**This AGREEMENT is made on 05 July 2011**

# Training Organisation Service Level Agreement

BETWEEN

(1) Open Door Adult Learning Centre and

(2) Manor Training and Resource Centre (‘the Subcontractor’)

(3) Swarthmore education Centre (‘the Subcontractor’)

**1 Definitions**

1.1 The following words and expressions have the following meanings:

**‘Achievement’** means achievement of a single Qualification or framework Qualification by a Learner as evidenced by the provision of Achievement Evidence;

**‘Achievement Evidence’** means evidence produced by the Subcontractor to the Open Door Adult Learning Centre in a form satisfactory to the Skills Funding Agency and comprising either:

1. A copy of the internal verification document if direct claims status is held with the external examination body or the external verifier document if direct status is not held or proof of submission of a claim to the Sector Skills Council or National Apprenticeship Service for framework achievement. In all cases a copy of the actual certification document, signed as a verified true copy of the original must be forwarded to Open Door Adult Learning within less than three months of the end achievement date; or
2. Where the Programme is such that there is no external examination body involved in assessing Learners a copy (certified as true and accurate by an authorised representative of the Subcontractor) of the certificate awarded by the Subcontractor to Learners who have attained a Qualification or if no certificate is given a signed notification of achievement;

**‘Agreement’** means all parts of this Agreement and includes the Schedules and the Appendices incorporated into it;

**‘Attendance’** means the attendance of a Learner on a Programme of guided learning that is in accordance with their individual learning plan and confirms progression towards their Qualification. Attendance, including the start and end date, must be evidenced using the documentation held in the Programme Quality Guide.

**‘Commencement Date’** is the date of this Agreement;

**‘Agency’** means the Skills Funding Agency;

**‘Enrolled Learner’** means a person who has been enrolled in accordance with the terms of this Agreement and in respect of whom Open Door Adult Learning has notified the Subcontractor that such Learner has been enrolled with Open Door Adult Learning;

**‘Funded Learner’** means a Learner whose education or training is intended to be funded in part or in full by the Agency as a consequence of both the Learner and the Programme being eligible for funding;

**‘Funding’** means the funding provided to the Open Door Adult Learning by the Agency in accordance with the Guidelines in relation to the Programme(s) and the provisions of this Agreement;

**‘Guidelines’** means the procedures, rules and requirements from time to time laid down by the Agency for use by the Open Door Adult Learning Centre in applying for the Funding;

**‘Intellectual Property’** means any intellectual property belonging to the Open Door Adult Learning Centre including but not limited to copyright in forms, course materials, marketing materials and unregistered trade and service marks made available by the Open Door Adult Learning Centre to the Subcontractor in connection with the provision or promotion of the Programme and also including Trade Marks and Intellectual Property described in the Schedule;

**‘Know-How’** means the non-patented practical information and expertise provided by the Open Door Adult Learning Centre to the Subcontractor and including the contents of the Quality Manual;

**‘Learner’** means a person who is enrolled and who receives the education or training comprised in the Programme;

**‘Learning Agreement’** means the learning agreement between the Open Door Adult Learning Centre and a Learner as specified in Guidelines;

**‘Liability’** means all and any liability, costs, losses, expenses or damages suffered or incurred by Open Door Adult Learning Centre and all and any claims made against Open Door Adult Learning Centre;

**‘Payments’** means the payments due under the terms of this Agreement from Open Door Adult Learning Centre to the Subcontractor in relation to the Programme(s);

**‘Premises’** means the premises listed in Schedule 5 to the Agreement or such other premises as are agreed between the parties;

**‘Price’** means the sums payable by Open Door Adult Learning Centre to the Subcontractor in relation to the Programme(s), calculated in accordance with Schedule 1 to this Agreement;

**‘Programme’** means an individual learning programme specified in a Learning Agreement and provided by the Subcontractor which is aimed at the Learner achieving one or more of the Qualifications identified in Schedule 2 to this Agreement;

**‘Qualification’** means

1. A qualification awarded by an external examination body to Learners who have completed a Programme and met that external examination body’s criteria for awarding the relevant qualification; or
2. Where there is no external examination body involved in assessing Learners, a quasi-qualification awarded by the Subcontractor to Learners who have completed a Programme and who have met the Subcontractor’s criteria for awarding such a qualification, which criteria are approved by Open Door Adult Learning Centre ;

**‘Quality Guide’** may be in Organisational and Programme versions and means the documents that outline the key performance standards and the documentary evidence required to ensure the quality of the education or training provided by the Subcontractor for the Programme(s);

**‘Quality Standards’** means the standards expected of a skilled and competent provider of the kind of education or training which makes up the Programme(s);

**‘Trade Marks’** means the registered trademarks belonging to Open Door Adult Learning Centre or otherwise made available for use by the Subcontractor pursuant to this Agreement and notified by Open Door Adult Learning Centre to the Subcontractor;

**‘Tutors’** means the staff of the Subcontractor or people who are under the direct control of the Subcontractor as employees or volunteers engaged partly or wholly in the provision of the guided learning hours for the Programme(s);

**‘Tuition Fees’** means the fees charged to the Learner or their sponsor for the provision of the Programme(s).

**‘Year’** means each successive 12 month period starting on the Commencement Date or any subsequent anniversary of it.

1.2 In this Agreement, unless the context otherwise requires, references to the singular include the plural and vice versa; any reference to a person includes a body corporate and words importing one gender include both genders.

1.3 The headings in this Agreement are for ease of reference only but do not form part of the Agreement and will not be taken into account when construing it.

1.4 References to Schedules, Clauses, Appendices or Conditions are references to schedules, clauses, appendices or conditions of this Agreement.

**2 Principal Obligations**

2.1 The Subcontractor will provide the Programme(s) to the Learners on behalf of Open Door Adult Learning Centre in accordance with the terms and conditions of this Agreement.

2.2 The Programme(s) will be as set out in Schedule 2.

2.3 Open Door Adult Learning Centre will pay the Subcontractor the sums due in accordance with the terms and conditions of this Agreement in relation to each Learner provided with a Programme.

**3 Duration of the Agreement**

3.1 This Agreement will commence on the Commencement Date and will continue for the period specified in Schedule 3 unless terminated before that time in accordance with the terms and conditions of this Agreement.

**4 Payment Terms**

4.1 Within ten working days of Open Door Adult Learning Centre receiving Funding from the Agency Open Door Adult Learning Centre will pay to the Subcontractor such part of the Price due to the Subcontractor as relates to each Programme or fraction of a Programme completed in the previous month less any recoverable and within the agreed volume tolerances and tolerances specified by the Agency.

4.2 The Price will be calculated in accordance with Schedule 1.

4.3 No payment will be made in relation to the participation in the Programme of any Learner who:

1. Is not an Enrolled Learner; or
2. Is a person considered under the Guidelines to be ineligible for Funding or is fully funded by a source other than the Agency or funded by the Agency more than once in relation to the same Programme.

4.4 No payment will be made in relation to a Learner where the Subcontractor has not notified Open Door Adult Learning Centre of any relevant Attendance or Achievement by that Learner or has failed to provide evidence as specified in the Operational Quality Guide.

4.5 Open Door Adult Learning Centre will not be under any obligation to make payment to the Subcontractor in respect of Learners or Price over and above any upper limit on the number of Learners or Price (as the case may be) permissible on the Programme(s) that is agreed between the parties as set out in Schedule 4.

4.6 If Open Door Adult Learning Centre pays the Price to the Subcontractor in relation to any Learner who is subsequently demonstrated not to be eligible for payment of the Funding Open Door Adult Learning Centre will be entitled to be fully refunded by the Subcontractor. At the discretion of Open Door Adult Learning Centre such refund will either be payable within 30 days of notice by Open Door Adult Learning Centre to the Subcontractor or may be deducted from the payment due in the next month.

4.7 If the Agency for any reason outside the control of Open Door Adult Learning Centre refuses or fails to pay the Funding in relation to any Enrolled Learner Open Door Adult Learning Centre will be under no obligation to pay any part of the Price relating to that Learner to the Subcontractor and any part of the Price relating to the said Learner will be refunded to Open Door Adult Learning Centre by the Subcontractor in accordance with the terms of Clause 4.6 above.

4.8 The Subcontractor is required to charge a Tuition Fee to the Learner at a rate specified by SFA and report on the amount of fees collected on a termly basis. Tuition fees will be collected by and retained by the Subcontractor. The tuition fee policy and fee collection details for all Programmes covered by this Agreement must be agreed by all.

4.9 Where state aid regulations are applicable the Subcontractor is required to abide by the regulations, specifically in terms of informing the employer of their responsibilities, recording the evidence on approved documentation, securely storing the same and reporting to Open Door Adult Learning Centre .**5 Funding**

5.1 The Subcontractor agrees that it will co-operated fully with Open Door Adult Learning Centre to enable Open Door Adult Learning Centre to comply with any requirements of the Agency and in particular the Subcontractor will procure that all relevant forms, agreements, applications or other documents that are required by the Agency are completed and signed by the relevant authorised officer of the Subcontractor and by the Learner, as applicable.

5.2 The Subcontractor will not do anything that will cause Open Door Adult Learning Centre to be in breach of its obligations under its funding agreement with the Agency (as those obligations are set out in the Guidelines) or that will result in any of the conditions of funding as set out in the Guidelines not being met by Open Door Adult Learning Centre .

5.3 The Subcontractor will notify Open Door Adult Learning Centre immediately in writing if at any time after a Learner has been enrolled it becomes aware or suspects that such Learner is considered in accordance with the Guidelines to be ineligible for Agency funding or funded publicly by a source other than the Agency or to be funded by the Agency more than once in respect of the same Programme.

5.4 Open Door Adult Learning Centre is responsible for approving the Programme(s) that are planned to be delivered and confirming that the Programme(s) are eligible for Funding.

**6 Provision of Records and Information**

6.1 Throughout the term of this Agreement the Subcontractor will maintain and make available to Open Door Adult Learning Centre the agreed records and information as described and detailed in

1. The Programme Quality Guide
2. The Organisation Quality Guide
3. Any other records and information as Open Door Adult Learning Centre may reasonably require the Subcontractor to keep, such requirements to be notified in writing to the Subcontractor.

6.2 The information and records referred to in Clauses 6.1(a) to 6.1(c) above must be provided or made available (as the case may be) to Open Door Adult Learning Centre (or its authorised representative) or to the Agency (or its authorised representative) at the time and in the format specified in this Agreement in relation to such information and records or at such other time and in such other format as Open Door Adult Learning Centre may reasonably require by giving written notice of its requirements to the Subcontractor.

6.3 Where any records or information are required to be sent to Open Door Adult Learning Centre in accordance with this Clause 6 or any other Clause, such records and information must (unless otherwise stated in this Agreement or by written notice from Open Door Adult Learning Centre to the Subcontractor) be sent to the address and for the attention of the person specified in Clause 22 below in a timely manner as specified by Open Door Adult Learning Centre or the Agency.

6.4 The Subcontractor warrants that all information provided or made available to Open Door Adult Learning Centre and/or the Agency will be complete, true and accurate in all material respects.

6.5 The Subcontractor warrants that all information regarding the Subcontractor’s past experience and other matters that were disclosed to Open Door Adult Learning Centre in order to enable Open Door Adult Learning Centre to assess whether to enter into this Agreement (all of which information the Subcontractor acknowledges was relied on by Open Door Adult Learning Centre) was true and accurate in all material respects and that nothing that would reasonably be likely to alter Open Door Adult Learning Centre decision to enter into this Agreement was withheld or misrepresented.

6.6 The Subcontractor will confirm to Open Door Adult Learning Centre where it has entered into any other agreements for the provision of education or training.

6.7 The Subcontractor will retain all invoices, returns and other documents necessary to verify the Programme(s) delivered for six years from the end of the financial year in which the last payment is made or such longer period as notified in writing by Open Door Adult Learning Centre.

**7 Control of the Programme(s)**

7.1 The Subcontractor will comply with Open Door Adult Learning Centre reasonable requests in respect of any aspect of the Programme(s). Without prejudice to the generality of the foregoing, the Subcontractor will comply with the following obligations.

**7.2 Enrolment**

7.2.1 The Learners will be enrolled as Learners of Open Door Adult Learning Centre by Open Door Adult Learning Centre. Open Door Adult Learning Centre will direct the Subcontractor as to who is to be a Learner and to receive a Programme. The Subcontractor acknowledges that it is not Open Door Adult Learning Centre agent for the purpose of enrolment and the decision as to whether a person will be enrolled as a Learner is for Open Door Adult Learning Centre alone.

7.2.2 Open Door Adult Learning Centre may, in its absolute discretion, allow the Subcontractor to select persons for Open Door Adult Learning Centre to enrol as Learners from a class or classes of person indicated to the Subcontractor by Open Door Adult Learning Centre , provided that should Open Door Adult Learning Centre exercise this right that will be without prejudice to Open Door Adult Learning Centre right to accept or reject persons for enrolment as Learners.

7.2.3 The initial guidance and assessment of Learners and potential Learners will be carried out by Open Door Adult Learning Centre staff or by such staff of the Subcontractor as Open Door Adult Learning Centre may direct. Open Door Adult Learning Centre will approve the form that initial guidance and assessment will take, including but not limited to the form of the Learning Agreement that will be entered into. The terms of the Learning Agreement will form part of the Programme(s).

**7.3 Provision**

7.3.1 Not Applicable .

7.3.2 Not Applicable

7.3.3 The Subcontractor must co-operate fully with Open Door Adult Learning Centre to enable Open Door Adult Learning Centre to communicate freely with the Learners and allow the Learners to take advantage of the facilities offered by Open Door Adult Learning Centre. In particular the Subcontractor must give each Learner as soon as they enrol a copy of Open Door Adult Learning Centre Student Information and must provide a copy of this to any Learner who requests it, whether before or after enrolment.

7.3.4 The Subcontractor’s staff who are engaged in the delivery of a Programme will be managed by the Subcontractor to deliver the Programme in accordance with the agreed specification and Quality Guide(s). The Subcontractor will procure that the said staff obey Open Door Adult Learning Centre instructions in respect of the Programme(s). The Subcontractor will co-operate fully with Open Door Adult Learning Centre should Open Door Adult Learning Centre need to investigate any complaint against any of the Subcontractor’s staff so engaged and will co-operate in any such investigation. Following appropriate investigation, Open Door Adult Learning Centre will be entitled to require the Subcontractor to reprimand or suspend or remove the said staff from providing any or all Programme(s). The Subcontractor will ensure that any of its staff without a contract of employment, including agency, volunteer or contract workers who will provide services on behalf of Open Door Adult Learning Centre have the necessary qualifications, are medically fit, are not barred from employment as a Tutor and have a written agreement from the Subcontractor that covers the requirements placed on them to deliver the Programme(s) and their agreement to meet those requirements.

7.3.5 Whilst they are on a Programme the Subcontractor acknowledges that the Learners are subject to Open Door Adult Learning Centre rules and are entitled to use Open Door Adult Learning Centre facilities and benefits. The Subcontractor undertakes that no Learner who makes a complaint relating to a Programme will suffer any disadvantage as a result.

7.3.6 The Subcontractor will ensure that all Learners are aware of:

1. Their status as Learners of Open Door Adult Learning Centre;
2. Their right to complain to Open Door Adult Learning Centre about any aspect of the Programme;
3. How such a complaint can be made, and
4. The fact that the making of any such complaint will not of itself lead to action being taken against the Learner by the Subcontractor but that action may be taken against the Learner for breaches by the Learner of his/her conditions of participation on the Programme. Any learner making a complaint would not directly lead to action being taken against the learners by the subcontractor, however this does not preclude action being taken

7.3.7 The Subcontractor must notify Open Door Adult Learning Centre if any Learner withdraws from a Programme.

7.3.8 The Subcontractor must provide the Programme(s) to Quality Standards.

7.4 **Assessment**

7.4.1 All aspects of the assessment of Learners will be carried out in accordance with Open Door Adult Learning Centre directions. Open Door Adult Learning Centre will have the right to carry out assessments in whole or in part, or to delegate such assessments or any part thereof to the Subcontractor’s staff.

**8 Monitoring and Compliance**

8.1 The Subcontractor will at all times permit any authorised representative of Open Door Adult Learning Centre and/or the Agency:

1. To attend during any activity relating to the provision of a Programme and conduct relevant interviews and observations; and
2. Access to every part of premises where tuition is or has been provided by the Subcontractor; and
3. Access to facilities used in or for the provision or in connection with any part of a Programme;
4. To conduct review meetings the frequency of which is described in Schedule 7, or audits.

This permission is for the purpose of ensuring compliance with this Agreement, enabling Open Door Adult Learning Centre to give directions to the Subcontractor, monitoring quality requirements or conducting an audit of the Subcontractor’s procedures and controls.

8.2 The Subcontractor agrees to provide the Programme(s) in accordance with the Quality Standards and any other standards and/or requirements of Open Door Adult Learning Centre notified in writing to the Subcontractor.

**9 Health and Safety**

9.1 The Subcontractor will provide a safe, healthy and supportive environment that meets the reasonable needs of Learners. The Subcontractor complies with health and safety legislation and will carry out health and safety risk assessments covering each Learner and has declared to Open Door Adult Learning Centre all reportable injuries, diseases and dangerous occurrences covered by the RIDDOR regulations over the last three years together with the actions that have been implemented to prevent reoccurrences.

9.2 The Subcontractor will notify Open Door Adult Learning Centre immediately upon the occurrence of any of the following:

1. Any incident that may need to be notified by Open Door Adult Learning Centre to its insurers to enable Open Door Adult Learning Centre to bring a claim under any of its insurance policies;
2. Any injury to any person or any loss of or damage to property that occurred during provision of any part of a Programme or on any premises where a Programme is or has been held or in circumstances where there is any possibility that the Subcontractor and/or Open Door Adult Learning Centre may be liable, wholly or partly, for such injury, loss or damage.

Any event notified to Open Door Adult Learning Centre pursuant to this Clause must be notified by the quickest means possible in the circumstances and must be followed up as soon as possible by written notice to Open Door Adult Learning Centre setting out in full all relevant details and parties.

9.3 Open Door Adult Learning Centre is directly responsible to each Enrolled Learner for compliance with health and safety legislation during delivery of a Programme but the Subcontractor agrees that it will comply with all relevant requirements relating to health and safety.

9.4 The Subcontractor will fully indemnify Open Door Adult Learning Centre in respect of any Liability that arises as a result of any act of omission on the part of the Subcontractor (including, without limitation, any non-compliance with health and safety legislation) except to the extent that such Liability is due to the negligent act or omission by Open Door Adult Learning Centre .

**10 Insurance**

10.1 The Subcontractor will maintain adequate third party and occupier’s liability insurance with a minimum cover per claim as specified in Schedule 6.

10.2 The Subcontractor will maintain adequate insurance to cover the risks specified in Schedule 6 with a minimum cover per claim as specified in Schedule 6.

10.3 The Subcontractor will, at Open Door Adult Learning Centre request, immediately produce to Open Door Adult Learning Centre a certified copy of all its insurance policies pursuant to this Agreement and satisfactory evidence that all premiums for such policies are paid to date.

**11 Co-operation and Reputation**

* 1. Open Door Adult Learning Centre and the Subcontractor agree to use their respective best endeavours to meet on the dates and in the place specified in Schedule 7 or on such other dates and/or such other place as are agreed (provided that in the absence of agreement the date and place specified in Schedule 7 will apply) to discuss matters arising from this Agreement and the provision of the Programme(s).
	2. The Subcontractor acknowledges that as Learners will be enrolled with Open Door Adult Learning Centre on a Programme funded by the Agency , the reputations of each of these three parties are at stake and, accordingly, the Subcontractor agrees that:
1. It will not do anything that brings or is reasonably likely to bring Open Door Adult Learning Centre, its sub-contractors or the Agency’s reputation into disrepute;
2. It will provide the Programme(s) in accordance with best practice subject always to Open Door Adult Learning Centre right to direct how the Programme(s) will be provided;
3. It will do everything it reasonably can to promote Open Door Adult Learning Centre name and reputation;
4. It will comply with all Open Door Adult Learning Centre requirements in providing the Programme(s) or any part of it;
5. It will not assign or purport to assign any of its rights under this Agreement nor sub-contract to any third party any part of the provision of the Programme(s);
6. It will not do or fail to do anything that materially prejudices or is likely to materially prejudice the ability to comply with the terms of this Agreement;
7. It will continue to comply with legislation on employment (including the use of volunteers), immigration, safeguarding, equality and diversity and will maintain appropriate policies and procedures for safeguarding, equality and diversity, such procedures to include appropriate checks to ensure those in contact with young people or vulnerable adults have not been convicted of relevant offences or are not listed as unsuitable for such work;
8. It will continue to comply with data protection legislation (including the notification of the Information Commissioner’s Office that it processes personal information) and has appropriate data protection and security systems in place for the exchange of personal data with Open Door Adult Learning Centre;
9. It has systems to ensure compliance with the Agency’s requirements for data collection and the keeping of records;
10. It has a policy, or an agreed action plan, on sustainability.

11.3 In return for the Subcontractor providing the Programme(s) in accordance with the terms of this Agreement Open Door Adult Learning Centre agrees that it will provide the Subcontractor with such reasonable support and assistance as the Subcontractor reasonably requests provided that Open Door Adult Learning Centre will not be obliged to provide staff to run or assist in the provision of any part of the Programme(s).

**12 Certification of Attendance and Achievement**

12.1 Not Applicable

12.2 Not Applicable

**13 Learners with Additional Support Requirements**

13.1 The Subcontractor will maintain such appropriate information, advice guidance and support arrangements for Learners as may be reasonably expected by Open Door Adult Learning Centre.

13.2 In order to apply for further funding for Learners with additional support requirements, as described in the Guidelines, the Subcontractor must, in relation to each such Learner, submit an additional support assessment form as set out in the Quality Guide and initialled by the parties or otherwise notified to the Subcontractor by Open Door Adult Learning Centre .

**14 Termination**

14.1 Open Door Adult Learning Centre may terminate this Agreement by written notice to the Subcontractor if:

1. There is a material adverse change in the amount or nature of the Agency’s funding for Open Door Adult Learning Centre or Funding is no longer available for a Programme; or
2. There is a material breach by the Subcontractor of the terms of this Agreement which breach is not capable of remedy; or
3. There is a material breach by the Subcontractor of the terms of this Agreement which breach is capable of remedy but which is not remedied to Open Door Adult Learning Centre reasonable satisfaction within 14 days after Open Door Adult Learning Centre has given written notice of the breach to the Subcontractor requiring it to be remedied (provided that the notice terminating this Agreement is given by Open Door Adult Learning Centre within one month after the expiry of the period during which the breach should have been remedied); or
4. The Subcontractor proposes or enters into an arrangement or composition for the benefit of its creditors or is the subject of any distress execution sequestration or other process levied upon or enforced against any part of the Subcontractor’s undertaking, property, assets or revenues; or
5. The Subcontractor (if an individual or in the case of a partnership any partner) is the subject of a bankruptcy petition or has a bankruptcy order made against it or is the subject of an application order or appointment under sections 253, 273 or 286 of the Insolvency Act 1986 or is unable to pay or has no reasonable prospect of being able to pay its debts within the meaning of sections 267 and 268 of the Insolvency Act 1986; or
6. The Subcontractor (if a company) is the subject of a petition presented, an order made, a resolution passed or analogous proceedings taken for appointment of an administrator of or the winding up of the company (other than for amalgamation or reconstruction of a solvent company) or stops payment or agrees to declare a moratorium or becomes or is deemed to be insolvent or unable to pay its debts (within the meaning of section 124 of the Insolvency Act 1986) when they fall due; or
7. The Subcontractor is a company and notice relating to the striking off of the company is published; or
8. The Subcontractor is a company and an encumbrancer takes possession or exercises or attempts to exercise any power of sale or a receiver is appointed for the undertaking or assets or revenues of the Subcontractor; or
9. The Subcontractor enters into an agreement that Open Door Adult Learning Centre considers to be a conflict of interest or if it had not been disclosed to Open Door Adult Learning Centre as a conflicting agreement that already existed.

Such termination may take effect either immediately or at the end of such period as Open Door Adult Learning Centre in its discretion determines. In the latter case this Agreement will remain in effect until the end of the said period.

(j) If at any time the Subcontractor has not, in Open Door Adult Learning Centre reasonable opinion, met the quality requirements in Clause 7.3.8 above or has been graded as inadequate by or received an inadequate grade in any sector subject area(s) containing the Programme(s), or have fallen below the Agency’s published Minimum Levels of Performance then Open Door Adult Learning Centre will notify the Subcontractor of that fact and give reasons for its opinion and the Subcontractor will then have an opportunity to remedy the problem provided that if, within a reasonable time after receiving notice from Open Door Adult Learning Centre it has not remedied the problem to Open Door Adult Learning Centre reasonable satisfaction

14.2 The Subcontractor may terminate this Agreement by written notice to Open Door Adult Learning Centre if:

1. There is a repudiatory breach by Open Door Adult Learning Centre of the terms of this Agreement which breach is not capable of remedy; or
2. There is a material breach by Open Door Adult Learning Centre of the terms of this Agreement which breach is capable of remedy but which is not remedied to the Subcontractor’s reasonable satisfaction within one month after the Subcontractor has given written notice of the breach to Open Door Adult Learning Centre requiring it to be remedied (provided that the notice terminating this Agreement is given by the Subcontractor within one month after the expiry of the period during which the breach should have been remedied); or
3. Open Door Adult Learning Centre stops payment or agrees to declare a moratorium or becomes or is deemed to be insolvent or unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986) when they fall due.

Provided that (except in the case of Clause 14.2(a)) the Subcontractor will be obliged to continue to provide the Programme(s) notwithstanding that it has the right to terminate this Agreement in accordance with any provision set out herein (and all the terms and conditions of this Agreement will remain in force) until all Learners enrolled at the time that the event entitling the Subcontractor to terminate this Agreement occurs have completed or left the Programmes.

* 1. Any termination of this Agreement will be without prejudice to any right of either party against the other in respect of any antecedent breach of this Agreement.
	2. Please see 14.2

**15 Taxation and Other Payments**

15.1 All payments to be made under the terms of this Agreement are inclusive of any applicable value added tax.

15.2 The Subcontractor is responsible for making all relevant tax payments in relation to the Learners and will indemnify Open Door Adult Learning Centre in respect of any claims or demands that may be made against Open Door Adult Learning Centre in relation to such payments.

15.3 All Tutors are the responsibility of the Subcontractor and are employed by it and it is responsible for the paying all wages, income tax and national insurance contributions in respect of each Tutor. The Subcontractor will indemnify Open Door Adult Learning Centre against any claims made against Open Door Adult Learning Centre by any Tutor, including but not limited to claims that the employment of the said Tutors has transferred to Open Door Adult Learning Centre by virtue of the Transfer of Undertakings (Protection of Employment) Regulations or any similar provisions.

**16 Confidentiality**

16.1 Neither party will (save as required by this Agreement) without the written consent of the other disclose any of the contents of this Agreement or of the commercial arrangements between them save:

1. In the case of both parties, for any necessary disclosure to professional advisers of that party;
2. In the case of Open Door Adult Learning Centre , to the Agency and any other organisation or person having jurisdiction over Open Door Adult Learning Centre.

**17 Improvements**

17.1 The Subcontractor should advise Open Door Adult Learning Centre of any suggestions for improvements or enhancements to the Programme(s) or the way in which it is provided, the curriculum and/or the Programme material such that both parties can collaborate to improve the Learner experience or improve the efficiency of delivery.

17.2 Open Door Adult Learning Centre will use its reasonable endeavours to improve and develop the Programme, its curriculum and materials unless such curriculum or materials were not originally developed by or in conjunction with Open Door Adult Learning Centre . The Subcontractor agrees to implement any changes to the Programme(s), the way it is provided, the curriculum or materials which may be necessary as a result of any improvement, enhancement or development as soon as possible after receiving written notice from Open Door Adult Learning Centre specifying the changes to be made.

**18 Force Majeure**

18.1 If Open Door Adult Learning Centre or the Subcontractor is unable to perform any or all of their respective obligations under the terms of this Agreement because of any of the events set out below then that party will be relieved of its obligations to continue to perform under this Agreement for as long as their fulfilment is prevented or delayed as a consequence of any such event. The events referred to in this paragraph are:

 Fire, explosion, flood, reduction or unavailability of power, riot, war, national emergency, act of God, malicious damage, theft, non-availability of material, destruction or damage of essential equipment, or any other act omission or state of affairs of a similar nature beyond the control of either party.

**19 General Provisions**

19.1 This Agreement does not constitute a partnership, contract of employment, franchise or joint venture arrangement between Open Door Adult Learning Centre and the Subcontractor and the Subcontractor must not act or purport to act as Open Door Adult Learning Centre agent.

19.2 The waiver by a party of a breach of a provision of this Agreement will not prevent the subsequent enforcement of that provision and the waiver will not be a waiver of any subsequent breach of that provision or of any other provision.

19.3 This Agreement and the documents referred to in it contain the entire understanding of the parties and overrides and supersedes any prior promises, representations, undertakings or implications.

19.4 If any provision of this Agreement is invalid for any reason its invalidity will not affect the remainder of this Agreement which will remain valid and enforceable.

**20 Jurisdiction**

20.1 This Agreement is governed by and should be construed in accordance with English law.

**21 Intellectual Property and Trade Marks**

21.1 The Subcontractor agrees not to infringe any Intellectual Property made available pursuant to this Agreement.

21.2 In order to obtain the necessary authority to use any Trade Marks the Subcontractor undertakes to enter into a licence or other agreement if so required by Open Door Adult Learning Centre.

21.3 The Subcontractor will not use the Intellectual Property or anything confusingly similar to any part of it for anything other than the provision or promotion of the Programme(s) in accordance with this Agreement.

21.4 The Subcontractor acknowledges that both the Know-How and the contents of the Quality Manual are confidential and that any goodwill arising from the use of the Intellectual Property by it belongs to Open Door Adult Learning Centre.

21.5 During the term of this Agreement and for as long after as the Know-How and any other confidential information imparted to the Subcontractor by Open Door Adult Learning Centre remains outside the public domain (other than by reason of any breach of this Agreement) the Subcontractor will keep it strictly private and confidential and not disclose it to a third party without Open Door Adult Learning Centre prior written consent.

21.6 The Subcontractor will immediately notify Open Door Adult Learning Centre if, during the term of this Agreement or any renewal of it he becomes aware of a breach of the Intellectual Property or other intellectual property rights made available to him or of the unauthorised disclosure of any Know-How or the contents of the Quality Manual.

21.7 The Subcontractor will not register any trade mark or service mark in its own or any other name for use in connection with the provision of the Programme(s) or any part of it.

21.8 Nothing in this Agreement constitutes a warranty or assurance as to the validity or subsistence of any of the Intellectual Property.

21.9 The Subcontractor must use Open Door Adult Learning Centre name and any other name, mark, device or logo identifying or associated with Open Door Adult Learning Centre that Open Door Adult Learning Centre may specify on any advertisements or prospectuses relating to the provision of the Programme(s) by the Subcontractor and/or on Programme materials.

21.10 The Subcontractor must meet the requirements of the Agency’s endorsement branding guidelines in relation to Programmes funded by the Agency to Open Door Adult Learning Centre .

**22 Notices**

22.1 Any notice served pursuant to this Agreement will be properly served if sent by recorded delivery post to the respective party at the address shown at the start of this Agreement marked for the attention of Terry McHale for Open Door Adult Learning Centre or OPEN DOOR ADULT LEARNING CENTRE for the Subcontractor or by email to terry@opendoor-learn.com for Open Door Adult Learning Centre or jenean@manor-castle.org.uk for the Subcontractor, Maggi.Butterworth@swarthmore.org.uk for the Swarthmore Education Centre.

Signed by: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name, Principal of Open Door Adult Learning Centre

Signed as Witnessed by: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signed by: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

On behalf of Manor Training and Resource Centre

Signed as Witnessed by: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signed by: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

On behalf of Swarthmore Education Centre

Signed as Witnessed by: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**SCHEDULES**

**SCHEDULE 1 Price and Payments**

* 1. Calculation of Price:

Open Door Adult Learning Centre will pay the Subcontractor 98% of the funding that Open Door Adult Learning Centre receives from the Agency in respect of all verified and evidenced provision delivered by the Subcontractor under the terms of this Agreement for the Programme.

* 1. Payment Schedule:

Open Door Adult Learning Centre will pay the Subcontractor up-to monthly in arrears in accordance with the payment schedule of the Agency and as informed by the published PFR or equivalent record and within seven working days that Open Door Adult Learning Centre receives Funding from the Agency. Any recoverables duly confirmed will be deducted from the monthly payment.

**SCHEDULE 2 The Programmes**

The Subcontractor is to deliver the following Programmes under the Single Adult Skills Budget and the 16-18 Apprenticeship contract:

* 16-18 employed apprenticeships in OPEN DOOR ADULT LEARNING CENTRE
* 19-24 employed apprenticeships in OPEN DOOR ADULT LEARNING CENTRE
* 25+ employed apprenticeships in OPEN DOOR ADULT LEARNING CENTRE
* NVQs to employees of SMEs in OPEN DOOR ADULT LEARNING CENTRE
* Other fundable adult qualification provision, being OPEN DOOR ADULT LEARNING CENTRE
* Job Outcome related training in OPEN DOOR ADULT LEARNING CENTRE

All Programmes shall be delivered in accordance with Agency and awarding body guidance as issued and updated from time-to-time.

Open Door Adult Learning Centre expects the Subcontractor to deliver effective provision in terms of the following:

1.0 Programme Delivery:

 Each Programme delivered under this Agreement will have a range of requirements specified by external bodies and the Agency.

 Thus for each programme Open Door Adult Learning Centre will create and agree a **Programme Quality Guide** inclusive of all essential documentation to be used and maintained. Where possible Open Door Adult Learning Centre accept the paperwork already in place with the Subcontractor rather than impose Open Door Adult Learning Centre paperwork so long as in Open Door Adult Learning Centre opinion the external requirements are adequately met and data transfer issues are not made unreasonably difficult for either party.

 Open Door Adult Learning Centre expects the Subcontractor to provide:

 - in-depth, pre-course advice and guidance to Learners inclusive of eligibility checks (employer and Learner checks) and appropriateness of the provision in terms of meeting their individual and workplace needs.

 - individual learning plans that are prepared and include the different elements of learning, including key skills or skills for life support, are organised, integrated and agreed to ensure they are efficient and effective to the learning programme.

 - pre-course or in-course assessment undertaken using agreed procedures e.g. target skills or similar nationally approved skills for life assessment tools.

 - individual learning needs and support identified, documented and suitable arrangements put in place, in close liaison with and participation of the Learner.

 - pastoral support and guidance for Learners.

 - strategy for assessment, clear and planned from the outset and recorded in the individual learning plan.

 - a robust system of assessment, standardisation and moderation, including internal verification procedures, in accordance with the requirement of the relevant awarding body.

 - regularly assessed teaching and learning whether in groups or 1:1 and the results of observations are recorded and acted upon.

 - regular collection of Learner feedback and employer satisfaction and this is acted upon.

 - regularly undertaken progress reviews to ensure the Learner is in control of their own learning and provided with appropriate guidance and feedback to facilitate progression and achievement. Punctuality, attendance, achievement and skills development should be included.

 - review frequency that meets or exceeds the minimum requirements laid down for the Programme.

 - notification to Open Door Adult Learning Centre of any formal complaint, grievance or disciplinary procedure undertaken relating to any Learner covered by the Programme.

 - regular self-assessment and improvement planning for the Programme(s) delivered.

1.2 Over-Arching Themes:

1.2.1 Health & Safety / Safeguarding / Health and Well-being:

* Health & Safety checks and Risk Assessment undertaken on all employer premises where Learners are working on the Programme(s) in advance of Learner enrolment.
* All participating employers to be provided with appropriate information an initial induction and on-going information regarding Health & Safety Learner issues.
* All Learners to receive an in-depth induction including Health & Safety, and Safe Learner

1.2.2 Equality and Diversity (‘E&D’:

* E&D should be built into all aspects of the Programme(s) including:-

- publicity and marketing materials and approaches

- recruitment and induction

- delivery of training

- support for Learners with specific needs

- achievement and progression

- enrichment and enhancement

- any specific arrangements

* E&D Impact Assessments on all key processes may be required. Open Door Adult Learning Centre will provide materials and training, if required.
* Initial Learner induction should include:-

- over-view of Open Door Adult Learning Centre and the Subcontractor’s values, missions and beliefs in relation to equality of access, environments free from discrimination.

- exercises that enable learners to understand the full scope of E&D, for example, case-study work including bullying, use of language, unconscious discrimination etc.

* The curriculum design and delivery should be included in the Impact Assessment but should also seek to celebrate and promote the benefits of E&D good practice.
* Open Door Adult Learning Centre will support the ongoing inclusion of proactive E&D learning by providing the Subcontractor with information and materials covering, for example:-

- Open Door Adult Learning Centre Respect

 - Diversity Competition

 - Black History

 - Religious Festivals

 - Charity Events

* All Learner data should be monitored to determine any gaps in retention, achievement, participation or progression data. This should be an ongoing activity but also reflected in the Subcontractor’s annual self-assessment report and addressed in action plans.
* In 2011/12 all provision and associated work should be delivered under the auspices of the Single Equality Bill and in accordance with Agency Guidance and OFSTED Guidance relating to E&D.
* All Subcontractor staff and volunteers shall undertake and keep regularly refreshed on all training and development pertaining to E&D. Open Door Adult Learning Centre will facilitate access to E&D training, as required.

1.2.3 Organisation Quality Guide:

In order to cover the organisational elements of the above over arching themes and other organisational requirements of the Agreement Open Door Adult Learning Centre will create and agree an Organisation Quality Guide. Open Door Adult Learning Centre will not to impose documentation onto the Subcontractor without due need. The Organisation Quality Guide will include such items as approved staff CVs, proof of current public liability insurance as well as procedure and process documentation.

2.0 Quality Control:

The Subcontractor is expected to undertake effective quality control to support the implementation of their quality assurance procedures. This should include the undertaking of:

- observation of staff involved in providing advice and guidance and delivering the Programme(s).

- focus group or 1:1 feedback from Learners taken by an objective member of staff.

- monitoring of data and the taking of responsive actions e.g.

 - recruitment monitoring

 - attendance monitoring

 - qualification progress monitoring

 - retention monitoring

 achievement of timely success

 destination or other impact monitoring

 - complaint monitoring

- standardisation and moderation events.

- internal audit of learner files, documentation etc.

- annual production of a self-assessment report and in-year monitoring.

In this respect Open Door Adult Learning Centre staff will normally undertake a minimum of 2 review visits per

year and more if there are any compliance or quality concerns.

**SCHEDULE 3**

Period of this Agreement:

The duration of this Agreement shall be to 31 July 2013 but may be extended by mutual agreement of the parties, subject to a minimum of twelve months notice or to such notice period, if shorter than twelve months, being the number of months prior to 31 July in any year that the Agency notifies Open Door Adult Learning Centre of the funding for the period from 1 August of that year.

**SCHEDULE 4**

Upper limits on the number of Learners or Price permissible on the Programme(s):

**SCHEDULE 5**

Premises:

Address:

Post code:

**SCHEDULE 6**

Insurances:

Employers Liability and Third Party Liability Insurance must be in place and maintained throughout the duration of the Agreement with a Limit of Indemnity per claim on each Insurance of not less than £5 million.

Professional Negligence Insurance to cover education and training delivery must be in place and maintained throughout the duration of the Agreement with a Limit of Indemnity per claim of not less than £1 million.

**SCHEDULE 7**

Meeting Arrangements:

1. Meeting dates: as per mutual agreement but at least four per year plus audit visits. Meeting dates will be set out in the electronics events dairy.
2. Meeting venue: to be confirmed at each of the sub-contractor and lead contractor premises.