



# Sub-Contracting (Including Supply Chain Fees and Charges) Policy and Procedure

Sub-contractors are all providers delivering education or training on behalf of the College. This includes all sub-contractors listed on the Education and Skills Funding Agency (ESFA) Declaration of Sub-contractors.

Myerscough College is aware of the benefits that effective sub-contracted provision can provide in widening its curriculum offer, geographic area and links into local communities. The Funding Agencies are increasing regulation with respect to sub-contracting arrangements and complete transparency is expected. A stipulation of The Funding Agencies is that the supply-chain data is published and available to view on the College's website.

Sub-contracting is not without risk. To manage the risk, the College only works with reputable providers who successfully meet the requirements of the College's due diligence process.

The College holds full accountability for the delivery of sub-contracted activity. Both the College and the sub-contractors refer to and are bound by the Education and Skills Funding Agency (ESFA) Funding Guidance.

The aim of this policy is to ensure that all sub-contracted provision is managed effectively and efficiently; whilst focusing on quality. This policy ensures fully transparency in the College's sub-contracting arrangements and to provide guidance to members of the College regarding sub-contractor supply-chain fees and charges.

The College recognises that effective sub-contracts provide the communities that we work in with added value, whilst strengthening the College offer and widening our impact. It is our aim to ensure that the College's teaching expertise in the relevant subject area and internal Teaching and Learning assessment team will be utilised to ensure the highest standard of delivery in all sub-contracted provision.

This policy governs all sub-contracting within the College. Roles and responsibilities for the College and the sub-contractors are clearly defined from the outset of the partnership and all sub-contractors are required to agree and sign both a Contract and Service Level Agreement.

## Procedure

### 1. Identification of a Potential Sub-contractor

This can be via a direct approach from a potential Sub-contractor or by the College contacting a potential Sub-contractor. The College does not work with third parties to source Sub-contractors.

The Assistant Principal – Partnerships and Liverpool discusses the potential Sub-contract arrangement with the provider. Within the discussion the proposed volumes, target learner cohort, experience of delivering Sub-contracting provision, previous success rates etc are ascertained. Documentation and information available in the public domain will also be reviewed, such as websites and listings on Companies House.

If a potential Sub-contractor meets the College's expectations in the informal review and there is capacity within the relevant funding budget and will meet the College's strategic aims, it is discussed with the Vice Principal and Chief Executive; who may recommend that we do not progress the enquiry or that a paper outlining the proposal should be prepared for further discussion and full due diligence.

It should be noted that the College does not regularly enter into arrangements with newly established Sub-contractors. The volume of Sub-contracted provision is low and the College continues to work with existing partners with a proven track record of delivering high quality programmes that meet local, regional and community needs.

### 2. Due Diligence

The College will only work with providers who meet all the requirements of the Due Diligence process. This includes the following checks:

- Sub-contractor UKPRN and listing on the Delivery Register
- Active status on the Companies House Register
- Financial statement check
- Credit agency check
- References

The following documents are also requested and reviewed:

- Awarding body approval documentation (where relevant)
- External Verifier (EV) reports (where relevant)
- Health and Safety Policy
- Equality, Diversity and Inclusion Policy
- Safeguarding Policy
- Prevent Risk Management Plan
- Public Liability Insurance
- Self-Assessment Report (SAR) and Quality Improvement Plan (QIP)
- Sustainability / Environmental Policy
- Safer Recruitment Policy
- Document Retention Policy
- Privacy Notice

All checks are recorded on the Partner File Checklist, which will remain on file.

If the provider meets the expectations of the due diligence process the Contract and Service Level Agreement will be agreed.

### **3. Contract / Service Level Agreement**

This is completed with all Sub-contractors every contract year using the College standard Sub-contracting template, which meets the requirements of the ESFA Funding Guidance. The Sub-contract proposal and the payment schedule are also included within the contract.

### **4. Monitoring**

Monitoring activities seek to confirm that Teaching, Learning and Assessment is of an appropriate standard and that ESFA Funding Rules are upheld. A monitoring schedule is established with each Sub-contractor on the basis of risk and may be revised within the contract year, depending on in-year performance. Monitoring checks include:

Monitoring:

- Monthly telephone calls or visits
- Examining data (eg learner enrolments, registers, EV reports etc)
- Support visits
- Lesson observations
- Learner interviews
- Safeguarding Monitoring Report

Review:

- Quarterly formal meetings
- Examination of all aspects of the contract
- Planning future actions
- Attendance at termly FE Performance Boards, reviewing learner attendance, retention and achievement plus learner support

Evaluation:

- Annual assessments / audits
- Contract performance
- Contract renewal consideration

### **5. Risk Banding of Sub-contractors**

Risk is calculated based on:

- Previous track record
- Learner success rates
- Type of learner to be engaged (e.g. NEET)
- Expected length of stay of the learner (planned GLH)
- Contract performance and duration
- New Sub-contract arrangement

The risk banding determines the level / frequency of monitoring and the support available to the sub-contractor.

## **6. Supply Chain Fees and Charges**

The sub-contractor will be paid once documents are received as per the contract, relevant evidence of delivery is received and funding is claimed by the College.

Apprenticeships & Skills and Workplace Learning sub-contractors will be paid on profile each month in arrears. Payments will then be reconciled against actuals following the R06, R09, R11 and R14 ILR returns.

The College will retain a percentage dependent on the level of support, supervision, administration and assistance required. This amount covers assessor support, the collection and procession of data, quality assurance and the registration of learners.

This policy will be reviewed annually and will be freely available on the College's website. This policy will be presented to current and new sub-contractors during the initial stages of contract negotiation and as and when requested from thereon in.

A sub-contractor Supply Chain Checklist form must be completed and contain, as a minimum, the following information:

- Name of the sub-contractor;
- UKPRN number of the sub-contractor;
- Contract start and end date;
- Type of provision (for example, 16-18 Apprenticeships, 19+ Apprenticeships, classroom learning, workplace learning);
- Funding paid to the College for provision delivered by the sub-contractor in that academic year;
- Funding paid by the College to the sub-contractor for provision delivered in that academic year;
- Funding retained by the College in relation to each sub-contractor for that academic year;
- If appropriate, funding the sub-contractor has paid to the College for services or support provided in connection with the sub-contracted provision;
- Any information on fees and charges alongside the supply chain fees and charges policy to allow the College's supply-chain fees and charges information to be viewed in context.

## **Documents Associated with this Policy**

- ESFA Funding Guidance
- ESFA Subcontracting Funding Rules

## **Appendices**

Appendix 1 - Contract Template

Appendix 2 - Service Level Agreement Template

Appendix 3 - Sub-contracting Monitoring Guidelines

Appendix 4 - Partner File Checklist

Appendix 5 – Sub-contractor Supply Chain Checklist

Dated:

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**MYERSCOUGH COLLEGE SUBCONTRACT AGREEMENT 2022/23**

between

**MYERSCOUGH COLLEGE**

and

XXXX

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THIS AGREEMENT is dated : **XXXX**

## PARTIES

- (1) **MYERSCOUGH COLLEGE FURTHER EDUCATION CORPORATION** a body incorporated under the Further and Higher Education Act 1992 and having its main address at Bilsborrow, Preston, Lancashire, PR3 0RY (**Myerscough College**); and
- (2) **[INSERT DETAILS]** incorporated and registered in England and Wales, whose registered office is at **[INSERT DETAILS]** (the **Provider**).

## BACKGROUND

- (A) Myerscough College has entered into an agreement (the **Principal Agreement**) with the Funding Agent (hereafter defined) to provide services.
- (B) Myerscough College and the Provider have agreed to enter into this agreement pursuant to which the Provider will provide services (on the terms set out in this agreement) to assist Myerscough College in complying with its obligations and meeting its targets under the Principal Agreement.
- (C) The Provider acknowledges that the obligations of Myerscough College under the Principal Agreement are constantly under review by the Funding Agent and as a result Myerscough College may make such variations to the Provider's obligations under this Agreement, as are necessary to take account of any such review.

## AGREED TERMS

### 1. INTERPRETATION

- 1.1 The definitions and rules of interpretation in this clause apply in these terms and conditions (**Conditions**).

**Agreed Purpose:** the parties meeting their obligations under this Agreement and the provision of educational services to students.

**Agreement:** the agreement between the parties incorporating these Conditions and the Service Level Agreement.

**Budget:** the sum or sums allocated by Myerscough College for the provision of the Services by the Provider, as set out in the Service Level Agreement.

**Business Day:** a day other than Saturday, Sunday or a public holiday in England when the banks in London are open for business.

**Customer:** the person or persons, firm, group or company to whom the Services are delivered and/or provided as set out in the Service Level Agreement.

**Data Controller:** has the meaning given to it in the Data Protection Legislation.

**Data Discloser:** the party disclosing Personal Data.

**Data Processor:** has the meaning given to it in the Data Protection Legislation.

**Data Protection Legislation:** (i) the Data Protection Act 2018 (**DPA**); (ii) the General Data Protection Regulation ((EU) 2016/679) (**GDPR**) and any national implementing laws, regulations and secondary legislation, for so long as the GDPR is effective in the UK; (iii) the Law Enforcement Directive (Directive EU) 2016/679) (**LED**) (iv) any successor legislation to the DPA, the GDPR and the LED; and (v) all applicable Laws relating to the processing of the personal data and privacy, including where applicable the guidance and codes of practice issued by the any applicable

national data protection authority, and the equivalent of any of the foregoing in any relevant jurisdiction.

**Data Receiver:** the party receiving the Personal Data from the Data Discloser.

**Data Loss Event:** any event that results, or may result, in unauthorised access to Personal Data held by the Receiving Party under this Agreement, and/or actual or potential loss, alteration and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach.

**Data Subject:** has the meaning given to it in the Data Protection Legislation.

**Data Subject Request:** a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.

**Deliverables:** all Documents, products and materials developed by the Provider in relation to the provision of the Services as set out in the Service Level Agreement.

**Document:** includes, in addition to any document in writing, any drawing, map, plan, diagram, design, picture or other image, tape, disk or other device or record embodying information in any form.

**End Date:** the date that the delivery of services is due to be concluded as set out in the Service Level Agreement.

**Funding Agent:** Education Skills Funding Agency (**ESFA**) of Earlsdon Park, 53-55, Butts Road, Coventry, CV1 3BH

**Individual Learner Record (ILR):** Information about learner data that publicly funded colleges, training organisations, local authorities and employers (**FE providers**) must collect and return.

**In-put Material:** all Documents, information and materials provided by Myerscough College relating to the Services as set out in the Service Level Agreement.

**Intellectual Property Rights:** all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

**Myerscough College's Equipment:** any equipment, including tools, systems, cabling or facilities, provided by Myerscough College or its subcontractors and used directly or indirectly in the supply of the Services (hereafter defined).

**Myerscough College's Manager:** Myerscough College's manager and point of contact as notified to the Provider in writing from time to time.

**Personnel:** means all directors, officers, employees, agents, consultants and contractors of the relevant party and/or of any Sub-Processor engaged in the performance of its obligations under this Agreement

**Personal Data:** has the meaning given to it in the Data Protection Legislation.

**Protective Measures:** appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it including those outlined Schedule 4.

**Provider's Equipment:** any equipment, systems, cabling or facilities provided by the Provider and used directly or indirectly by the Provider in the supply of the Services.

**Provider's Manager:** the Provider's manager for the provision of the Services, as notified to Myerscough College in writing from time to time.

**Service Level Agreement:** document which sets out the terms for the delivery of services and signed by the parties on or around the date of this Agreement.

**Service Provision Completion:** a date by which the provision of the Services is to be completed as set out in the Service Level Agreement.

**Services:** the services to be provided by the Provider as set out in the Service Level Agreement.

**Shared Personal Data:** the personal data to be shared between the parties under clause 9.2 of these Conditions.

**Sub-contract Proposal:** the detailed plan describing the sub-contract, setting out the requirements and specifications of the Services to be provided by the Provider, the estimated timetable including dates and stages of the sub -contract and the provision of the Services and details of the work to be done and responsibilities for the provision of the Services by the Provider, including but not limited to the information set out in Schedule 1.

**Sub-Processor:** any third Party appointed to process Processed Personal Data on behalf of the Receiving Party related to this Agreement.

**VAT:** value added tax chargeable under English law for the time being and any similar additional tax.

- 1.2 Condition, schedule and paragraph headings shall not affect the interpretation of these conditions.
- 1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors and permitted assigns.
- 1.4 The schedules form part of this Agreement and shall have effect as if set out in full in the body of these Conditions and any reference to this Agreement includes the schedules.
- 1.5 Words in the singular shall include the plural and vice versa.
- 1.6 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.7 A reference to **writing** or **written** includes faxes but not e-mail.
- 1.8 Where the words **include(s)**, **including** or **in particular** are used in these terms and conditions, they are deemed to have the words **without limitation** following them and where the context permits, the words **other** and **otherwise** are illustrative and shall not limit the sense of the words proceeding them.
- 1.9 Any obligation in this Agreement on a person not to do something includes an obligation not to agree, allow, permit or acquiesce in that thing being done.
- 1.10 References to conditions and schedules are to the conditions and schedules of this Agreement.

## **2. COMMENCEMENT AND DURATION**

- 2.1 The services supplied under this Agreement shall be provided by the Provider from the date specified in and in accordance with the Service Level Agreement.
- 2.2 The Services supplied by the Provider under this Agreement shall continue to be supplied by the Provider until Service Provision Completion.
- 2.3 The provisions of this Agreement will prevail over any inconsistent terms or conditions contained, or referred to in an acceptance of quotation offer, or implied by law, trade custom, practice or course of dealing. In the event of a conflict between the Service Level Agreement and these Conditions, the Service Level Agreement will prevail.

## **3. SERVICE LEVEL AGREEMENT AND PAYMENTS**

3.1 In consideration of the Provider providing the Services from the date specified in the Service Level Agreement and complying with the provisions of this Agreement from the date of this Agreement, Myerscough College shall:

- (a) make available to the Provider the Budget for the provision of the Services by the Provider; and
- (b) subject to the provisions of clause 13.2 of this Agreement make payment to the Provider as set out in the Payments Schedule (Schedule 3 to this document). For the avoidance of doubt, payment of a Claim by Myerscough College shall not be of the essence and shall be conditional upon:
  - (i) the Funding Provider making payment of a claim by Myerscough College under the Principal Agreement; and
  - (ii) Myerscough College being reasonably satisfied that the payment is necessary for the provision of the Services by the Provider.

3.2 The College will pay the Provider at least quarterly, based on the funding generated by the Individual Learner Record (ILR).

3.3 All payments made by Myerscough College under the terms of this agreement are inclusive of any Value Added Tax (or other tax) if applicable. It is the responsibility of the Provider to determine tax liability for which you will be solely liable.

3.4 The Provider must retain all documents relating to the payment of services for a period of 6 years from the Sub-contract end date and subsequently securely disposed of.

3.5 The Sub-contract Proposal and Service Level Agreement have been agreed and no amendment shall be made except in accordance with clause 16 of this Agreement.

## **4. PROVIDER'S OBLIGATIONS**

4.1 The Provider must ensure compliance with ESFA Funding Rules.

4.2 The Provider must supply the College with learner / programme data in a timely manner to ensure that accurate returns are made within the College ILR.

4.3 The Provider shall use its best endeavours to provide, manage and complete the provision of the Services to Myerscough College or where applicable the Customer, and to deliver the Deliverables to Myerscough College and comply in all material respects with the Sub-contract Service Level Agreement.

4.4 Subject to clause 5.2 the Provider shall be responsible for interpreting the Sub-contract Proposal and Service Level Agreement and the Provider shall be solely responsible for its own interpretation of any documentation or information obtained.

4.5 The Provider shall provide the Services in a proper manner and in accordance with all these Conditions. The Provider warrants and represents that it:

- (a) has the competence to perform the Services;

- (b) has suitably qualified staff available to deliver the funded education and training;
  - (c) has or shall obtain the necessary tools, equipment and personnel to provide the Services;
  - (d) shall maintain and use such tools and equipment in accordance with the manufacturer's specifications and recommendations, and all good operational practice;
  - (e) has or shall obtain, at its expense, before performing any Services, or necessary registrations, certificates, permits, licences and authorisations to perform the Services;
  - (f) shall perform the Services in accordance with all good law, including all relevant health and safety legislation and Safeguarding regulations;
  - (g) shall perform the Services in good faith, promptly, with due diligence and competence.
- 4.6 The Provider shall allow the Funding Agent, and any other person nominated by the Funding Agent, access to their premises and all documents relating to education and training funded by the Agent.
- 4.7 The Provider shall maintain in force during the term of this Agreement full and comprehensive policies of insurance to sufficiently cover the provision of the Services, including (but not limited to) employers liability insurance and general liability insurance. The Provider shall provide such evidence of insurance as Myerscough College shall reasonably require upon request.
- 4.8 The Provider warrants and represents that it will not do or omit to do any act that would result in Myerscough College being in breach of the Funding Agent's Requirements and any other such reasonable requirements that Myerscough notify the Provider of in writing from time to time.
- 4.9 The Provider shall indemnify and hold Myerscough College harmless, on demand for, all costs, charges or losses sustained or incurred by Myerscough College (including any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property and those arising from injury to or death of any person and loss of opportunity to deploy resources elsewhere) arising directly or indirectly from the Provider's fraud, negligence, failure to perform or delay in the performance of any of its obligations under this Agreement, subject to Myerscough College confirming such costs, charges and losses to the Provider in writing.
- 4.10 The Provider shall inform Myerscough College immediately of any change in circumstances which may affect the Provider's ability to comply with the terms of this Agreement or of any matter which may affect the successful completion of the delivery of services. This could include, but is not limited to:
- (a) Non-delivery of training when funds have been paid; or
  - (b) Sanctions imposed on the Provider by an awarding organisation; or
  - (c) An Ofsted grade of Grade 3 or Grade 4; or
  - (d) Complaints or allegations by learners, people working for The Provider or other relevant parties; or
  - (e) Allegations of fraud.
- 4.11 The Provider shall give Myerscough College sufficient evidence to assess their performance against Ofsted's Common Inspection Framework. The provider shall also, where required, provide evidence to guide the judgements and grades within Myerscough College's self-assessment report.
- 4.12 The Provider shall co-operate with Myerscough College in the event of any education and training ending for any reason to ensure continuity of learning.
- 4.13 The Provider is bound by European Social Fund (ESF) clauses from the ESFA Funding Agreement, even if the provision being subcontracted is not funded by ESF. Learners must be aware of the support provided by ESF. All learner documentation and the Provider's website must include the ESF logo.

- 4.14 The Provider shall not use funding from the Funding Agent to make bids for or claims from any European funding on their own behalf or the behalf of the Funding Agent. The Provider shall not use payments made as match funding for ESF Co-Financing Projects. The ESFA reserves the right to use payments as match funding for ESF projects and the Provider must provide any such information as required to ensure compliance.
- 4.15 The Provider agrees to allow Myerscough College overall control over the enrolment or rejection of learners and delivery of learning.
- 4.16 The Provider will ensure a learning agreement is completed by the learner at enrolment that reflects the outcome of initial guidance and assessment for an individual learner.
- 4.17 The provider will be required to demonstrate through accounting, management information systems and any other relevant evidence (in the sole discretion of the funding agent or and other body undertaking audit or monitoring), to the funding agent and anybody acting on their behalf that no double funding has occurred in respect of the Provision delivered within this contract.
- 4.18 Where the funding agent identifies double funding in respect of the Provision, or any part thereof, the Provider will be liable to repay any sums paid in respect of the Provision for which the Provider has received funding from another source and the College reserves the right to deduct any monies owed to the Provider under this contract.

4.19 **Prevent / British Values**

The provider must demonstrate their active engagement in Prevent Awareness in the safeguarding of learners. In complying with this duty, Providers would expect active engagement from Governors, Boards, Principals, Managers and leaders with other partners, including the police.

Management and co-ordination arrangements must be implemented across the organisation with a single point of contact for the operational delivery of Prevent-related activity. Providers must have clear and visible policies and procedures for managing whistleblowing and complaints regarding Prevent. Providers must develop a Prevent Action Plan to set out the actions that will be taken to mitigate risks.

Providers must be able to demonstrate that they undertake appropriate training and development for all relevant staff. This is to enable teachers and others supporting the delivery of the curriculum to use opportunities in learning to educate and challenge. It will also allow leaders and teachers to identify British Values in their management, teaching and through general behaviours of the organisation, including through opportunities in the curriculum.

Providers must have clear policies in place for students and staff using IT equipment, including the use of filtering as a means of restricting access to harmful content, and should consider the use of their overall strategy to prevent people from being drawn into terrorism.

The Provider must demonstrate how they are working to prevent learners from being drawn into extremism. This will include involving individuals in governance roles as well as staff across the organisation with responsibility for safeguarding, welfare, curriculum, IT and staff training. There should be a designated person responsible for Prevent.

4.20 **English and Maths**

It is the obligation of the provider to adhere to the ESFA Funding Rules regarding English and Maths. Failure to comply with this obligation will be deemed as a material breach.

**5. MYERSCOUGH COLLEGE'S OBLIGATIONS**

- 5.1 Myerscough College shall use all reasonable endeavours to perform and comply with its obligations as set out in the Service Level Agreement.

5.2 Myerscough College will also where practical provide reasonable guidance to the Provider in relation to the Service Level Agreement and its obligations under this Agreement.

5.3 If Myerscough College's performance of its obligations under this Agreement is prevented or delayed by any act or omission of the Funding Agent, the Provider, their agents, Sub-contractors or employees, Myerscough College shall not be liable for any costs, charges or losses sustained or incurred by the Provider arising directly or indirectly from such prevention or delay.

## **6. MEETINGS AND INFORMATION**

6.1 The Provider's Manager shall meet with Myerscough College's Manager on request to discuss matters relating to the delivery of services.

6.2 The Provider's Manager will provide all such information relating to or arising from this Agreement, the Sub-contractor Proposal for the Delivery of Services and the Service Level Agreement and its provision of Services as Myerscough College's Manager may request from time to time.

## **7. INTELLECTUAL PROPERTY RIGHTS**

7.1 As between Myerscough College and the Provider, all Intellectual Property Rights and all other rights in the In-put Material and the Deliverables, including those set out in the Service Level Agreement (if any) shall be owned by Myerscough College unless otherwise agreed in writing.

## **8. CONFIDENTIALITY AND MYERSCOUGH COLLEGE'S PROPERTY**

8.1 The Provider shall keep in strict confidence all Intellectual Property and other technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Provider by Myerscough College, its employees, agents or Sub-contractors and any other confidential information concerning Myerscough College's business or its products which the Provider may obtain. The Provider shall restrict disclosure of such confidential material to such of its employees, agents or Sub-contractors as need to know the same for the purpose of discharging the Provider's obligations to Myerscough College, and shall ensure that such employees, agents or Sub-contractors are subject to obligations of confidentiality corresponding to those which bind the Provider.

8.2 All materials, equipment and tools, drawings, specifications and data supplied by Myerscough College to the Provider (including In-put Material, Myerscough College's Equipment) shall, at all times, be and remain the exclusive property of Myerscough College, but shall be held by the Provider in safe custody at its own risk and maintained and kept in good and where applicable working condition by the Provider until returned to Myerscough College, and shall not be disposed of or used other than in accordance with Myerscough College's written instructions or authorisation.

8.3 This clause 8 shall survive termination of this Agreement, however arising.

## **9. DATA PROTECTION - GENERAL**

9.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 9 and clauses 10 and 11 are in addition to, and do not relieve, remove or replace, a party's obligations under the Data Protection Legislation.

9.2 The parties acknowledge that in performing their respective obligations hereunder they shall be sharing Personal Data between themselves as Data Controllers, and also there may be circumstances where one party may act as the Data Processor of the other.

### **9.3 Confidentiality**

The Data Receiver shall ensure that all Permitted Recipients who have access to and/or process the Shared Personal Data are obliged to keep the Shared Personal Data confidential.

#### 9.4 **Security and training**

- (a) Each Party shall ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Disclosing Party may reasonably reject (but failure to reject shall not amount to approval by the Disclosing Party of the adequacy of the Protective Measures), having taken account of the:
  - (i) nature of the data to be protected;
  - (ii) harm that might result from a Data Loss Event;
  - (iii) state of technological development; and
  - (iv) cost of implementing any measures;
- (b) Each Party shall ensure that:
  - (i) its Personnel do not process Shared Personal Data or Processed Personal Data except in accordance with this Agreement (and in particular Schedule 4);
  - (ii) it takes all reasonable steps to ensure the reliability and integrity of any of its Personnel who have access to the Shared Personal Data and Processed Personal Data and ensure that they:
    - (A) have undergone adequate training in the use, care, protection and handling of Processed Personal Data (which shall be proportionate to the staff members' role, responsibility and frequency with respect to their handling and processing of the Personal Data); and
    - (B) are aware of and comply with the such party's duties under this clause 9 and clauses 10 and 11 (as applicable);
    - (C) are subject to appropriate confidentiality undertakings; and
    - (D) are informed of the confidential nature of the Shared Personal Data and Processed Personal Data.

#### 9.5 **Data Loss Events and reporting procedures**

- (a) Having considered the Data Protection Legislation and any relevant guidance, the parties have in place their own policies and procedures that must be followed in the event of a Data Loss Event.
- (b) The parties agree to provide reasonable assistance as is necessary to each other to facilitate the handling of any Data Loss Event in an expeditious and compliant manner.

#### 9.6 **Data Subjects' rights**

- (a) Data Subjects have the right to obtain certain information about the processing of their Personal Data through a Subject Access Request. In circumstances where the processing of a Data Subject's Personal Data is not in compliance with applicable the Data Protection Legislation, Data Subjects may also request rectification, erasure or blocking of their Personal Data.
- (b) The parties are responsible for maintaining a record of individual requests for information, the decisions made and any information that was exchanged. Records must include copies of the request for information, details of the data accessed and shared and where relevant, notes of any meeting, correspondence or phone calls relating to the request.
- (c) The parties agree to provide reasonable assistance as is necessary to each other to enable them to comply with Data Subject Requests and to respond to any other queries or complaints from Data Subjects.



## 9.7 **Obligation to notify the Disclosing Party**

- (a) Subject to clause 9.7(b), the Receiving Party shall notify the Disclosing Party immediately if it:
  - (i) receives a Data Subject Request (or purported Data Subject Request) in relation to processing their data under this Agreement;
  - (ii) receives a request to rectify, block or erase any Shared Personal Data or Processed Personal Data;
  - (iii) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
  - (iv) receives any communication from the Information Commissioner or any other regulatory authority in connection with Processed Personal Data processed under this Funding Agreement;
  - (v) receives a request from any third Party for disclosure of Shared Personal Data or Processed Personal Data where compliance with such request is required or purported to be required by Law; or
  - (vi) becomes aware of a Data Loss Event.
- (b) The Receiving Party's obligation to notify under clause 9.7(a) shall include the provision of further information to the Disclosing Party in phases, as details become available.

## 9.8 **Assistance**

- (a) Taking into account the nature of the processing, the Receiving Party shall provide the Disclosing Party with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 9.7(a) (and insofar as possible within the timescales reasonably required by the Disclosing Party) including by promptly providing:
  - (i) the Disclosing Party with full details and copies of the complaint, communication or request;
  - (ii) such assistance as is reasonably requested by the Disclosing Party to enable the Disclosing Party to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
  - (iii) the Disclosing Party, at its request, with any Processed Personal Data it holds in relation to a Data Subject;
  - (iv) assistance as requested by the Disclosing Party following any Data Loss Event;
  - (v) assistance as requested by the Disclosing Party with respect to any request from the Information Commissioner's Office, or any consultation by the Disclosing Party with the Information Commissioner's Office.

## 9.9 **Records**

- (a) The Receiving Party shall maintain complete and accurate records and information to demonstrate its compliance with this clause 9 and clauses 10 and 11 (as applicable).
- (b) The Receiving Party shall allow for audits of its Data Processing activity by the Disclosing Party or the Disclosing Party's designated auditor.
- (c) Each Party shall designate its own data protection officer if required by the Data Protection Legislation.

## 9.10 **Changes to these Data Protection clauses**

- 9.11 Myerscough College may, at any time on not less than 30 Business Days' notice, revise this clause 9 and clauses 10 and 11 by replacing them (in whole or in part) with any applicable standard

clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).

9.12 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. Myerscough College may, but shall not be obliged to, on not less than 30 Business Days' notice to the Provider amend this Agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

### 9.13 **Indemnity**

(a) Each party undertakes to indemnify each other and hold each other harmless from any cost, charge, damages, expense or loss which they cause each other as a result of their breach of this clause 9 and clauses 10 and 11, except to the extent that any such liability is excluded under [clause 14].

(b) Indemnification hereunder is contingent upon:

(i) the party to be indemnified (**indemnified party**) promptly notifying the other party (**indemnifying party**) of a claim;

(ii) the indemnifying party having sole control of the defence and settlement of any such claim; and

(iii) the indemnified party providing reasonable cooperation and assistance to the indemnifying party in defence of such claim.

## 10. **DATA PROTECTION – CONTROLLER TO CONTROLLER**

This clause 10 shall apply where the parties are sharing Personal Data as Data Controllers.

### 10.1 **Agreed Purpose**

The parties agree to only process Shared Personal Data for the Agreed Purpose, and shall not process Shared Personal Data in a way that is incompatible with the Agreed Purpose.

### 10.2 **Information, notices and consents**

(a) The Data Discloser shall ensure that it has all necessary notices and consents in place to enable lawful transfer of the Shared Personal Data to the Data Receiver for the Agreed Purposes.

(b) The Data Discloser shall, in respect of Shared Personal Data, ensure that their privacy notices are clear and provide sufficient information to the data subjects for them to understand what of their personal data the Data Discloser is sharing with the Data Receiver, the circumstances in which it will be shared, the purposes for the data sharing and either the identity of the Data Receiver or a description of the type of organisation that will receive the personal data, together with, if applicable, giving notice that, on the termination of this Agreement, Personal Data relating to them may be retained by the Data Receiver, its successors and assignees.

(c) Where required under the Data Protection Legislation, the Data Receiver undertakes to inform the Data Subjects, of the purposes for which it will process their Personal Data and provide all of the information that it must provide to ensure that the Data Subjects understand how their Personal Data will be processed by the Data Receiver.

### 10.3 **Data quality**

(a) The Data Discloser shall ensure that before disclosing any Personal Data, Shared Personal Data are accurate.

(b) Shared Personal Data must be limited to the Personal Data described in Schedule 4. The Shared Personal Data must not be irrelevant or excessive with regard to the Agreed Purposes.

#### 10.4 International Transfers

- (a) For the purposes of this clause, transfers of Shared Personal Data shall mean any sharing of Shared Personal Data by the Data Receiver with a third party, and shall include, but is not limited to, the following:
  - (i) storing Shared Personal Data on servers outside the EEA;
  - (ii) subcontracting the processing of Shared Personal Data to data processors located outside the EEA; and
  - (iii) granting third parties located outside the EEA access rights to the Shared Personal Data.
- (b) The Data Receiver shall not disclose or transfer the Shared Personal Data to a third party data controller located outside the EEA unless:
  - (i) such international transfer is stated as permitted in Schedule 4, or it has the express written consent of the Data Discloser; and
  - (ii) it complies with the provisions of Articles 26 of the GDPR (in the event the third party is a joint controller); and
  - (iii) it ensures that:
    - (A) the transfer is to a country approved by the European Commission as providing adequate protection pursuant to Article 45 GDPR;
    - (B) there are appropriate safeguards in place pursuant to Article 46 GDPR; or
    - (C) one of the derogations for specific situations in Article 49 GDPR applies to the transfer.

#### 11. DATA PROTECTION – CONTROLLER TO PROCESSOR

This clause 11 shall apply where the Receiving Party is acting as a processor (or sub-processor) of the Personal Data on behalf of the Disclosing Party.

##### 11.1 Assistance

- (a) The Receiving Party shall provide all reasonable assistance to the Disclosing Party in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Disclosing Party, include:
  - (i) a systematic description of the envisaged processing operations and the purpose of the processing;
  - (ii) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
  - (iii) an assessment of the risks to the rights and freedoms of Data Subjects; and
  - (iv) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Processed Personal Data.

##### 11.2 Receiving Party's obligations

- (a) The Receiving Party shall, in relation to any Processed Personal Data processed in connection with its obligations under this Agreement:
  - (i) process that Processed Personal Data only in accordance with Schedule 4, unless the Receiving Party is required to do otherwise by Law. If it is so required the Receiving Party shall promptly notify the Disclosing Party before processing the Processed Personal Data unless prohibited by Law;
  - (ii) notify the Disclosing Party immediately if it considers that any of the Disclosing Party's instructions infringe the Data Protection Legislation;

- (iii) not transfer Processed Personal Data outside of the EU unless the prior written consent of the Disclosing Party has been obtained and the following conditions are fulfilled:
  - (A) the Disclosing Party or the Receiving Party has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Disclosing Party;
  - (B) the Data Subject has enforceable rights and effective legal remedies;
  - (C) the Receiving Party complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Processed Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Disclosing Party in meeting its obligations); and
  - (D) the Receiving Party complies with any reasonable instructions notified to it in advance by the Disclosing Party with respect to the processing of the Processed Personal Data;
- (iv) ensure that its Personnel do not publish, disclose or divulge any of the Processed Personal Data to any third Party unless directed in writing to do so by the Disclosing Party or as otherwise permitted by this Agreement.

### 11.3 Protective Measures

- (a) The Disclosing Party may set out in Schedule 4 a minimum requirement of Protective Measures, but such minimum requirement shall not amount to approval by the Disclosing Party of the adequacy of the Protective Measures.
- (b) The Disclosing Party may reasonably reject the Receiving Party's Protective Measures implemented in accordance with clause 9.4(a), but failure to reject shall not amount to approval by the Disclosing Party of the adequacy of the Protective Measures.

### 11.4 Sub-processors

- (a) Before allowing any Sub-Processor to process any Processed Personal Data related to this Agreement, the Receiving Party must:
  - (i) notify the Disclosing Party in writing of the intended Sub-Processor and processing;
  - (ii) obtain the written consent of the Disclosing Party;
  - (iii) enter into a written agreement with the Sub-Processor which give effect to the terms set out in clauses 9 and 11 such that they apply to the Sub-Receiving Party; and
  - (iv) provide the Disclosing Party with such information regarding the Sub-Receiving Party as the Disclosing Party may reasonably require.
- (b) The Receiving Party shall remain fully liable for all acts or omissions of any of its Sub-processors.

### 11.5 Data retention and deletion

- (a) The Data Receiver shall not retain or process Processed Personal Data for longer than is necessary to carry out the processing, which shall be no longer than the retention period specified in Schedule 4.
- (b) The Data Receiver shall ensure that any Processed Personal Data is returned to the Data Discloser or destroyed in accordance with the Data Discloser's reasonable requirements on termination of this Agreement.
- (c) Notwithstanding clauses 11.5(a) and 11.5(b), parties shall be entitled to retain Processed Personal Data in accordance with any statutory or professional retention periods applicable in their respective countries and / or industry provided that such retention periods are notified to the Data Discloser.

- (d) Following the deletion of Shared Personal Data in accordance with clause 11.5(b), the Data Receiver shall notify the Data Discloser that the Shared Personal Data in question has been deleted.

## **12. SAFEGUARDING**

- 12.1 The Provider warrants that it will comply fully with the Myerscough College Safeguarding / Learner Protection and Prevent Policy and Procedure.

## **13. TERMINATION**

- 13.1 Subject to the provisions of clauses 13.2 and 13.3, this Agreement shall terminate following completion of the delivery of services in accordance with the Service Level Agreement and receipt by Myerscough College of the final payment from the Funding Agent under the Principal Agreement.

- 13.2 Notwithstanding the provisions of clause 13.1, in the event that the Funding Agent withholds the whole or any proportion of any payment or requires a refund of the whole or any proportion of any payment made by the Funding Agent to Myerscough College under the Principal Agreement, for any reason whatsoever, Myerscough College may withhold, suspend, withdraw payment to the Provider under this Agreement or may require that the Provider refunds a reasonable proportion (to be determined by Myerscough College in its absolute discretion) of any payment made under this Agreement or otherwise by Myerscough College to the Provider or any of its agents or subcontractors and the Provider must make payment to Myerscough College immediately following such demand. For the avoidance of doubt the accounts and payments made in respect of the delivery of services may be audited at any time for a period of 6 years after the Sub-contract End Date and Myerscough College may demand a refund under this clause at any time following the completion of such an audit.

- 13.3 If Myerscough College require the refund of any payment under clause 13.2 of this Agreement the Provider will also pay interest on any sum demanded by Myerscough College at a rate of 4% above the base lending rate of Barclays Bank Plc, from time to time, from the date of such demand (both before and after judgement).

- 13.4 Without prejudice to any other rights or remedies which Myerscough College may have, Myerscough College may terminate this Agreement without liability to the Provider immediately on giving notice to the Provider if:

- (a) the Provider commits a breach of any of the terms of this Agreement and (if such a breach is remediable) fails to remedy that breach within 2 weeks of that party being notified in writing of the breach; or
- (b) an order is made or a resolution is passed for the winding up of the Provider, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order of the Provider; or
- (c) an order is made for the appointment of an administrator to manage the affairs, business and property of the Provider, or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the Provider, or notice of intention to appoint an administrator is given by the Provider or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986); or
- (d) a receiver is appointed of any of the Provider's assets or undertaking, or circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the Provider, or if any other person takes possession of or sells the Provider's assets; or
- (e) the Provider makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way; or
- (f) the Provider receives an Ofsted Grade 4; or

- (g) there is a serious safeguarding issue; or
- (h) the Provider ceases, or threatens to cease, to trade.

13.5 On termination of this Agreement for any reason:

- (a) the Provider shall immediately return all of Myerscough College's Equipment, In-put Material and Deliverables. If the Provider fails to do so, then Myerscough College may enter the Provider's premises and take possession of them. Until they have been returned or repossessed, the Provider shall be solely responsible for their safe keeping; and
- (b) the accrued rights of the parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination shall not be affected.
- (c) the Provider will provide access to student, curriculum planning and delivery data.

#### **14. LIMITATION OF LIABILITY**

14.1 Nothing in this Agreement limits any liability which cannot legally be limited, including but not limited to liability for:

- (a) death or personal injury caused by negligence;
- (b) fraud or fraudulent misrepresentation; and
- (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

14.2 Subject to clause 14.1, neither party to this agreement shall have any liability to the other party, whether in contract, tort (including negligence), breach of statutory duty, or otherwise for any indirect or consequential loss arising under or in connection with this agreement.

#### **15. FORCE MAJEURE**

15.1 Neither party will have any liability to the other under this Agreement if it is prevented from or delayed in performing its obligations under this Agreement or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including strikes, lock-outs or other industrial disputes (whether involving the workforce of Myerscough College or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or Sub-contractors.

#### **16. VARIATION**

16.1 No variation of the terms and conditions set out in this Agreement or of any of the documents referred to herein shall be valid unless such variation is in writing and signed by or on behalf of each of the parties.

16.2 Notwithstanding the provisions of clause 16.1, Myerscough College may make such variations to the Service Level Agreement and Funding Agent's Requirements as are required as a result of the following:

- (a) variations to the Funding Agent's Requirements requested by the Funding Agent;
- (b) for good management reasons;
- (c) for reasons beyond Myerscough College's reasonable control.

16.3 Myerscough College will use its reasonable endeavours to notify the Provider in writing of any variations to the Service Level Agreement and/or Funding Agent's Requirements under clause 16.2 as soon as reasonably practicable after becoming aware of the need for such variations, however the Provider acknowledges that this may not always be possible.

16.4 This Agreement shall remain fully effective as varied in accordance with this clause 16.

## **17. CONFLICT**

In the event of any conflict between the terms of the Principal Agreement, these Conditions and/or the Service Level Agreement, the following order of precedence shall apply:

- 17.1 firstly the Principal Agreement;
- 17.2 secondly these Conditions; and
- 17.3 thirdly the Service Level Agreement.

## **18. WAIVER**

- 18.1 A waiver of any right under this Agreement is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and the circumstances for which it is given.
- 18.2 Unless specifically provided otherwise, rights arising under this Agreement are cumulative and do not exclude rights provided by law.

## **19. SEVERANCE**

- 19.1 If any provision (or part of a provision) of this Agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions will remain in force.
- 19.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, that provision will apply with whatever modification is necessary to make it valid, enforceable and legal.

## **20. STATUS OF PRE-CONTRACTUAL STATEMENTS**

- 20.1 Each of the parties acknowledges and agrees that, in entering into this Agreement it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to these terms and conditions or not) relating to the subject matter of this Agreement, other than as expressly set out in this Agreement.

## **21. ASSIGNMENT**

- 21.1 The Provider shall not, without the prior written consent of Myerscough College, assign, transfer, charge, Sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.

## **22. NO PARTNERSHIP OR AGENCY**

- 22.1 Nothing in this Agreement is intended to, or shall operate to, create a partnership between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

## **23. RIGHTS OF THIRD PARTIES**

- 23.1 This Agreement is made for the benefit of the parties to it and (where applicable) their successors and permitted assigns and is not intended to benefit, or be enforceable by, anyone else. The exception being the Funding Agent who has the right to enforce the terms of this Agreement.

## **24. NOTICES**

- 24.1 Notice given under this Agreement shall be in writing, sent for the attention of the person, and to the address or fax number, given in this Agreement (or such other address, fax number or person as the relevant party may notify to the other party) and shall be delivered personally, sent by fax or sent by pre-paid, first-class post or recorded delivery. A notice is deemed to have been received, if delivered personally, at the time of delivery, in the case of fax, at the time of transmission, in the case of pre-paid first class post or recorded delivery, 48 hours from the date

of posting and, if deemed receipt under this clause 24 is not within business hours (meaning 9.00 am to 5.00 pm Monday to Friday on a day that is a business day), at 9.00 am on the first business day following delivery. To prove service, it is sufficient to prove that the notice was transmitted by fax, to the fax number of the party or, in the case of post, that the envelope containing the notice was properly addressed and posted.

**25. GOVERNING LAW AND JURISDICTION**

- 25.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter, shall be governed by, and construed in accordance with, the law of England and Wales.
- 25.2 The parties irrevocably agree that the courts of England shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter.

This agreement has been entered into on the date stated at the beginning of it.

Signed by:

Alison Robinson

\_\_\_\_\_

Chief Executive and Principal

For and on behalf of **Myerscough College**

Signed by:

\_\_\_\_\_

Director

For and on behalf of **[INSERT PROVIDER'S FULL NAME]**



## SCHEDULE 1 Sub-contract Proposal

This agreement between Myerscough College and XXXX has been developed to provide opportunities for learners XXXX. This will support clients in securing employment locally or moving into further study.

16-18 Learners (EFA Funded)

Study Programme Banding	Study Programme Content	GLH	Number of Learners
Full Time 580+ GLH			
Part Time 485+ GLH			
Part Time 485-579 GLH			
Part Time 385-484 GLH			
Part Time 300-384 GLH			
Part Time up to 280 GLH			

The proposed terms in this Agreement will be fixed for a period from [DATE]. All learner enrolment paperwork must be received by the College before [DATE].

### Key Performance Indicators (KPIs)

Minimum performance levels for programmes are as follows, Providers are expected to endeavour to achieve these KPIs:

- Retention 95%
- Pass 95%
- Achievement 90% (including English and maths)

### Maximum Contract Value

[PROVIDER] has been allocated a maximum contract value of [£XXX]. This is the maximum total value that will be paid to the subcontractor and is based on the proportion of funding allocated to the Provider within Schedule 3. No additional payments will be available to the Provider as this is inclusive of all elements of the Study / Apprenticeship Programme.

## SCHEDULE 2 Funding Provider's Requirements

For further funding guidance, please refer to the following websites:

Delivery Programme Guidance

[www.gov.uk/guidance/16-to-19-education-funding-guidance](http://www.gov.uk/guidance/16-to-19-education-funding-guidance)

[www.education.gov.uk](http://www.education.gov.uk)

Includes:       Learner Eligibility and Contribution Rules  
                    Funding Regulations

[www.ofsted.gov.uk](http://www.ofsted.gov.uk)

Includes:       The Common Inspection Framework

### **SCHEDULE 3     Schedule of Payments**

Payments will be based on 85% of the grant available for each individual student as per the ILR Funding Report. For each individual student remaining on programme payments will be made as follows:

- 75% paid monthly over the duration of the programme (payments cease if the student withdraws)
- 25% final payment per successful completion

Payments will be made monthly in arrears, with the final payment being made on production of Awarding Body Certification.

## SCHEDULE 4 Shared Personal Data and Processed Personal Data

Data Category	Individual Learner Record (“ILR”)
<b>Nature of sharing</b>	<p>Processor to sub-processor</p> <p>The ultimate Data Controller of any Personal Data contained in the ILR shall be the ESFA on behalf of the Secretary of State for Education. Myerscough College shall be the data processor and the Provider shall be a sub-processor.</p>
<b>Lawful basis for sharing</b>	<p>Legitimate Interests – Processing of the Personal Data is required to enable Myerscough College to obtain funding for the relevant student’s course.</p>
<b>Categories of Data Subjects</b>	<p>The Data Subjects are students on education or training programmes administered by the ESFA that are subject to the Funding Agreement as defined in the ESFA privacy notice and ILR specification and its appendices.</p> <p><a href="https://www.gov.uk/government/publications/esfa-privacynotice">https://www.gov.uk/government/publications/esfa-privacynotice</a></p> <p><a href="https://www.gov.uk/government/collections/individualisedlearner-record-ilr">https://www.gov.uk/government/collections/individualisedlearner-record-ilr</a></p>
<b>Types of Personal Data</b>	<p>The Personal Data to be processed is defined in the ILR specification.</p> <p><a href="https://www.gov.uk/government/collections/individualisedlearner-record-ilr">https://www.gov.uk/government/collections/individualisedlearner-record-ilr</a></p>
<b>Nature of Processing</b>	<p>The nature and purposes of the processing is defined in the ESFA privacy notice.</p> <p><a href="https://www.gov.uk/government/publications/esfa-privacynotice">https://www.gov.uk/government/publications/esfa-privacynotice</a></p> <p>Information on how the data must be supplied to the ESFA is detailed in the ILR specification and its appendices.</p> <p><a href="https://www.gov.uk/government/collections/individualisedlearner-record-ilr">https://www.gov.uk/government/collections/individualisedlearner-record-ilr</a></p>
<b>Agreed Purpose</b>	<p>To allow Myerscough College to submit the Personal Data to the ESFA as required under the Funding Agreement.</p>
<b>Transfer outside of the EEA</b>	<p>Not permitted without the consent of the ESFA.</p>
<b>Retention Policy</b>	<p>Myerscough College is required to retain the data for the funding and audit purposes set out in the Funding Agreement for 6 years from the end of the financial year in which the last payment is made under the Funding Agreement.</p> <p>For the purposes of the Department for Work &amp; Pensions as a data controller, where Learner data is used as match on the 2007-13 ESF programme, the data must be retained securely until at least 31 December 2022 and where Learner data is used as match on the 2014-20 ESF programme, the data must be retained securely until 31st December 2030.</p>

	<p>The Provider shall ensure that it complies with the retention obligations placed on Myerscough College in respect of its own processing of the Personal Data.</p> <p>Myerscough College is responsible for determining any further need to process the data, including its retention, prior to secure destruction.</p>
<p><b>Notes</b></p>	<p>The Personal Data within this ILR Data Category may also be held by the parties in their capacities as Data Controllers, or by way of sharing through other data categories. This data notice applies only to Personal Data submitted to the ESFA via the ILR.</p>

<b>Data Category</b>	<b>Student Information (Pre and Post Enrolment)</b>
<b>Nature of sharing</b>	Controller to Controller
<b>Lawful basis for sharing</b>	Legitimate interests and pursuant to contract with the learner and certain information will be transferred on the basis of consent.
<b>Categories of Data Subjects</b>	<p>The Data Subjects are students on education or training programmes administered by the ESFA that are subject to the Funding Agreement as defined in the ESFA or Myerscough College privacy notice and ILR specification and its appendices.</p> <p><a href="https://www.gov.uk/government/publications/esfa-privacynotice">https://www.gov.uk/government/publications/esfa-privacynotice</a></p> <p><a href="https://www.myerscough.ac.uk/privacy-policy/">https://www.myerscough.ac.uk/privacy-policy/</a></p> <p><a href="https://www.gov.uk/government/collections/individualisedlearner-record-ilr">https://www.gov.uk/government/collections/individualisedlearner-record-ilr</a></p>
<b>Types of Personal Data</b>	<p>Personal data may include the following:</p> <ul style="list-style-type: none"> <li>• National Insurance Number</li> <li>• Education history / qualifications achieved</li> <li>• Employment history</li> <li>• Criminal convictions data</li> <li>• Initial and diagnostic assessment results</li> <li>• Medical information</li> <li>• Learning support requirements</li> <li>• Current course information – enrolment, timetable, achievement and attendance records</li> <li>• Safeguarding concerns</li> <li>• RIDDOR reportable accidents</li> </ul>
<b>Nature of Processing</b>	<p>The nature and purposes of the processing is defined in the Myerscough College privacy notice.</p> <p><a href="https://www.myerscough.ac.uk/privacy-policy/">https://www.myerscough.ac.uk/privacy-policy/</a></p> <p>[INSERT LINK TO PROVIDER PRIVACY NOTICE]</p>
<b>Agreed Purpose</b>	Storage and administration of student personal data as required to perform the obligations under this agreement as per the privacy notice of Myerscough College and the Provider.
<b>Transfer outside of the EEA</b>	Not permitted without the consent of the ESFA.
<b>Retention Policy</b>	<p>Myerscough College is required to retain the data for the funding and audit purposes set out in the Funding Agreement for 6 years from the end of the financial year in which the last payment is made under the Funding Agreement.</p> <p>For the purposes of the Department for Work &amp; Pensions as a data controller, where Learner data is used as match on the 2007-13 ESF programme, the data must be retained securely until at least 31 December 2022 and where Learner data is used as match on the 2014-20</p>

	<p>ESF programme, the data must be retained securely until 31st December 2030.</p> <p>The Provider shall ensure that it complies with the retention obligations placed on Myerscough College in respect of its own processing of the Personal Data.</p> <p>Myerscough College is responsible for determining any further need to process the data, including its retention, prior to secure destruction.</p>
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<b>Data Category</b>	<b>Staff Information</b>
<b>Nature of sharing</b>	Controller to Controller
<b>Lawful basis for sharing</b>	Legitimate interests
<b>Categories of Data Subjects</b>	Employees of the respective parties
<b>Types of Personal Data</b>	<p>Personal data may include the following:</p> <ul style="list-style-type: none"> <li>• Name</li> <li>• Contact details</li> <li>• Title</li> <li>• DBS details</li> <li>• Qualifications</li> <li>• Performance evaluations</li> </ul>
<b>Nature of Processing</b>	<p>The nature and purposes of the processing is defined in the Myerscough College privacy notice and Myerscough College staff privacy notice.</p> <p><a href="https://www.myerscough.ac.uk/privacy-policy/">https://www.myerscough.ac.uk/privacy-policy/</a></p> <p><a href="https://www.myerscough.ac.uk/media/4474/staff-and-job-applicant-privacy-notice.pdf">https://www.myerscough.ac.uk/media/4474/staff-and-job-applicant-privacy-notice.pdf</a></p> <p>[INSERT LINK TO PROVIDER PRIVACY NOTICE]</p>
<b>Agreed Purpose</b>	Storage and administration of student personal data as required to perform the obligations under this agreement as per the privacy notice of Myerscough College and the Provider.
<b>Transfer outside of the EEA</b>	Not permitted without the consent of the ESFA.
<b>Retention Policy</b>	<p>Myerscough College is required to retain the data for the funding and audit purposes set out in the Funding Agreement for 6 years from the end of the financial year in which the last payment is made under the Funding Agreement.</p> <p>For the purposes of the Department for Work &amp; Pensions as a data controller, where Learner data is used as match on the 2007-13 ESF programme, the data must be retained securely until at least 31 December 2022 and where Learner data is used as match on the 2014-20 ESF programme, the data must be retained securely until 31st December 2030.</p> <p>The Provider shall ensure that it complies with the retention obligations placed on Myerscough College in respect of its own processing of the Personal Data.</p> <p>Myerscough College is responsible for determining any further need to process the data, including its retention, prior to secure destruction.</p>

## Appendix 2 – Sub-contracting Service Level Agreement



## SUBCONTRACTING SERVICE LEVEL AGREEMENT

This agreement is between **Myerscough College** and **XXXX**

The proposed terms within this agreement will be fixed for the period from:

**[DATE]** to **[DATE]**

Both Myerscough College and the Sub-contractor shall collaborate to provide good quality and a co-ordinated approach to the training of all learners. Myerscough College shall liaise at least once a month to ensure that the training programmes are meeting the learners' needs, to monitor performance and address operational issues.

### 1.0 Programme of Learning

#### 1.1 Recruitment

##### **The Sub-contractor agrees to:**

- Ensure that all learners that they recruit onto the programme meet the eligibility criteria as set by the Education Skills Funding Agency (ESFA).
- Ensure that funding has not displaced other funds and that there is no duplication of funding from another source for the provision.
- Complete all of the programme documentation as required by Myerscough College to support the claims and audit processes.

##### **Myerscough College agrees to:**

- Support the learner recruitment process.
- Provide all documentation and support the Sub-contractor in the completion of the documentation.
- Retain overall control of enrolment/rejection of learners as it would do if the learners were to be taught on its own site.

## **1.2 Induction and Initial Assessment**

### **The Sub-contractor agrees to:**

- Deliver a full induction to the learner and include a full initial assessment.
- Register all approved learners with the appropriate awarding body, if not already completed by Myerscough, within the correct timescales and to provide Myerscough College with copies of all relevant correspondence between the Sub-contractor and the awarding body regarding the provision.

## **1.3 Progression and Review**

### **The Sub-contractor agrees to:**

- Not sub-contract the delivery of funded provision to other organisations or self-employed individuals without the express and written approval of Myerscough and the funding body.
- Allow access to premises, documentation and learners as required.
- Provide Myerscough College with learner and employer details as and when requested.
- Deliver training and assessment for the agreed programmes to meet the awarding body standards.
- Complete all assessment and tracking documentation as required.
- Participate in the contract review process.
- Ensure that all working practices conform to Myerscough College standards for safeguarding, equality and diversity, health and safety and quality assurance.

### **Myerscough College agrees to:**

- Provide support and guidance to support successful delivery of the programme.
- Manage communications and reporting processes with funding bodies.
- Manage claims as per funding body requirements.
- Manage the contract review process.

## **1.4 Completion and Withdrawals**

### **The Sub-contractor agrees to:**

- Notify Myerscough College immediately if there are any leavers from the programme and complete the appropriate documentation.
- Provide awarding body certification for all successful learners where applicable.
- Co-ordinate learning to achieve agreed achievement rates.

### **Myerscough College agrees to:**

- Manage claims as per funding body requirements.

## **2.0 Quality Assurance**

### **The Sub-contractor agrees to:**

- As part of the rigorous Quality Assurance process, provide Myerscough College with the information/documentation outlined within the Sub-contracting File Checklist.
- Allow access to enable the College to carry out lesson observations.
- Provide a copy of their Self-Assessment Report (SAR) and Quality Improvement Plan (QIP) to be reviewed and incorporated into Myerscough College's SAR. For Sub-contractors who do not have an SAR a "mini" SAR will be completed, with the support of the Quality Manager.
- Ensure that competent and appropriately qualified and experienced staff are employed to deliver the training.
- Ensure that all training is relevant to the qualifications delivered.
- Provide a safe, healthy and supportive environment which meets the needs of the learners and the requirements of safeguarding and DBS checks.
- Provide individual support for learners.
- Work with Myerscough College to minimise those learners at risk of leaving their programmes early.
- Gather and share learner feedback as requested.
- Comply with requests by the ESFA to display ESFA logos and emblems. Learners must be aware of the support provided by ESF. All learner documentation and the Provider's website must include the ESF logo.

**Myerscough College agrees to:**

- Provide all recording documentation to support the quality assurance process to meet the funding body requirements.
- Manage contracts to meet the funding body requirements.

**2.1 Annual Review**

Both the Sub-contractor and Myerscough College will review and agree a Service Level Agreement on an annual basis.

**2.2 Audit**

It is a contractual requirement from the ESFA that all sub-contractors should undergo audit visits throughout the duration of their contract. The frequency of these visits is to be agreed by both parties.

**The Sub-contractor agrees to:**

- Co-operate with the planning and inspection of activities if notified from the ESFA or Myerscough College that provision is to be inspected.

**Myerscough College agrees to:**

- Manage the audit processes as per the funding body requirements and undertake appropriate action as recommended.

- Liaise with ESFA representatives on all matters relating to the funding and audit processes.

### **2.3 Monitoring and Review Arrangements**

- Monitoring visits will take place to encompass safeguarding, quality assurance including lesson observations, health & safety, financial reconciliations and performance. Visits will be carried out regularly taking account of the pattern of provision and the number of learners. Myerscough College will make unannounced visits in-year and include a sample of sites where applicable.
- The Sub-contractor must report on an on-going basis to Myerscough College when it enters into other contracts with other providers, and commit to confirming the volume and value of those contracts. Providers who have an aggregate contract value of £100,000 or more in any one year must declare this to the College so that appropriate action can be taken.

### **3.0 Insurance Liability**

#### **The Sub-contractor agrees to:**

- Ensure that all learners on ESFA funded programmes are covered by policies of organisation Liability Insurance and Public Liability Insurance. Copies of certificates are to be provided to Myerscough College.

### **4.0 Financial Arrangements**

Funding profiles are to be produced with the Service Level Agreement on an annual basis. Profiles can be varied within the contract year if both parties agree to this. A funding reconciliation will be completed at quarterly intervals.

#### **The Sub-contractor agrees to:**

- Not deliver above the agreed profiles unless prior agreement has been given by Myerscough College.
- Pay back any monies to Myerscough College relating to any of the Sub-contractor's provision that has been clawed back following an ESFA audit.
- Inform Myerscough College of any current or historic irregular financial delivery activity which could include, but is not restricted to: substantiated non-delivery of training when funds have been paid, sanctions imposed on the Sub-contractor by the awarding organisations, inadequate grade for the Sub-contractor by Ofsted, serious complaints and/or allegations by individuals working for the Sub-contractor and/or learners and/or relevant parties, allegations of fraud.
- Comply with the requirements of the ESFA regarding Branding and Logos and State Aid as detailed in Sections 13 and 14 of The Financial Memorandum.

**Myerscough College agrees to:**

- Pay the Sub-contractor based on 85% of the grant available for each individual student as per the ILR Funding Report. Payments will be made as follows:
  - 75% paid monthly over the duration of the programme (payments cease if the student withdraws)
  - 25% final payment per successful completion
- If notified by the ESFA that there will be a financial claw back due to an audit outcome relating to the Sub-contractor's provision, have the right to claw back those payments in accordance with the ESFA recommendations.
- Funding is retained by Myerscough College as follows:

<b>Purpose</b>	<b>% of Retained Fee</b>	<b>Value of Retained Fee</b>
Quality assurance and oversight		
Administrative functions		
Mandatory training		

**5.0 Termination**

This agreement may be terminated by either party by giving three months' notice. Either party may terminate this agreement if either party is in breach of these terms and conditions.

Signed on behalf of **Myerscough College**:

Name Alison Robinson

Signature.....

Position Chief Executive and Principal

Date.....

Signed on behalf of: **XXXX**

Name.....

Signature.....

Position.....

Date.....

## Sub-Contracting – Monitoring Guidelines

Myerscough College is committed to working in partnership with sub-contractors; following a robust monitoring procedure to ensure that the quality of the provision is not compromised. All monitoring activities seek to confirm that Teaching, Learning and Assessment is of an appropriate standard and that ESFA Funding Rules are upheld.

Monitoring takes place following the completion of the due diligence process and the issuing of the Contract and Service Level Agreement. A monitoring schedule is established with each sub-contractor on the basis of risk and may be revised within the contract year, depending on in-year performance. Monitoring Checks include:

### Monitoring:

- Monthly telephone calls or visits
- Examining data (eg learner enrolments, registers, EV reports etc)
- Support visits
- Lesson observations
- Learner interviews

### Review:

- Quarterly formal meetings
- An examination of all aspects of the contract
- Planning future actions

### Evaluation:

- Annual assessments / audits
- Contract performance
- Contract renewal consideration

## Risk Banding of Sub-Contractors

Risk is calculated using the template below. Where a sub-contractor is considered to be high risk additional support and monitoring is planned according to the actual risk factor, following negotiation and discussion with the sub-contractor.

	<b>Weighting</b>	<b>Score</b> 1 = Low Risk 2 = Medium Risk 3 = High Risk	<b>Total Score</b> 4.5 – 6 = Low 5.6 – 9 = Medium 9.5+ = High
Previous track record	1.0		
Learner success rates (including English and Maths)	1.0		
Type of learner to be engaged (NEET = High)	0.5		
Expected length of stay per learner (Planned GLH)	0.5		
Contract performance and duration	0.5		
New sub-contract arrangement	1		
<b>TOTAL:</b>			

Additional support may include:

- Additional visits to sub-contractor premises to provide guidance
- Increased frequency of lesson observations
- Additional tutor support
- More rigorous verification



**Appendix 1 – Exemplar Monitoring Schedule**

	<b>Aug</b>	<b>Sept</b>	<b>Oct</b>	<b>Nov</b>	<b>Dec</b>	<b>Jan</b>	<b>Feb</b>	<b>March</b>	<b>April</b>	<b>May</b>	<b>June</b>	<b>July</b>
Monthly telephone call / visit	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Data Examination			✓			✓			✓			✓
Support Visit			✓			✓			✓			✓
Lesson Observation			✓	✓		✓	✓					
Learner Interview			✓	✓		✓	✓					
Formal Quarterly Meeting	✓			✓			✓			✓		
Contract Review	✓			✓			✓			✓		
Audit					✓				✓			
Contract Performance Review						✓						✓
Contract Renewal Meeting												✓

## Appendix 2 – Documents Associated with Monitoring Sub-Contractors

Activity	Monitoring Documents
Monthly telephone call / visit	<ul style="list-style-type: none"> <li>● Sub-Contract Minutes</li> </ul>
Data Examination	<ul style="list-style-type: none"> <li>● MIS Reports</li> <li>● Sub-Contract Quality Checklist</li> </ul>
Support Visit	<ul style="list-style-type: none"> <li>● Sub-Contract Spot-Check</li> <li>● Sub-Contract Minutes</li> <li>● Sub-Contract Quality Checklist</li> </ul>
Lesson Observation	<ul style="list-style-type: none"> <li>● Walk through observation form</li> </ul>
Learner Interview	<ul style="list-style-type: none"> <li>● Sub-Contract Spot Check – Learner Discussion</li> </ul>
Formal Quarterly Meeting	<ul style="list-style-type: none"> <li>● Sub-Contract Minutes</li> <li>● Sub-Contract Quality Checklist</li> </ul>
Contract Review	<ul style="list-style-type: none"> <li>● MIS Reports</li> <li>● Sub-Contract Minutes</li> </ul>
Audit	<ul style="list-style-type: none"> <li>● Sub-Contract File Checklist</li> <li>● MIS Reports</li> <li>● Health, Safety and Welfare (HASWEL) Placement Assessment Record MT91</li> </ul>
Contract Performance Review	<ul style="list-style-type: none"> <li>● Sub-Contract Minutes</li> </ul>
Contract Renewal Meeting	<ul style="list-style-type: none"> <li>● Sub-Contract Minutes</li> </ul>

## Appendix 4 – Partner File Checklist

### Myerscough College Partner-Provider File Checklist

### Myerscough College Sub-Contractor Due Diligence and File Checklist

Provider: \_\_\_\_\_

UKPRN: \_\_\_\_\_

<b>Procurement</b>				
<b>Partner File Checklist Items</b>	<b>Yes</b>	<b>No</b>	<b>Not Required</b>	<b>Comments</b>
1: Conflicts of Interest form	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<b>Due Diligence</b>				
<b>Partner File Checklist Items</b>	<b>Yes</b>	<b>No</b>	<b>Not Required</b>	<b>Comments</b>
2: Companies House printout	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
3: Audited Accounts	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
4: Credit agency check (if required)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<b>Partner Documentation</b>				
<b>Partner File Checklist Items</b>	<b>Yes</b>	<b>No</b>	<b>Not Required</b>	<b>Comments</b>
5: Contract (signed)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
6: Service Level Agreement	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
7: Timetable/ Scheme of Work	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
8: Partner staff list (including DBS checks)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

## Partner Monitoring

Partner File Checklist Items	Yes	No	Not Required	Comments
9: EV/IV records	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
10: Registers	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
11: Meeting minutes	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
12: Awarding body registration documentation (if Myerscough isn't claiming the results) - Copy of the latest EV Report & Action Plan (per scheme)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
13: Sub-contracting Activity and Financial Activity Declaration	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
14: H&S policy	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
15: EDI policy	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
16: Public Liability Insurance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
17: Safeguarding policy (including Prevent)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
18. Sustainability / Environmental Policy	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
19. Document Retention Policy	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
20: SAR & QIP	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

**Appendix 5 – Supply Chain Checklist**



**Myerscough College Sub-contractor Supply Chain Checklist**

Name of the Sub-contractor	
UKPRN Number of the Sub-contractor	
Contract Start and End Date	
Type of provision (for example, 16-18 Apprenticeships, 19+ Apprenticeships, classroom learning, workplace learning)	
Funding paid to The College for provision delivered by The Sub-contractor in that academic year	
Funding paid by The College to The Sub-contractor for provision delivered in that academic year	
Funding retained by The College in relation to each Sub-contractor for that academic year	
If appropriate, funding The Sub-contractor has paid to The College for services or support provided in connection with the subcontracted provision	

<p>Any information on fees and charges alongside the supply chain fees and charges policy to allow The College's supply-chain fees and charges information to be viewed in context</p>	
<p>Any other information</p>	

Document History			
<b>Author:</b>	Assistant Principal – Liverpool and Partnerships	<b>Ref and Document Version:</b>	Sub-contracting (Including Supply Chain Fees and Charges) Policy and Procedure
<b>Approval:</b>	Finance & Resources Committee	<b>Approval Date:</b>	September 2022
<b>Approved by:</b> (Insert signature)	Chair of Governors	Chair of the F & R Committee	Chief Accounting Officer
<b>Review Date:</b>	September 2023		
<b>Publication:</b>	Staff Intranet College Website		
Quality Assurance			
This Policy and Procedure maps to the following external quality assurance frameworks			
Framework		Framework Section Reference(s)	
<b>Education Inspection Framework</b>			
<b>MATRIX</b>			
<b>QAA</b>			
<b>QIA</b>			
<b>ESFA</b>			
Key Changes to Document			
Merger of the Subcontracting Policy and Procedure and the Subcontractor Supply Chain Fees and Charges Policy and Procedure.			

**All Myerscough College Policies are subject to screening for Equality Impact Assessment**

Equality Impact Assessments are carried out to see whether the policy has, or is likely to have, a negative impact on grounds of: age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, marriage or civil partnership, sex or sexual orientation

Myerscough College not only fulfils its legal position in relation to current and future equality legislation, but additionally goes beyond compliance in providing and promoting “Opportunities for all to succeed”, free from any aspect of discrimination, harassment or victimisation.

All staff have a duty of care to look after the interests of and support their colleagues. *This policy takes account of our commitment to eliminating discrimination, identifying and removing barriers and providing equal opportunities for our learners, staff and visitors to ensure that no one feels excluded or disadvantaged.*

**Safeguarding, Learner Protection and Prevent**

All staff have a responsibility to support and promote the College’s commitment to providing a safe environment for students, staff and visitors. Additionally, all staff have a responsibility to report any safeguarding or Prevent issues to the Designated Senior Lead for Safeguarding and Prevent.