

**Memorandum of Understanding (MOU)**

**Cornwall Education Learning Trust (CELT) and Jason Thomas Dance School (JTDS)**

**Date: July 2023**

**Introduction**

This contract sets out the respective roles and responsibilities of both CELT and JTDS. Both CELT and JTDS have read, and will comply with, 'Funding guidance for young people 2022 to 2023, subcontracting control regulations, July 2022'.

The general principle is that students are enrolled as students of Bodmin College (BC) with JTDS being subcontracted to provide tuition on behalf of CELT.

The intention of the partnership is one in which we enhance the opportunities available to young people by providing expert provision and enabling wider access to appropriate high quality education via ESFA approved qualifications.

The course/s will be delivered over a one year period. The partnership will work to ensure compliance and excellence in:

- the management and control of the contract
- the welfare of the young people involved
- students' access to the full entitlement of study programmes and student support e the overall quality of the education and/or training being delivered under the subcontracting arrangement

Although students are enrolled at BC for the vast majority of their Study Programme they will attend JTDS for the vast majority of their learning. JTDS and BC are united as a registered Btec Exceptional Collaborative Arrangement centre as of September 2021.

**Purpose:** This contract entitles CELT to exercise management controls over JTDS activities including, if required, access by auditors appointed by CELT or the funding body.

**Duration:** The programme will start on September 1<sup>st</sup> 2023 and conclude on 31 August 2024.

**Finance**

CELT will receive 100% of the AWPU from the ESFA according to the number of students on the roll.

CELT will deduct 20% of the AWPU to cover its administration costs of the project including, but not limited to, quality assurance and 80% of the AWPU will be paid via invoice to JTDS by CELT.

The agreed level of funding is paid for JTDS to deliver the following qualifications:

- Level 3 National Foundation Diploma in Performing Arts
- Level 3 National Extended Diploma in Performing Arts
- Level 4 Diploma in Theatre Arts: Performance Pathway (The Dang)

- Level 4 Diploma in Performing

Students are not charged for completion of the above course/s as funding is supplied by the ESFA via CELT. Additional private study offered by JTDS is separate to ESFA funding and any top up funding required from parent/carers will be collected by JTDS in line with their policies and procedures.

All fees payable to JTDS will be inclusive of VAT if applicable.

### **Conflicts of interest**

CELT will be cognisant of, and take steps to avoid, and conflicts of interest and/or any circumstances which may give rise to an actual or perceived conflict of interest. It is not acceptable for staff with a direct or indirect financial interest in the subcontractor to undertake any management control activities.

### **Respective roles and responsibilities**

CELT will endeavour to meet all of requirements of the funding guidance.

CELT are responsible for all aspects of provision delivered under subcontracting arrangements. This includes, but is not limited to:

- Eligibility
- Performance
- Safeguarding
- Fee charging— institutions must be clear that public funding is only used to pay for delivering study programmes, and is not used to cover ancillary aspects, such as memberships of sports clubs or theatre groups

BC will place the students on roll and record subcontracted provision in line with published guidance for the school census and individualised learner record (ILR).

JTDS will manage all matters relating to their subcontracted provision of related courses. They will complete paperwork relating to courses (e.g. Assessment Plans, Student Trackers, Student Handbook, etc) and ensure staffing provision is appropriate to meeting the needs of all students enrolled on the course/s. Where students have not achieved a Level 2 pass in E/M JTDS will ensure they are enrolled into an appropriate programme of study.

Second-level subcontracting is not permitted. This means that JTDS must not subcontract any part of the delivery of ESFA-funded provision. The subcontractor's directly employed staff must deliver provision. If volunteers are delivering provision, the subcontractor must have control as if they were employed staff.

### **Monitoring**

CELT will ensure that they monitor the subcontracting delivery so that:

- they ensure learners are safeguarded (to inc. Prevent and GDPR (summary) e learners have full access to the entitlement, including (but not limited to) information about and access to 16 to 19 bursary and other student support funding, information, advice and guidance (IAG) and access to learning support if required
- the provision is of good quality and fill gaps in niche/expert provision providing better access to training facilities
- they ensure that all sites used for the delivery are of suitable quality for teaching and learning for young people

### **Controls over students, tutors and provision**

The directly funded institution must be able to demonstrate that they exercise all the following key controls:

- it can enrol or reject students as it would do if the students were to be taught on its own site
- students sign a learning agreement at the time of enrolment; the agreement must reflect the outcome of initial guidance and assessment for an individual student and set out their study programme and any learning support to be provided
- student eligibility for ESFA funding is confirmed through an enrolment form and/or learning agreement, which must include the name and logo of the directly funded institution, and which is signed by the student at the start of their programme
- a learning programme and its means of delivery has been clearly specified by the institution
- there are arrangements for assessing the progress of individual students
- there are procedures for the institution to regularly monitor the delivery of programmes provided in its name throughout the period of the programme

### **Controls over qualifications and curriculum**

As JTDS is the approved centre, CELT must ensure that an independent person with appropriate expertise in the curriculum area is able to provide advice on subcontracted arrangements and undertake the necessary checks on the operation of the arrangements, including quality checks. This person must not have a direct or indirect financial interest in the subcontractor to undertake any management control activities. When the subcontractor is the centre approved by the awarding body for the qualifications CELT must be able to demonstrate that it can exercise effective control over the provision. It must monitor the activities of the approved centre with regard to its relationship with the awarding body. It must exercise control over, and make appropriate arrangements for, quality assuring the provision, and be able to evidence these.

### **Monitoring (control) visits and spot-checks within study programmes**

Institutions must address all the monitoring, management and control issues over their subcontracted delivery set out in this document for themselves. Monitoring will include:

- checks on eligibility of provision
- direct observation of the initial guidance and assessment process
- the delivery of the study programmes throughout the period of delivery, which may include reviewing examples of student work. This must also include online learning

Spot-check visits will be carried out regularly, taking account of the pattern of provision so that they are applied to a significant proportion of students. Spot-check visits will involve CELT making unannounced visits in-year to JTDS. The checks must be proportionate to the risk and volume of the provision and contract. They must also be undertaken throughout the year at times that are proportionate to the periods in which funding is being claimed.

CELT will ensure that they meet and interview a sample of students and staff regularly. Institutions must ask students to name the institution they are enrolled at, and must also ask if they are at the same time, or have been recently, a student at another ESFA-funded institution. Other evidence sought must include:

- marketing material
- copies of registers
- learning agreements
- registration documents for awarding bodies
- visit notes from external moderators
- evidence of certification
- evidence of safeguarding activities

CELT will use systematic checks to confirm that the provision is being delivered and the location of delivery is consistent with their expectations and records. The number and characteristics of students must accord with the institution's expectations and records. CELT will carry out an investigation at their own cost if there is any evidence of a subcontractor having irregular financial or delivery activity. CELT must report the outcome of the investigation, in writing, to the ESFA within 10 days of the investigation ending.

Monitoring activities must be similar to those considered appropriate for external verification or moderation, sufficient to ensure that student progress can be monitored, and used to gather regular student feedback.

### **Termination**

In addition to contract expiry there are other reasons that the partnership may be terminated which will include material breach of contract (including quality concerns) and insolvency. As no institution may subcontract, without written ESFA permission, with any provider in the following categories this contract allows for immediate or early termination if these circumstances arise during the contract:

- a subcontractor that is inspected in its own right and found to be inadequate or underperforming by Ofsted
- a subcontractor that is subject to intervention by the DfE/ESFA
- where the institution is not permitted to recruit 16 to 18 year old students and/or 19 to 24 year old high needs students (HNS), for example, an 11 to 16 school

If CELT or JTDS end the subcontracting arrangement, they must make sure there is continuity of provision for those students already on the programme and that there is no gap in provision created as a result. Consequently, JTDS agree to teach the course to completion should any

premature close affect the agreement. In return CELT agree to continue to provide student funding in line with this agreement until students have completed their study.

If the subcontracting arrangement is terminated by either party then sufficient notice of at least 3 months must be given.

### **Escalation**

If any party has any issues, concerns or complaints about the project, or any matter in this MOU, that party shall notify the other party and the parties shall then seek to resolve the issue by a process of consultation. If the issue cannot be resolved within a reasonable period of time, the agreement shall be terminated in line with this MoU.

### **Controls and procedures**

Advice for accounting officers

CELT management and Trustees will ensure that:

- Subcontracted delivery arrangements comply with the evidence requirements set out in companion document Funding regulations.
- The controls set out in this document are in place and operating for all subcontractor arrangements.
- They are making appropriate systematic checks to ensure that students enrolled by subcontractors on their behalf and recorded in their records are correctly described in their own student record system and were actually receiving the scheduled provision described.
- Money from the 16 to 19 Bursary Fund is distributed in accordance with the relevant guidance, and is not used to pay for activity, equipment, or memberships that are not necessary for the study programme.
- Subcontracted delivery is of good quality.
- Students are safeguarded and are able to access financial and learning support in the same way as those attending the institution.

### **Procurement**

CELT will ensure that the subcontractor(s) is chosen fairly and that they have sufficient capacity, capability, quality and business standing to deliver the provision that is being subcontracted. CELT will take all necessary steps to eliminate any actual or perceived conflicts of interests in potential subcontractors, and eliminate such subcontractors from the process.

### **Due diligence**

CELT will carry out a process of due diligence to manage the reputational and other risks of contracting with the proposed subcontractor. This process will consider non-financial as well as financial issues. In financial terms the ESFA expects an inclusion of the steps set out below:

- Institutions must only award contracts to registered companies or charities. The status of companies must be recorded as 'active' on the Companies House register.

- CELT will assess the financial health of the proposed subcontractor on at least an annual basis to ensure that they have the financial standing and capacity to deliver the subcontract. This will involve obtaining and reviewing their statutory accounts (financial statements), and possible reference to credit agency checks. CELT will exercise extreme caution where a credit agency limit is low, or where the company has high levels of borrowing or poor indicators of financial solvency.
- CELT will not contract with companies with any of the following:
  - risk warnings (that is, above average risk warning from an agency)
  - legal notices (that is, intention to dissolve, winding up petition/order, compulsory or voluntary liquidation, etc)
  - overdue statutory accounts
- CELT will not contract with brand new companies who:
  - are yet to submit their first statutory accounts, unless they are able to thoroughly verify the new company's financial capacity
  - have a legal relationship with a company falling into categories listed above

CELT will gather relevant information about the proposed subcontractor to provide assurance of its ability to meet all requirements.

### **Variation**

This Memorandum may only be varied by written agreement of all parties.

### **Charges and liabilities**

The parties shall each bear their own costs and expenses incurred in complying with their obligations under this MoU.

The parties shall remain liable for any losses or liabilities incurred due to their own or their employee's actions and no party intends that the other parties shall be liable for any loss it suffers as a result of this MoU.

### **Status**

This MOU is not legally binding, and no legal obligations or legal rights shall arise between the parties from this MoU. The parties enter into the MOU intending to honour all their obligations. Nothing in this MOU is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party as the agent of the other party, nor authorise either of the parties to make or enter into any commitments for or on behalf of the other party.

### **Governing law and jurisdiction**



This MOU shall be governed by and construed in accordance with English law and, without affecting the escalation procedure, each party agrees to submit to the exclusive jurisdiction of the courts of England and Wales.

**Signed for and on behalf of CELT:**

Signature: 

Name: Alan Geoffrey Brown

Position: Chair of CELT Trustees

Date: 10<sup>th</sup> July 2023

**Signed for and on behalf of JTDS:**

Signature:

Name: Jason Thomas 

Position: Principal

Date: 31<sup>st</sup> October 2023