

This Funding Agreement is made the day of 2013

Between:

- (1) **Leeds City Council** of Civic Hall Leeds LS1 1UR (the “**Council**”); and
- (2) **Leeds Apprenticeship Training Agency Limited** (company registration number: 08310738) of White Rose House, 28a York Place, Leeds LS1 2EZ (the “**ATA**”).

Background:

- A: The Skills Funding Agency acting on behalf of the Government’s Department for Business, Innovation and Skills has agreed to provide City Deal Funding (as defined below) for the Leeds City Region for the period 2012-2016, on the terms and conditions set out in an agreement between the Skills Funding Agency and the Council which is attached as Schedule 1 to this Agreement (**‘City Deal Funding Agreement’**).
- B: The Council has agreed to receive and manage the City Deal Funding as fund holder under the City Deal Funding Agreement in respect of the Leeds City Region.
- C: The ATA has agreed to discharge some of the Council’s obligations under the City Deal Funding Agreement, in consideration for receiving a proportion of the grant in respect of those obligations relating to the ATA in the City Deal Funding Agreement.

Agreed Terms:

1 Definitions and Interpretation

- 1.1 The definitions and rules of interpretation set out in this Clause apply to this Agreement, unless the context requires otherwise:

“**Agreement**” refers to these terms and conditions including any schedules attached to them;

“**ATA Funding**” is that specified proportion of the City Deal Funding which is allocated to the ATA conditionally on the performance of the Key Outcomes and payable upon the Milestone Triggers as detailed in Schedule 2 to this Agreement and having a possible maximum of £882,500 under this Agreement;

“**City Deal**” is the project created to support the delivery of skills related aspects in the Leeds City Region as part of the Government’s wider objectives set out in ‘Unlocking Growth in Cities’ and for which the aims, objectives and associated milestones and timescales are set out in Annex A to the City Deal Funding Agreement;

“City Deal Funding” is the funding in its entirety received by the Council as fund holder from the Skills Funding Agency under the City Deal Funding Agreement;

“Key Outcome” the measurable outcomes specific to the ATA and identified as such under the columns headed as such in the table set out in Schedule 2;

“Milestone Triggers” the milestone dates being the end of the month identified as such under the columns headed ‘Milestone Timeline – By End’ in the table set out in Schedule 2; and

“Parties” the parties to this Agreement.

- 1.2 The headings of this Agreement shall not affect its construction or interpretation.
- 1.3 Any reference in this Agreement to a Clause or Schedule is to a clause or schedule of this Agreement unless otherwise specified.
- 1.4 Reference to any gender shall include all genders and words in the singular may be interpreted as including reference to the plural and vice versa. Words indicating a person shall include bodies of persons whether corporate or incorporate.
- 1.5 Reference to any statute or statutory provision includes a reference to the same as from time to time amended, extended or re-enacted or consolidated and all subordinate legislation made pursuant to it.

2 **Term**

- 2.1 This Agreement takes effect from the 1 November 2012 and ends on termination of the City Deal Funding Agreement or on 31 March 2016 whichever occurs first.
- 2.2 Any renewal, variation or extension of this Agreement or funding in respect of subsequent years is subject to funds being made available to the Skills Funding Agency and then by the Skills Funding agency to the Council.

3 **Obligations of the Parties**

- 3.1 Subject to the terms and conditions set out in this Agreement, the Council agrees to make the payments of the ATA Funding in the amounts and at the times of the Milestone Triggers as specified in Schedule 2.
- 3.2 During this Agreement the ATA shall:
 - 3.2.1 use its reasonable endeavours to deliver the Key Outcomes (in each case in accordance with the City Deal Funding Agreement);
 - 3.2.2 provide the Council, upon reasonable notice and request, with the ATA’s business plan detailing its proposals for how

- the Key Outcomes will be achieved in compliance with Clause 3.2.1 together with evidence on an ongoing basis of progress against the same and of the ATA's compliance with Clause 3.2.1;
- 3.2.3 provide the Council, upon reasonable notice and request, with such monitoring and other information sufficient to enable the Council to comply with its obligations under the City Deal Funding Agreement;
 - 3.2.4 otherwise comply with the terms of the City Deal Funding Agreement in respect of the Council's administrative area;
 - 3.2.5 comply with any reasonable request for information, support or assistance from the Council or the Skills Funding Agency; and
 - 3.2.6 not by its actions or omissions impede, prevent or delay the performance by the Council of its obligations under the City Deal Funding Agreement.
- 3.3 During this Agreement the Council shall:
- 3.3.1 provide the ATA with sufficient reasonable notice and details of requirements to enable the ATA to comply with its obligations in Clauses 3.2.2, 3.2.3 and 3.2.5; and
 - 3.3.2 not by its actions or omissions impede, prevent or delay the performance by the ATA of its obligations under this Agreement and/or the City Deal Funding Agreement.

4 Funding and Payment

- 4.1 Within 60 days of the ATA's achievement of each of the requisite Key Outcomes the Council shall pay to the ATA in arrears the relevant sum being identified as payable by the Milestone Trigger in Schedule 2.
- 4.2 It is the ATA's responsibility to assess liability for Value Added Tax in relation to sums payable under this Agreement and the ATA acknowledges the provisions of Clause 6 of the City Deal Funding Agreement.
- 4.3 The ATA acknowledges and agrees that:
 - 4.3.1 the Skills Funding Agency or the Council may reduce or reclaim the ATA Funding if project costs associated with or to be met by the ATA Funding are lower than expected;
 - 4.3.2 it must inform the Council if it receives, or become entitled to receive, additional money from another funding source to the City Deal;
 - 4.3.3 it must ensure that no aspect of the City Deal is funded from more than one source for the same activity (i.e. double funded);
 - 4.3.4 no element of the ATA Funding may be used as 'match' funding for European Social Funds or any other funding source.

5 Audit

- 5.1 The ATA shall:

- 5.1.1 keep a satisfactory record of all its expenditure relating to the City Deal, and of any fees, costs or other payments made to staff, consultants or other workers. The Council or the Skills Funding Agency may ask to see records upon reasonable notice and request at any time; and
 - 5.1.2 procure that the ATA Funding is used only for the purposes of City Deal activities and shall provide any evidence requested by the Council or the Skills Funding Agency to confirm the same.
- 5.2 For audit purposes, the Council and the Skills Funding Agency, the Secretary of State and his agents, the Department for Business Innovation and Skills, the Department for Education, the National Audit Office, the Audit Commission and/or the Inspectorate shall have the right to visit all or any site(s) and view operations relating to the ATA's performance in relation to the City Deal to inspect relevant documents, and if necessary, interview learners and staff delivering the City Deal during these visits.

6 Liability and Insurance

- 6.1 Subject to Clause 6.2 the ATA agrees that it shall be liable and shall indemnify the Council for all loss, damage, costs or liability incurred by or claims made against the Council in respect of:
- 6.1.1 any loss or damage to property or personal injury (including death) which arises from anything done or omitted to be done by the ATA in carrying out activities related to the City Deal under this Agreement, but only to the extent that such loss, damage or injury is caused by any neglect, default or other wrongful act of the ATA or its agents or sub-contractors;
 - 6.1.2 a breach by the ATA of the terms of this Agreement; or
 - 6.1.3 clawback of, recovery of, or loss of future City Deal Funding by the Skills Funding Agency only to the extent to which such clawback, recovery or loss can be shown by written evidence to have been directly resulting from a breach by the ATA of this Agreement.
- 6.2 The ATA's total liability to any party in connection with this Agreement and/or the City Deal in respect of:
- 6.2.1 any liability arising under Clause 6.1.1 shall not exceed the higher of:
 - 6.2.1.1 the total amounts received by the ATA from the Council under or in relation to this Agreement; or
 - 6.2.1.2 the total amounts received by the ATA under a relevant policy of insurance in respect of such liability; and
 - 6.2.2 any liability arising other than under Clause 6.1.1 shall not exceed the total amounts received by the ATA from the Council under or in relation to this Agreement.
- 6.3 The ATA shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in

respect of all risks which may be incurred by the ATA, arising out of the ATA's performance under this Agreement, including death or personal injury, loss of or damage to property or any other loss.

- 6.4 The Council hereby agrees it shall be liable and shall indemnify the ATA for all loss, damage, costs or liability incurred by or claims made against the ATA in respect of:
- 6.4.1 any loss or damage to property or personal injury (including death) which arises from anything done or omitted to be done by the Council in carrying out activities related to the City Deal, but only to the extent that such loss, damage or injury is caused by any neglect, default or other wrongful act of the Council or its agents or sub-contractors;
 - 6.4.2 a breach by the Council of the terms of this Agreement; or
 - 6.4.3 clawback of, recovery of, or loss of future City Deal Funding by the Skills Funding Agency only to the extent to which such clawback, recovery or loss can be shown by written evidence to have been directly resulting from any negligent act or omission of the Council.
- 6.5 The Council's total liability to any party in connection with this Agreement and/or the City Deal in respect of:
- 6.5.1 any liability arising under Clause 6.4.1 shall not exceed the higher of:
 - 6.5.1.1 the total amounts payable by the Council to the under or in relation to this Agreement; or
 - 6.5.1.2 the total amounts received by the Council under any policy of insurance; and
 - 6.5.2 any liability arising other than under Clause 6.4.1 shall not exceed the total amounts payable by the Council to the ATA under or in relation to this Agreement.
- 6.6 The Council shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Council, arising out of the City Deal Funding Agreement and the Council's performance of its obligations under this Agreement, including death or personal injury, loss of or damage to property or any other loss.

7 Publicity and Freedom of Information

- 7.1 Neither party should bring the name of the Department for Business, Innovation and Skills, the Skills Funding Agency or each of the Parties to this Agreement or their employees into disrepute.
- 7.2 The Department for Business, Innovation and Skills or the Skills Funding Agency shall have the right to use and reproduce any information supplied under the terms of this Agreement, subject to copyright and duties arising under the Data Protection Act 1998 owed by the ATA, provided that the ATA shall use its reasonable endeavours to obtain the necessary consents and waivers to such disclosure, use and reproduction. Nothing in this Agreement shall oblige the ATA to

disclose any commercially confidential information of any third party, provided that the parties acknowledge and agree that they shall agree in advance of any disclosure being requested what information constitutes commercially confidential information from time to time, but that as a minimum requirement (and being a non-exhaustive list) the information specified in Schedule 3 is not considered to be commercially confidential for these purposes.

- 7.3 If the ATA submits any information to the Council, for which the ATA is not the owner of any copyright arising in it, and which they have reason to believe may not be used in any way or reproduced, the ATA shall inform the Council.
- 7.4 Each party acknowledges that the Department for Business, Innovation and Skills, the Skills Funding Agency or the other Party to this Agreement are each subject to legal duties under the Freedom of Information Act 2000, which may require the disclosure on request of information relating to this City Deal or otherwise relating to, held by or on behalf of that Party and each Party shall assist and co-operate with the other to enable that Party to comply with its information disclosure obligations.
- 7.5 If any Party receives a request under the Freedom of Information Act 2000 which may require the disclosure of information it holds relating to the other Party (whether or not such information is confidential information), that Party shall immediately notify the other of:
- 7.5.1 the request;
 - 7.5.2 the receiving party's opinion as to whether or not any information relating to the other Party might be disclosed;
 - 7.5.3 whether the receiving party considers the information should be disclosed by law; and
 - 7.5.4 whether (and if so, when) the receiving party intends to make the disclosure.

8 Neutrality and Propriety

- 8.1 It is a condition of City Deal Funding (and each Party shall procure in their participation) that City Deals must be politically neutral.
- 8.2 There must be no impropriety or irregularity concerning any Party or any other individual concerned with the management of the City Deal. All dealings and transactions must be transparent. Any interest of such persons in the City Deal must be declared. In particular each Party must:
- 8.2.1 observe the highest standards of propriety involving impartiality, integrity and objectivity in relation to the stewardship of funds provided by the Skills Funding Agency;
 - 8.2.2 maximise value for money through ensuring that the City Deal is delivered in the most efficient and economical way, within available resources, and with independent validation of performance achieved wherever practicable; and
 - 8.2.3 be accountable for the activities supported with the City Deal Funding, the stewardship of the City Deal Funding and the

extent to which related performance targets and objectives have been met;
provided that the above obligations only apply to the ATA to the extent of the ATA Funding.

9 Assignment

9.1 No Party to this Agreement may assign any asset or any part of this Agreement without obtaining each other Party's written consent first, subject to any conditions attached to such consent.

10 Continuation

10.1 If the City Deal in whole or in part consists of a study or report, neither the Department for Business, Innovation and Skills, or the Skills Funding Agency is under any obligation to act upon the recommendations or to publish or make public the report or its findings, and neither the Council or the ATA may publish any such report without the consent of the Department for Business, Innovation and Skills or the Skills Funding Agency.

11 General Matters

11.1 This Agreement contains the whole agreement between the Parties and it supersedes any prior written or oral agreement between them and is not affected by any other promise, representation, warranty, usage, custom or course of dealing. The Parties confirm that they have not entered into this Agreement on the basis of any representation that is not expressly incorporated into this Agreement. Nothing in this Agreement shall exclude liability for any fraudulent statement or act made prior to the date of this Agreement.

11.2 No waiver by either Party of any breach of this Agreement shall be considered as a waiver of any subsequent breach of the same provision or any other provision.

11.3 The invalidity, illegality or unenforceability of any of the provisions of this Agreement shall not affect the validity, legality or enforceability of the remaining provisions of this Agreement.

11.4 Neither party shall be liable for any delay or failure in performing its obligations under this Agreement (save in respect of any payments due under this Agreement) as a result of reasons beyond its reasonable control, including but not limited to acts of God, war, flood, fire, labour disputes, strikes, lock-outs, riots, civil commotion, malicious damage, explosion, governmental actions and any other similar events.

11.5 None of the terms and conditions of this Agreement shall be enforceable by any person who is not a party to it, save to the extent expressly stated.

11.6 This Agreement is governed by and interpreted in accordance with English law and the parties agree to submit to the non-exclusive jurisdiction of the English courts.

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

**Authorised Signatory for and on behalf of
Leeds City Council**

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Signature

Position

Name (Print)

Date:

**Authorised Signatory for and on behalf of
Leeds Apprenticeship Training Agency Limited**

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Signature

Position

Name (Print)

Date: