party to the Agreement and defines the level of service that can be expected by each party, in order to secure appropriate, equitable and effective AEB provision.

1. SERVICE SPECIFICATION: PROVIDER

1.1 Agreement Context

The Provider will comply with employment law, policies and procedures of the Authority and the Department of Development and Regeneration.

- a) The ESFA AEB Funding rules 18/19 and New Challenges, New Chances statement of educational principles.
- b) The Authority's Economic Strategic plan 2030 and priorities for AEB Learning.
- c) Current Authority policies and procedures with regard to equality and diversity; adult safeguarding; prevent; the Authority's disability statement, and staff development and quality assurance.
- d) The financial regulations of the Authority.
- e) The Authority's Health and Safety Policy, or where relevant, other agreed Health and Safety Policy which complies with national legal requirements. Colleges will ensure that procedures cover use by the adult programme.
- f) Registration of any crèche provision with the appropriate Registration Unit.

1.2 Planning and Delivery

The Provider will contribute through relevant mechanisms to the collaborative planning process for provision, working to achieve an appropriate curriculum balance in local and deprived areas and across the Bolton Borough.

As detailed in Schedule A to this specification, for the Funding provided, the Provider will:

- Plan and deliver a programme of AEB learning with routes through to employability.
- Provide accommodation, facilities, and resources in support of this programme.
- Provide learner and learning support resources in support of this programme.
- Produce the information needed for the promotion of learning in an agreed format and by an agreed date.

- Use the Authority's logo and/or acknowledge funding support from ESFA via the Local Authority in all other publicity and learner resources produced in relation to the agreed programme. Where relevant, the Provider will acknowledge other sources of funding and declare £+.

The Provider is responsible for the day to day management of the agreed programme including the collection of and accounting for fees and charges; the provision of advice and guidance to potential students; support to tutors and the supervision and development of the programme of activities.

The Provider will publish an annual and CLC (Community Learning Centre) prospectus. This will be available to all households in the Borough in the summer term.

If there are matters of concern, these should be raised with the Authority's AEB Manager (BCAEM) at the earliest opportunity so that remedial action can be taken.

1.3 Management of Information

- The Provider will ensure that registers are kept up to date, and record information on attendance, withdrawal (date and reason), and progression (code).
- The Provider will ensure that the BCAEM has access to AEB data held on MIU systems and provide the BCAEM with data reports in a specified format by 16th of each month.
- The Provider will produce the necessary information, as required by ESFA, including ILRs, on enrolments, attendance, withdrawal, completion and achievement for inputting into the ESFA Management Information System as specified in the timetable at Schedule B. The collection and use of data is subject to the Data Protection Act.
- The Provider will provide the necessary information as required by the Ofsted Inspectorate.

1.4 Monitoring and Evaluation.

For the AEB provision, the Provider will have in place and comply with agreed quality assurance for the observation of lessons, curriculum audit, learner and stakeholder feedback and self-assessment.

The Provider will monitor their performance in relation to the performance indicators outlined by the BCAEM and make every effort to deliver against the set targets for each term as agreed in Schedule A. These targets will be identified by Authority and agreed on an annual basis and reviewed termly. Where the Provider considers that performance will fall outside the agreed band in one or more aspects, they will alert the BCAEM so that appropriate remedial action can be undertaken.

The Provider will ensure that appropriate quality improvement systems are in place including mentoring, staff development and support. A calendar for quality procedures will be agreed and reviewed on an annual basis. The BCAEM will partner the Provider and contribute to the quality assurance processes.

The Provider will keep auditable accounts and allow access for inspection of the accounts by nominated Authority finance officers and appointed internal and external auditors.

The Provider will allow access by nominated community learning officers/auditors and Ofsted to any aspect of their AEB service for monitoring, inspection, or self-assessment purposes.

2. SERVICE SPECIFICATION: CONTRACT HOLDER

Authority: Department of Place.

2.1 Management and Planning

BCAEM on behalf of the Authority will convene scrutiny, planning and consultative meetings with the Provider as necessary. From time to time the Provider will be invited to contribute to working groups on issues in which they have an interest.

The Authority will provide senior management support through the posts of Director of Place and the BCAEM.

BCAEM will ensure that the key planning and strategic documents are completed and returned appropriately and as required by funding bodies, including Development Plans, Business Plans and Self-Assessment Reports.

2.2 Information Management and Monitoring

BCAEM will maintain a database of information supplied by the Provider. This information is subject to the current Data Protection Act. The Authority will monitor this information, and also supply related reports to the Provider for monitoring and evaluative purposes, by the dates as agreed in Schedule B.

The Provider will be responsible for the timely verification and return of ILRs and responsible for Inspection Data related information.

2.3 Curriculum Support and Development

The Authority will monitor curriculum support via the BCAEM chairing the Provider Quality Scrutiny Group, with responsibility for staff development events, observe teaching and learning, and undertake professional reviews with tutors in accordance with the agreed Colleges self-assessment pro-forma and staff development policy.

The Authority aims to be responsive to College initiatives on meeting local needs as identified and as far as possible within funding constraints, will support curriculum and community development and new initiatives in order to develop provision to meet the needs of the local community.

The Authority will also seek to encourage the Provider to develop a curriculum responsive to the needs of residents as identified by local, regional or national priorities. The Provider will be kept informed of and involved in such developments.

The Authority will support the Provider in its adult information and guidance activities to an agreed standard, focused in particular on target groups and communities as identified term by term.

2.4 Quality Assurance

The Authority will operate in line with its quality assurance policy and procedures. The Authority will require the Provider to provide a part of its AEB CL funding for staff development opportunities for staff directly or indirectly employed for CL delivery, in accordance with the Provider's Staff Development policy. The Provider is expected to release staff where possible to attend relevant events.

Learners/stakeholders complaints will be dealt with by the Provider's complaints procedure. The Authority will monitor levels and areas of complaints and be informed of any actions taken to address these.

The Authority will validate and monitor CL quality assurance procedures and policies through a college Quality Development Plan.

2.5 Funding

The Authority will provide funding from the ESFA derived contract to achieve the activities outlined in this agreement, on the basis of the funding formula and rules of the SFA, and the outcomes/targets achieved. Funding will be subject to annual review and audit, and may fail as a result of:

- Amendments to ESFA funding arrangements.
- Reductions in the quality and/or quantity of work undertaken by the Provider
- Opportunities to secure additional external funding.
- Unsatisfactory Ofsted Inspection and ESFA audit.

The Authority will audit financial arrangements of the Provider in-so-far as they apply to the development and delivery of CL and, where appropriate, the Leadership and Management of the programme.

In the event of reduced levels of expected funding resulting from under-performance the Provider funding would be adjusted to reflect this in full. A copy of the ESFA 17/18 Funding rules is available on-line.

2.6 Agreement Period

The Agreement will commence on 1 August 2018 and expire on 31 July 2019. It will be subject to review in March 2019.

The Authority will provide the (ESFA) funding as specified in Schedule A to this Specification.

The Authority will make payments of amounts and at the dates specified in Schedule A to this Specification.

If the Provider produces less than 90% of the agreed outputs, the agreement will be jointly reviewed (Authority & Provider) with the intention of producing a remedial action plan. The funding level would also be reviewed at that point.

In addition to meeting the outputs required, funding is dependent on compliance with employment law (see Schedule A).

The consequent risks, including financial risks, of any “claw back” by ESFA rests with the Provider.

3. JOINT RESPONSIBILITIES OF THE PROVIDER AND THE AUTHORITY

- To ensure there is an appropriate exchange of information, necessary to meet the agreed objectives of the service to users, including the management information specified at 1.3 and 2.1 above.
- To ensure that there are regular and appropriate liaison arrangements to deal with matters relevant to the Agreement.
- To ensure that resources are used for the purposes described in this agreement.
- To ensure both parties engage in contingency planning if either the Subcontractor or Contractor need to withdraw from the subcontract arrangement; or the subcontractor goes into liquidation or administration.
- To ensure that an up to date appropriate Lock Down Policy and Procedure is in place to ensure that the Community Learning Hubs and the Provider main site remain safe for learners and staff in the event of a civil disturbance, a fire, or a terror related attack.

4. TERMINATION OR VARIATION PROCEDURES

The terms of this specification may be amended by mutual consent. Any significant alterations, postponements or cancellation of the service must be proposed in writing to the other party immediately.

The Provider will be consulted on future funding arrangements through:

- (a) Regular meetings between senior College staff and BCAEM throughout the term of the agreement.
- (b) Detailed discussion between BCAEM and the Provider regarding proposed variations to the agreement either within the time span of the agreement or in determining future agreements.
- (c) Discussions of the content of future agreements will take place between BCAEM and the Provider approximately three months prior to the end of the current agreement.

If, due to unforeseen circumstances, the Provider becomes unable to provide the range of services indicated in the agreement, the Provider will inform BCAEM immediately, and the agreement will be renegotiated.

The Authority reserves the right to terminate the contract and to ask for the removal of underperforming staff from delivery of the contract.

5. GRIEVANCE PROCEDURES

- 5.1 In the event of disagreement over priorities or any other grievance between the Authority and the Provider, representatives of the two parties will enter into negotiations to seek a mutually acceptable outcome.
- 5.2 Should this prove unacceptable to either party, the final point of reference in a complaint/grievance will be the Director of Place. If, following the Director's ruling, no agreement is reached; the contract may be terminated by the Authority, giving three months' notice to the Provider.

6. CONTACT POINTS

Authority: Jayne Tramontana
Manager – Adult Education
Bolton Council
Department of Place
3rd Floor, Bolton Town Hall
Bolton
BL1 1RU
01204 334187

College: Bill Webster
Interim Principal
Bolton College
Deane Road Campus
Deane Road
Bolton
BL3 5BG
01204 482012

7. FUTURE AEB ARRANGEMENTS

- 7.1 The AEB is subject to staged devolution in Greater Manchester. The GMCA will assume responsibility of AEB funded provision from the 2019/20 academic year. Therefore, the statutory duty to deliver AEB which currently sits with the Secretary of State will transfer to MCAs from 19/20. As stated by the ESFA, funding will be affected by devolution, and Mayoral Combined Authorities (MCA's) will be responsible for funding their residents. The ESFA will fund non-devolved areas.

- 7.2 In future, depending on geographic delivery footprint and commissioning decisions, providers may have a single funding relationship with a commissioning authority or multiple funding relationships with both an MCA and ESFA. GM is keen that there is diversity in the GM market and is committed to working with high quality providers who want to build a strong, forward-looking relationship with the GMCA and provide the best value and impact from the devolved GM AEB. This will allow GM to realign the funding currently spread across a significant provider base across the country, to a smaller one more focused on GM residents, offering the opportunity to maximise impact, recognise the role of subcontracting but minimise management fees.
- 7.3 AEB funding will be aligned to the specific work and skills priorities within the GM Strategy and the emerging Industrial Strategy. It will be strongly focussed on moving to an outcome based system ensuring that the skills system works for everyone. Priorities identified are:
- All young people are equipped for life
 - There are good jobs, with opportunities for people to progress and develop
 - A thriving and productive economy in all parts of Greater Manchester
 - A Work and Skills system that works for everyone.
- 7.4 In addition, there will be partial procurement of AEB for the 2019/20 academic year. Based on GM's indicative AEB allocation of around £90m, for the initial years, around 70% will be 'plan led' block grant funding (including to existing local authorities and GM based FE Colleges) and the value of the procured elements of activity for the 2019/20 academic year will be an estimated £25m per annum out of GM's final overall budget, which is expected to be confirmed by DfE early in 2019. This will allow for diversity in the market and offer the opportunity to test new approaches, but it is understood this will not significantly affect the funds or arrangements for the Authority or the Provider at present. The Authority will continue to update the Provider throughout the current year.
- 7.5 The implications of staged devolution are still largely emerging; however, it is not anticipated that there will be significant changes in the 2019/20 academic year. In light of this, it is proposed that supplemental arrangements are agreed with the Provider for the 2018/19 academic year and that, on confirmation of the 2019/20 ESFA funding award and confirmation of GM's staged devolution plans, supplemental arrangements are then agreed with the Provider for the 2019/20 academic year.

SCHEDULE A: SERVICE LEVEL SPECIFICATION

The Provider will undertake, in consultation with BCAEM, an annual self-assessment programme and submit its SAR to the BCAEM by end January 2019. Please see Management arrangements in Schedule B and Appendix 1. The Provider will incorporate into this SAR a related Quality Improvement/Development Plan outlining how it will maintain/improve its level of performance by addressing:

OUTPUTS

1. LEVEL OF ACTIVITY

To provide the guided learning hours, the unique learner numbers in the current year as identified and agreed with BCAEM.

2. CURRICULUM

Collaborating, where appropriate, with other potential partner Colleges, the Provider will produce a programme of provision via a curriculum responsive to need, in which there are appropriate opportunities to develop core skills for employment (literacy, numeracy and information technology,); and to access a range of vocational, academic and self-development opportunities that demonstrate directed or embedded sustainable education. Ensure that all curriculum leads to progression: Further Learning, Employability or Volunteering.

3. PERFORMANCE TARGETS

Participation

- With the set out agreed targets for the numbers of learners to be engaged in each ESFA learning area.
- Work towards widening participation such that the participation profile reflects the population profile of the area served.
- Work with identified partner organisations to enhance / extend range of provision.
- Work towards agreed minimum numbers for different types of provision.
- Conduct locally based research into local learning requirements and needs in order to inform programme planning.

Retention

- To meet or exceed the retention targets as agreed, for the current year for different types of provision.
- Monitor learner attendance and retention on a regular basis and produce termly reports
- Maintain and improve retention to the set targets, of initially enrolled students to end of course

- Where provision (by programme or subject) falls 10% or more below target agree an action plan with BCAEM to be implemented and monitored for that area.

Achievement

- Ensure that appropriate systems for setting learner goals and recording achievement in non-regulated courses (RARPA) and that the six stages of RARPA are in place within all AEB CL programme areas.
- Where achievement is not being adequately recorded within a programme area or subject, an action plan will be implemented and monitored for that area to address any issues identified.
- To develop a system of recording achievement for validation by an external body.

Progression

- Collect intended destination and progression data on all CL students who complete a course.
- Make available progression reports indicating learner destination.
- Ensure that all CL learners have access to Information, Advice and Guidance as per Ofsted recommendation.

4. ACCOMMODATION

- Provide appropriate and adequate accommodation for the programme offered including access to specialist facilities and equipment.
- Maximise the physical accessibility of the programme.
- Comply with DDA/SENDA requirements.
- Conduct accommodation review to satisfy H&S regulations.

5. FUNDING

In respect of the outputs given above and the Agreement as a whole, the Authority will pay the following:

AEB Community Learning

Allocation of ESFA funding from the Authority to the Provider

Information relating to funds for the funding period

1 August 2018 – 31 July 2019

Detail	TOTAL
For AEB Regulated and Non-regulated CL provision	£2,092,423

- The Authority will provide a delegated budget as indicated above of the ESFA funds allocated to the Authority.

Payments will be made in accordance with the Appendix to this Schedule A

- ESFA CL Funds will be collected by the Authority and paid into the Provider's CL account against the code allocated to the centre for Adult and Community Learning transactions: (Code: AD20000-99990-00000-BN-00000).
- The Authority will retain a 4% management fee cost from the total ESFA funds allocated to the Authority to cover Strategic Leadership and Management costs. This to include:
 - Costs of agreed the Authority's Staff
 - Support costs for the Authority's Staff Development Consultancy
 - The Authority's administration and accommodation support costs.

APPENDIX TO SCHEDULE A

Payment Schedule (Aug 2018 - July 2019)

AUG	SEPT	OCT	NOV	DEC	JAN	FEB	MAR	Total Aug 18 - Mar 19	APR	MAY	JUNE	JULY	Total Apr 19 - Jul 19	Total
163,869	163,862	163,862	163,862	163,862	163,862	163,862	163,862	1,310,903	195,380	195,380	195,380	195,381	781,521	2,092,424

SCHEDULE B: Management arrangements – this section outlines the detail of how responsibility for the strategic development, determination and delivery of the Authority’s AEB CL Programme will be shared between the Authority and the Provider, in partnership with the ESFA, who allocate the AEB CL funding. This includes the involvement of the Principal of the Provider or delegated senior manager in agreeing the work of nominated staff within the Provider and the role of the Provider in the appropriate partnership working deemed to be desirable for the successful delivery of the programme.

The Authority (AEB Community Learning) will:	The Provider will:
<ol style="list-style-type: none"> 1. Chair and service the any relevant Community Learning partnership as evolved. Ensure wider representation on Community partnerships for the Authority will represent views of partners involved in Community Learning across the borough 2. Submit any partnership recommendations to the appropriate Local Authority Committees. 3. Identify and require such personnel as deem necessary to produce the LA Self-Assessment Report, the Community Learning Development Plan. Work in partnership during an Ofsted inspection. 4. Ensure that all LA CL staff receives appropriate CPD training and ongoing professional support and supervision including competence assessment and caseload management. 5. Ensure that LA CL personnel receive Health and Safety, E&D, sustainability and Adult Safeguarding training and act in accordance with LA policies. 6. Ensure that all LA CL staff are appraised in line with LA Quality Standards and that the designated Authority Director 	<ol style="list-style-type: none"> 1. Nominate a senior manager to ensure collaborative working between the Authority and other Colleges across the borough. This to be achieved through membership and attendance to Community groups, as well as those activities the Authority determines necessary to ensure collaboration and coherence of provision with these and other organisations. 2. Assist LA in preparation of documentation for submission to LA committees. 3. Expect to be involved in the identification of such personnel to assist the LA for the task of producing the LA Self-Assessment Report, the Community Learning Strategy. Work in partnership during an Ofsted inspection. 4. Ensure that all the Authority Staff engaged in CL planning and delivery receives appropriate CPD training and ongoing professional support and supervision including competence assessment and caseload management. 5. Ensure that the Authority CL personnel receive Health and Safety, E&D, sustainability and Adult Safeguarding training and act in accordance with both the LA and the Authority’s policies. 6. Ensure that all the Authority CL Staff is appraised in line with the Provider’s quality standards and that the designated LA manager is

<p>and Exec member are involved appropriately.</p> <ol style="list-style-type: none">7. Participate in monthly monitoring meetings with appropriate the Provider's senior Staff to review the Provider provision of LA plan.8. Facilitate an annual review of the Funding Agreement between the Authority and the Provider. This to be in the spring term.9. Provide CL management information as required by the SFA, on LA contracted AEB CL activity, not only to ESFA but to Local Authority Committees as required and deemed to be necessary for further development of CL provision for audit and monitoring purposes in line with ESFA protocol for the sharing of data between Education and Training Colleges and the Skills Funding Agency. Set out the deadlines for the ESFA Protocol in the Work Plan that will be agreed between the Parties within one month of the date of the Agreement10. Refer any complaints received about the Provider to the designated senior manager of the Authority.	<p>appropriately involved in the monitoring of the programme.</p> <ol style="list-style-type: none">7. Participate in monthly monitoring meetings with the BCAEM to review the Provider provision of LA plan.8. Participate in an annual review of the AEB Funding Agreement between the Authority and BCC. This to be in the spring term. <p>Provide LA with access to MIU Dashboard and CL Target Data information by the 16th of each month as required by ESFA, on LA contracted AEB CL activity, as required by LA and deemed to be necessary for further development of AEB CL provision for audit and inspection and monitoring purposes. Meet the deadlines for the SFA protocol in the Work Plan that will be agreed between the Parties within one month of the date of the Agreement</p> <ol style="list-style-type: none">10. Refer any complaints received about Bolton LA to the BCAEM.
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Appendix 1

BOLTON AEB COMMUNITY LEARNING PLAN; MANAGEMENT AND LEADERSHIP FLOW CHART.

