

# The Apprenticeship College

Model Framework Agreement Related to Apprenticeship  
Training (Non-Levy Funded)

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# **FRAMEWORK SERVICES AGREEMENT**

**relating to Apprenticeship Training for non-Levy Funded  
Employers**

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Version 4

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## **PARTIES, COMMENCEMENT AND DURATION**

### **DEFINITIONS AND INTERPRETATIONS**

#### **1 Interpretation**

The definitions and rules of interpretation set out in Schedule 1 shall apply in this Agreement.

### **ORDERING, INVOICING AND PAYMENT**

#### **2 Ordering Services**

2.1 The Employer may order any of the Training Services by making a request ('a Request for Services') to the Training Provider pursuant to this clause 2.

2.2 The Training Provider shall provide the Agreed Services from the date specified in the Request for Services that relates to those services.

2.3 Each Request for Services shall state the matters listed in the template request for services set out in the Contract of Service agreement.

2.4 The Training Provider and the Employer shall negotiate in good faith each Request for Services and:

2.4.1 the Employer shall provide the Training Provider with such information as it may reasonably require to enable it to assess the prior learning of any Apprentice or prospective Apprentice; and

2.4.2 without any obligation on either Party to agree, both Parties shall sign and date the Contract of Service agreement once it is agreed.

2.5 When a Request for Services has been agreed and signed in accordance with clause 2.4 the services specified in that Request for Services shall be Agreed Services and the date of the signed Request for Services shall be the RFS Agreement Date.

2.6 Each Request for Services shall form part of this Agreement and shall not form a separate contract.

#### **3 Changes to Services**

3.1 If the Employer or the Training Provider wishes to change this Agreement or the Agreed Services, it may at any time request such change in accordance with the Change Procedure set out in Schedule 4.

3.2 Notwithstanding any other provisions of this Agreement, where the Training Provider reasonably considers that a change to the Agreed Services is required in order to comply with any requirement of the ESFA taking effect after the RFS Agreement Date including any

modification of the ESFA Rules the Training Provider shall be entitled by notice in writing to the Employer ('a Mandatory Change Notice') to make such changes as it may reasonably decide are necessary to comply as specified in such Mandatory Change Notice with effect from a time specified in that notice and the Employer shall pay the Training Provider such amount as the Training Provider may reasonably determine to be the additional cost (if any) of providing the Agreed Services as so varied ('the Mandatory Additional Cost Payment').

#### **4 Charges, Invoicing and Payment**

- 4.1 The Training Provider shall be entitled to invoice monthly the Employer for the Relevant Percentage of the Qualifying Charges and the whole of any other charges and the Employer shall pay such invoices within 30 days of receipt of such invoice provided however that the Training Provider shall only be entitled to the Completion Payment once the Apprentice has sat his final assessment.
- 4.2 The Employer is responsible for payment of the Charges.
- 4.3 Notwithstanding any other provisions of this Agreement to the extent that the Charges are not actually paid by the ESFA out of the Government-Employer Co-investment Funding or via Transferred Levy Funds the Training Provider shall be entitled to invoice the Employer for the Charges in accordance with the Payment Schedule and otherwise at any time for services rendered at any time before the end of the most recently ended month and the Employer shall pay such invoices within 30 days of receipt provided however that where the Charges are paid via Transferred Levy Funds, the Training Provider shall only be entitled to the Completion Payment once the Apprentice has taken their end-point assessment.
- 4.4 The Charges are stated exclusive of applicable VAT.
- 4.5 The Training Provider shall promptly on request provide a VAT invoice to the Employer in respect of such of the Charges for the Agreed Services as are subject to VAT.
- 4.6 Without prejudice to the obligation on the Employer to pay the Charges the Employer shall provide such assistance to the Training Provider as the Training Provider may reasonably require to obtain any payment to which it may be entitled in respect of the Agreed Services or otherwise pursuant to this agreement under the ESFA Rules.
- 4.7 If and to the extent that the Training Provider receives a payment from Government-Employer Co-investment Funding or via Transferred Levy Funds in respect of services for which the Employer has already paid the Training Provider shall apply that payment first in satisfaction of any other sum which is or may become due owing or incurred by the Employer to the Training Provider on any account and thereafter as to any balance in payment to the Employer.
- 4.8 Without prejudice to any other rights of the Training Provider any invoice that is not paid when due shall bear interest at the rate of 3 per cent above the base rate for the time being of Barclays Bank plc.

## TRAINING PROVIDER RESPONSIBILITIES

### 5 Training Provider General Responsibilities

5.1 The Training Provider shall:

5.1.1 provide the Agreed Services in all material respects in accordance with the applicable Request for Services and Good Industry Practice;

5.1.2 use all reasonable endeavours to meet any performance dates specified in a Request for Services;

5.1.3 specify in the Request for Services a manager ('the Services Manager'), to act on behalf of the Training Provider in all matters relating to the Agreed Services and use reasonable endeavours to ensure that the same person acts as the Services Manager for the duration of the Agreed Services; and

5.1.4 observe all health and safety and security requirements that apply at any of the Employer's premises that have been communicated to it under clause 9.1.5, provided that it shall not be liable under this Agreement if, as a result of such observance, it is in breach of any of its obligations under this Agreement.

5.2 The Training Provider shall at all times for the duration of this Agreement have and maintain the following policies (as amended from time to time):

5.2.1 data and privacy policy; and

5.2.2 Training Provider complaints policy.

5.3 If the Agreed Services are Government-Employer Co-investment Funded or funded by Transferred Levy Funds the provisions of clauses 9, 7 and 8 shall apply.

### 6 Training Provider ESFA Responsibilities

6.1 Subject to clause 5.3 the Training Provider shall in accordance with the ESFA Rules:

6.1.1 prepare and distribute to the Employer and the Apprentice the Training Plan and Commitment Statement at the outset of an Apprentice's programme;

6.1.2 extend the actual end-date of the Apprenticeship if the working hours of the Apprentice fall below 30 hours a week;

6.1.3 check the eligibility of the individual Apprentice at the start of their apprenticeship programme;

6.1.4 conduct an initial assessment of the Apprentice's abilities, knowledge, skills and behaviours which includes the identification and recognition of the Apprentice's prior learning, carrying out relevant diagnostic testing (where required) and the identification of any learner support needs;

- 6.1.5 only use Government-Employer Co-investment Funding and Transferred Levy Funds for those who are eligible
  - 6.1.6 retain evidence of each Apprentice's eligibility for as long as reasonably necessary;
  - 6.1.7 carry out a thorough assessment to identify any learning difficulty or disability that requires reasonable adjustments and the additional learning support (Additional Funding) the Apprentice needs in order to complete the Apprenticeship and if appropriate record in the ILR that an Apprentice has a learning support need;
  - 6.1.8 agree and record the outcomes of the additional learning support assessment, deliver support in line with the identified needs, record all outcomes in the evidence pack, and retain evidence of the assessment;
  - 6.1.9 conduct a thorough Functional Skills assessment based on the national literacy and numeracy standards if an Apprentice requires further training before being able to achieve a Level 2 Standard and the Training Provider is seeking funding for this;
  - 6.1.10 contract in writing with an End-Point Assessment Organisation of the Employer's choosing, and agree with it provisions covering the arrangements for sharing relevant information about the Apprentice so end-point assessment and certification can take place, including arrangements for any re-takes and payments and change of circumstances which may delay or lead to the cancellation of end-point assessment and for this purpose the Employer shall choose an End-Point Assessment Organisation reasonably acceptable to the Training Provider within 14 days of the Training Provider requiring it to do so and if the Employer shall fail to do so the Training Provider is hereby authorised in the name and on behalf of the Employer to choose such End-Point Assessment Organisation as the Training Provider thinks fit provided that no End-Point Assessment Organisation shall be appointed pursuant to this clause which is connected with the Training Provider or which is not on the ESFA Register of End-Point Assessment Organisations;
  - 6.1.11 make payment to the End-Point Assessment Organisation for conducting the end-point assessment and keep records of all such payments;
  - 6.1.12 collect employer co-investments regularly during the Apprenticeship and report the value received on the ILR and ensure all employer co-investments are collected in full at least one month prior to the date on which the Completion Payment is due and the Training Provider shall not return to the Employer, in total or in part, the Employer's co-investments once the co-investments have been collected;
  - 6.1.13 where the volume of off-the-job training delivered is less than the volume of planned off-the-job training produce a statement in accordance with the ESFA Rules; and
  - 6.1.14 update the commitment statement with any material changes throughout the Apprenticeship as identified during progress reviews.
- 6.2 Notwithstanding any other provisions of this Agreement, the Training Provider shall not be required to provide the Training Services unless the Employer has agreed with the Training

Provider that the Apprenticeship to be provided for any Apprentice is the most appropriate for that individual, in accordance with ESFA Rules.

- 6.3 The Employer acknowledges that it has the option of using the Recruit an Apprentice Service for all new recruits.
- 6.4 Where the Training Provider advertises on behalf of the Employer using the Recruit an Apprentice Service, the Training Provider shall make clear in the advertisement how many hours will be expected being not less than the minimum duration requirements for the Apprenticeship.

## **7 Subcontracting by the Training Provider**

- 7.1 Subject to clause 5.3 if any subcontractor is used by the Training Provider to provide any of the Agreed Services the Training Provider warrants that:
  - 7.1.1 it has the knowledge, skills and experience of contracting with, and managing, delivery subcontractors;
  - 7.1.2 it has not assessed that subcontractor as unsuitable and that the quality of that sub-contractor's delivery is not demonstrably inadequate;
  - 7.1.3 it will directly deliver some of the Apprenticeship training and/or on-programme assessment associated with each Employer's Apprenticeship programme in accordance with the ESFA Rules;
  - 7.1.4 it will not use a subcontractor for the delivery of the Agreed Services unless that subcontractor satisfies the criteria for using delivery subcontractors specified in the ESFA Rules including but without limiting the generality of the foregoing that the subcontractor is on the RoATP;
  - 7.1.5 it will manage, monitor and regularly assess for quality its delivery subcontractors through visits and face to face interviews to ensure high-quality delivery and compliance with safeguarding requirements in accordance with its agreement with the ESFA for the provision of funded delivery and the ESFA Rules;
  - 7.1.6 it will obtain an annual report from an external auditor if the total Apprenticeship contracts with delivery subcontractors exceeds £100,000 in any one financial year;
  - 7.1.7 it will not permit any subcontractor to subcontract the performance of its obligations;
  - 7.1.8 it will not enter into an agreement for brokerage contrary to the ESFA Rules; and
  - 7.1.9 it will ensure learners supported through subcontracting arrangements know about the relationship between the Training Provider and the delivery subcontractor including each party's roles and responsibilities in delivering the Agreed Services;



- 7.1.10 it will enter into a written agreement with the subcontractor before the subcontractor starts delivering the Agreed Services;
- 7.1.11 it will provide the Employer with information regarding the funding retained by the Training Provider and the funding paid to the subcontractor; and
- 7.1.12 the contract with the subcontractor will specify the matters required to be specified in that subcontract by the ESFA Rules.

## **8 Training Provider Assurances**

8.1 Subject to clause 5.3 the Training Provider warrants that it will not:

- 8.1.1 use Employer or government account funds for an Apprentice's programme where they or another party claim funding from another government department or other agency for the same purpose;
- 8.1.2 claim funding for any part of any Apprentice's programme that duplicates training or assessments they have received from any other source;
- 8.1.3 commence an Apprentice's programme if there is no prospect of the Apprentice completing the programme within the amount of time available;
- 8.1.4 enrol an Apprentice without confirmation that they are not undertaking another Apprenticeship or another DfE funded FE/HE programme contrary to the ESFA Rules;
- 8.1.5 enrol an Apprentice without ensuring that they meet the eligibility requirements or have permission to work in England;
- 8.1.6 enrol an Apprentice against an Apprenticeship standard unless it has been identified as approved for delivery in accordance with the ESFA Rules;
- 8.1.7 claim funding for individuals who do not meet the eligibility requirements set out in the ESFA Rules;
- 8.1.8 claim funding from the ESFA other than for training or assessment in accordance with the ESFA Rules;
- 8.1.9 request any employer contribution to the cost of an Apprenticeship up to the maximum value of the funding band if the Employer employing fewer than 50 people recruit an eligible apprentice;
  - (a) aged between 16 and 18 years old (or 15 years old if the apprentice's 16<sup>th</sup> birthday is between the last Friday of June and 31 August)
  - (b) aged between 19 and 24 years old and either has:
    - (i) an EHC plan provide by their local authority; or

- (ii) has been in the care of their local authority as defined in the funding rules;
- 8.1.10 except as permitted by the ESFA Rules provide end-point assessment to any Apprentice it has trained; or
- 8.1.11 pay an inducement or any other payment not authorised by the ESFA Rules to an Employer or any other training provider or an End-Point Assessment Organisation.
- 8.2 Subject to clause 5.3 the Training Provider warrants that:
  - 8.2.1 off the job training will be directly relevant to the apprentice standard and otherwise will comply with the ESFA Rules;
  - 8.2.2 it has robust procedures in place to ensure it does not inadvertently fund extremist organisations through the subcontracting of apprenticeship training and/or on-programme assessment.

## **EMPLOYER RESPONSIBILITIES**

### **9 Employer General Responsibilities**

- 9.1 The Employer shall:
  - 9.1.1 co-operate with the Training Provider in all matters relating to the Agreed Services;
  - 9.1.2 specify in the Request for Services a manager ('the Contract Manager') to act on behalf of the Employer in all matters relating to the Agreed Services;
  - 9.1.3 provide the Training Provider at no charge with such access to the Employer's premises, data and other facilities as the Training Provider may reasonably require;
  - 9.1.4 provide the Training Provider in a timely manner and within no later than 5 Business Days with all such documents, information and materials in any form as the Training Provider may reasonably require;
  - 9.1.5 inform the Training Provider of all health and safety and security requirements that apply at the Employer's premises;
  - 9.1.6 ensure that all the Employer's Equipment is in good working order and suitable for the purposes for which it is used;
  - 9.1.7 obtain and maintain all necessary licences and consents and comply with all applicable laws as may be required to enable the Training Provider to provide the Agreed Services, the installation of the Training Provider's Equipment, the use of all Employer Materials and the use of the Employer's Equipment, in all cases before the date on which the Agreed Services are to start;

- 9.1.8 keep, maintain and ensure the Training Provider's Equipment in accordance with the Training Provider's instructions from time to time and not dispose of or use the Training Provider's Equipment other than in accordance with the Training Provider's written instructions or authorisation;
  - 9.1.9 make any complaint to the Training Provider only in accordance with the Training Provider's Complaints Policy provided pursuant to clause 5.2.2;
  - 9.1.10 inform the Training Provider if it is claiming the incentive payment for a new Apprentice; and
  - 9.1.11 pay to the Training Provider the employer co-investments required to be collected by the Training Provider in accordance with Clause 9.1.12 and in particular but without in any way limiting the foregoing pay to the Training Provider all employer co-investments payable by the Employer in full at least one month prior to the date on which the Completion Payment is due.
- 9.2 If the Agreed Services are Government-Employer Co-investment Funded or funded by Transferred Levy Funds the provisions of clauses 11, 12 and 13 shall apply.

## **10 Employer Apprenticeship Responsibilities**

- 10.1 The Employer shall:
- 10.1.1 distribute to the Training Provider and to the Apprentice a copy of the signed Apprenticeship Agreement;
  - 10.1.2 subject to any adjustment for prior learning or any other exception to the rules on the minimum duration of an Apprenticeship in accordance with the ESFA Rules, or where an Apprentice is completing an Alternative Apprenticeship, enter into an Apprenticeship Agreement with each Apprentice for:
    - (a) a fixed term of at least 372 days for at least 30 hours per week; or
    - (b) fewer than 30 hours per week (or an unspecified number of hours including for the avoidance of doubt zero hours) but for an extended duration in accordance with the ESFA Rules;and which includes such other particulars as the ESFA Rules may require;
  - 10.1.3 work with the Training Provider and each Apprentice to agree an Apprenticeship Standard, Commitment Statement and Training Plan for each Apprentice;
  - 10.1.4 pay each Apprentice at least the minimum wage required by law and provide the Training Provider with written confirmation thereof;
  - 10.1.5 assist the Apprentice with his development as much as possible to the reasonable satisfaction of the Training Provider;

- 10.1.6 permit the Training Provider to apply for additional funding as provided in the ESFA Rules;
- 10.1.7 compensate the Training Provider for all costs and expenses reasonably incurred by the Training Provider:
  - (a) if it is prevented by the Employer from attending and inspecting the Employer's premises; or
  - (b) if the Apprentice fails to keep an appointment with the Training Provider owing to any act or omission of the Employer; and
- 10.1.8 where part-time working is agreed or the Apprenticeship agreed is a zero-hours contract extend the duration of the Apprenticeship as the Training Provider may require to comply with the ESFA Rules.
- 10.1.9 promptly notify the Training Provider where there is a break in learning due to an agreed break from the Apprenticeship, maternity leave, parental leave, adoption leave or other leave and an Apprentice intends to continue with the permitted amount off-the-job training and enter an additional agreement with the Apprentice and Training Provider in accordance with the ESFA Rules;
- 10.1.10 promptly notify the Training Provider where there is a change of circumstance in relation to the working hours of the Apprentice and discuss with the Apprentice and Training Provider in accordance with the ESFA Rules;
- 10.1.11 promptly notify the Training Provider where the Apprentice intends to move to a new version of an apprenticeship standard and discuss the change, including appointing a new End-Point Assessment Organisation where required, with the Apprentice and the Training Provider in accordance with ESFA Rules.

## **11 Employer ESFA Responsibilities**

- 11.1 Subject to clause 9.2 the Employer undertakes that in accordance with the ESFA Rules it shall:
  - 11.1.1 promptly provide accurate and up to date information to the reasonable satisfaction of the Training Provider;
  - 11.1.2 provide the Training Provider with all reasonable support and information it requires in relation to the Apprentice and the Apprenticeship;
  - 11.1.3 at all times provide the Training Provider with up-to-date information on the Apprentice's employment status or breaks in learning;
  - 11.1.4 immediately notify the Training Provider of any changes to the Apprentice's employment status;

- 11.1.5 promptly provide the Training Provider with such information as it may reasonably require for it to obtain Government-Employer Co-investment Funding and Transferred Levy Funds, including but not limited to evidence:
- (a) of the Apprentice's eligibility to receive funding at the start of the Apprenticeship programme;
  - (b) of the Apprentice's employment by either the Employer or a connected company or charity as defined by HM Revenue and Customs;
  - (c) that the Apprentice is spending at least 20% of their paid hours on off-the-job training directly relevant to the Apprenticeship Standard (excluding English and maths up to and including Level 2);
  - (d) of the Apprentice's average weekly hours;
  - (e) that the job allows the Apprentice to gain wider employment experience;
  - (f) that the total amount of time spent on an Apprenticeship meets the ESFA's minimum duration funding rule if an Apprentice is changing their Apprenticeship Standard, transfers between providers, or takes a break in learning; and
  - (g) that the Employer employs an average of 49 or fewer employees if the Employer is relying on funding from the government.
- 11.1.6 involve the Apprentice in active learning or monitored workplace practice throughout the Apprenticeship programme to the reasonable satisfaction of the Training Provider;
- 11.1.7 provide the Apprentice with support and supervision to the reasonable satisfaction of the Training Provider;
- 11.1.8 subject to the Apprenticeship Agreement ensure that the Apprentice works a minimum of 30 hours a week, including any off-the-job training;
- 11.1.9 ensure that the Apprentice works such number of hours per week to undertake sufficient, regular training and on the job activity as the Training Provider may reasonably require;
- 11.1.10 permit the Apprentice to complete the Apprenticeship within their working hours (including for English and maths) and provide such evidence of doing so or having done so as the Training Provider may reasonably require;
- 11.1.11 extend the working hours of the Apprentice or the duration of the Apprenticeship in accordance with the ESFA Rules as the Training Provider may reasonably require if the Training Provider determines that the Apprentice has worked below the minimum number of hours required to complete the Apprenticeship or where a part-time working pattern is needed and in that case provide the Training Provider with

- such evidence as it may reasonably require to show why this working pattern is needed;
- 11.1.12 disclose any reason why the Apprentice may not have enough time to complete the Apprenticeship;
  - 11.1.13 ensure that the Apprentice will spend at least 50% of his working hours in England over the duration of the Apprenticeship;
  - 11.1.14 ensure that the Apprentice is not already undertaking any other Apprenticeship programme or another DfE funded FE/HE programme contrary to the ESFA rules;
  - 11.1.15 ensure that each Apprentice is eligible to work in England;
  - 11.1.16 promptly provide the Training Provider with any information it may reasonably require in relation to previous Apprenticeship training or qualifications that any Apprentice may have received;
  - 11.1.17 promptly confirm with the ESFA the spending of Transferred Levy Funds;
  - 11.1.18 promptly pay all sums owed to the Training Provider in relation to the Apprenticeship including the full difference between band maximums and agreed prices, or for any mandatory co-investment;
  - 11.1.19 where there is a break in learning due to illness, parental leave or any other reasons notify the Training Provider and not pause payments otherwise than with consent of the Training Provider, such consent not to be unreasonably withheld, and extend the practical period as the Training Provider may reasonably require;
  - 11.1.20 ensure that the Apprentice is prepared for the end-point assessment process to the reasonable satisfaction of the Training Provider; and
  - 11.1.21 at least 6 months before the Apprentice reaches the gateway select an End-Point Assessment Organisation to deliver end-point assessment from the ESFA Register of End-Point Assessment Organisations and negotiate a price with the End-Point Assessment Organisation taking into account the ESFA's expectation that the cost of end-point assessment should not usually exceed 20% of the funding band maximum and the ESFA's expectation that Employer's must achieve good value for money.
- 11.2 Unless otherwise agreed the Employer hereby appoints the Training Provider to record the required details of the Apprenticeship with the ESFA and if otherwise the Employer shall promptly record the required details of the Apprenticeship with the ESFA.
- 11.3 The Employer warrants to the Training Provider that each Apprenticeship under this Agreement is a genuine apprenticeship within the meaning of the ESFA Rules.
- 11.4 If the Employer receives Transferred Levy Funds, the Employer shall provide the Training Provider with a completed subsidy control declaration for the funding received and if the Training Provider becomes aware that the Employer has exceeded its small amounts of

financial assistance exemption the Training Provider shall be free to report that fact to the ESFA.

- 11.5 Unless otherwise agreed the Employer hereby appoints the Training Provider to reserve funds and enter information on their behalf and where funds have not been reserved before the Apprenticeship start date the Training Provider is authorised to reserve funds on the employer's behalf. Where any funds have been reserved on behalf of the Employer the Employer shall not change the provider without the consent of the Training Provider such consent not to be unreasonably withheld. Where the reservation expires otherwise than owing to the default or neglect of the Training Provider before the Apprenticeship starts the Employer will pay a reasonable charge to the Training Provider for the work of making a new reservation.
- 11.6 Where an electronic or digital signature is being held by the ESFA from the Employer the Employer undertakes to take such steps as the Training Provider may require to satisfy the ESFA that the original signature has not been altered.

## **12 Employer Additional Apprentice Responsibilities**

- 12.1 Subject to clause 9.2 the Employer undertakes that in accordance with the ESFA Rules, it shall not:
- 12.1.1 require Apprentices (including former Apprentices) to make financial contributions towards the cost of the Apprenticeship programme, on programme or end-point assessment (including in relation to their former Apprenticeship programme);
  - 12.1.2 require the Training Provider to seek Additional Funding in relation to Learning Support if in the Training Provider's reasonable opinion the Additional Funding is being used or would be used to support the Apprentice with everyday difficulties not directly related to the Apprenticeship, or to address gaps in the Apprentice's prior knowledge, skills or behaviours that are relevant to the Apprenticeship, or where the Training Provider would incur no cost for putting in place reasonable adjustments for the Apprentice, or where reasonable adjustments are not required to be provided to the Apprentice;
  - 12.1.3 withdraw Apprentices and re-start Apprenticeships that originally commenced before 1 May 2017 when the ESFA Rules came into force; or
  - 12.1.4 use Transferred Levy Funds to pay for Apprenticeships which originally commenced before 1 May 2018.
- 12.2 If the Employer receives Transferred Levy Funds:
- 12.2.1 the Employer must follow the ESFA's apprenticeship funding rules for employers (as amended from time to time) for all Apprenticeships funded by a transfer;
  - 12.2.2 the Employer must pay the Training Provider the Employer co-investment if the full cost of the Apprenticeship cannot be met by the Transferred Levy Funds or from the Employer's Apprenticeship Service Account; and

12.2.3 the Employer warrants that it has arranged the transfer to fund the Apprenticeship from the outset.

### **13 Employer Training Provider Responsibilities**

13.1 The Employer shall observe and perform any ESFA Apprenticeship Agreement for Employers entered into between the Employer and the ESFA that applies to any Apprenticeship under this Agreement.

13.1.1 Without prejudice to clause 13.1 the Employer shall:

- (a) promptly and whenever reasonably required by the Training Provider provide such information as the ESFA may require to pay the Charges; and
- (b) authorise and direct the ESFA to make payments to the Training Provider for the Agreed Services and the assessment by the End-Point Assessment Organisation;

in each case to the extent permissible under the ESFA Rules.

13.2 If the Employer receives Transferred Levy Funds, the Employer shall notify the Training Provider which Apprenticeships are funded by the Transferred Levy Funds before the Apprenticeship starts.

13.3 The Employer shall not agree a commitment on the ESFA Apprenticeship Service where the Apprenticeship would be eligible for support for small employers. Funding for these Apprenticeships must be claimed as set out in the "support for small employers" section of the ESFA Rules.

13.4 The Employer shall not be entitled to stop or suspend payments by the ESFA to the Training Provider unless one of the Termination Conditions applies.

13.5 Subject to clause 9.2 the Employer shall indemnify the Training Provider against all loss damages costs claims and expenses suffered or incurred by the Training Provider as a result of:

13.5.1 the Employer failing to disclose any information to the Training Provider that was reasonably required by the Training Provider, including but not limited to:

- (a) where a Training Provider is unable to claim Additional Funding due to the employer's failure to provide sufficient information within a reasonable period of time;
- (b) any change of circumstance relating to the Employer or the Apprentice;

13.5.2 any action which the ESFA may take if the Employer's recruitment practice is detrimental either to the Apprentice or the apprenticeship brand; or



- 13.5.3 as a result of the ESFA taking action to recover funding from the Training Provider owing to any breach of the ESFA Rules by the Employer or any breach of this Agreement by the Employer which results in a breach of or failure to comply with the ESFA Rules.

## **MUTUAL ESFA RESPONSIBILITIES**

### **14 Positive Obligations**

- 14.1 If the Agreed Services are Government-Employer Co-investment Funded or funded by Transferred Levy Funds each of the Training Provider and the Employer undertakes with the other that it shall in accordance with the ESFA rules:
- 14.1.1 enter into a written Apprenticeship Agreement and Commitment Statement in relation to each Apprentice at the start of and for the entire length of the Apprenticeship (including end-point assessment if applicable) except where the Apprentice is completing an Alternative Apprenticeship;
  - 14.1.2 agree the time when the Apprentice has obtained sufficient knowledge, skills and behaviours to successfully complete the apprenticeship and for this purpose the Employer shall within 14 days of the Training Provider requiring it to do so agree such a time as proposed by the Training Provider and if the Employer shall fail to do so the Training Provider is hereby authorised in the name and on behalf of the Employer and the Training Provider to decide that time as the Training Provider thinks fit;
  - 14.1.3 take the costs of the end-point assessment and any re-takes into account when agreeing the Charges;
  - 14.1.4 take the Apprentice's prior learning into account when agreeing the Charges
  - 14.1.5 include the contact details and website for the Training Provider on the written agreement with the Apprentice and on the Commitment Statement; and
  - 14.1.6 if the Apprenticeship is achieved and the Apprentice does not stay with the Employer cooperate with the other to support the Apprentice and seek alternative opportunities.

### **15 Negative obligations**

- 15.1 If the Agreed Services are Government-Employer Co-investment Funded or funded by Transferred Levy Funds each of the Training Provider and the Employer undertakes to the other that in accordance with the ESFA Rules it shall not:
- 15.1.1 use Government-Employer Co-investment Funding or Transferred Levy Funds for any of the following:

- (a) enrolment, induction, initial assessment, initial diagnostic testing or similar activity;
- (b) travel costs for apprentices under any circumstances;
- (c) Apprentice wages;
- (d) personal protective clothing and safety equipment required by the Apprentice to carry out their day-to-day work;
- (e) development of original teaching materials related to the delivery of a new apprenticeship offer;
- (f) off-the-job training delivered only by distance learning, not including online and other blended learning activities; or
- (g) any training, optional modules, educational trips or trips to professional events in excess of those required to meet the knowledge, skills and behaviours of the Apprenticeship Standard; this includes training solely and specifically required for a licence to practise;
- (h) any fees to third parties associated with a licence to practise; this applies even where a licence to practise is specified in the apprenticeship standard and assessment plan;
- (i) any fees to awarding bodies for non-mandatory qualifications (qualifications that are not specifically listed in the standard); this includes registration, examination and certification costs;
- (j) student membership fees that are required by professional bodies, even when linked to mandatory qualifications;
- (k) registration and examination (including certification) costs associated with a licence to practise; this applies even where a licence is specified in the Apprenticeship Standard and assessment plan;
- (l) registration and examination (including certification) costs for non-mandatory qualifications (qualifications that are not specifically listed in the Apprenticeship Standard);
- (m) end-point assessment costs incurred by the Training Provider but not included in the price agreed between the Employer and any End-Point Assessment Organisation;
- (n) English and Maths up to Level 2;
- (o) repeating the same regulated qualification where the Apprentice has previously achieved it unless it is a requirement of the Apprenticeship or for any GCSE;

- (p) training for skills, knowledge and behaviours already attained by the apprentice;
- (q) accommodation costs (including residential costs associated with non-mandatory qualifications) where the Apprentice is resident away from their home base, because of the requirements of their day-to-day work or because this is convenient for the Employer or Training Provider;
- (r) capital purchases (and the maintenance of capital purchases), including lease agreements, which would have a lifespan beyond the Apprenticeship being funded;
- (s) maintenance of capital purchases; this includes vehicle parts and labour, insurance and MOT;
- (t) time spent by employees/managers supporting Apprentices, mentoring or time arranging training support except where this is directly linked to the training assessment, including end-point assessment; or
- (u) specific services not related to the delivery and administration of the Apprenticeship, this includes the recruitment and continuing professional development of staff involved in apprenticeships, company inductions, management agents, brokerage services (to an employer or main provider) and the costs of memberships or other costs paid to employers, or their representatives, associated with procurement registers or opportunities to secure business.

## **16 Change of circumstances**

- 16.1 Where training and/or assessment is no longer being delivered owing to a change in circumstance the Employer shall pay:
- 16.1.1 the cost of the Charges for the training and any end-point assessment delivered up to and including to the termination date; and
  - 16.1.2 any mandatory co-investment due for any training or end-point assessment already delivered as reasonably determined by the Training Provider and if the Training Provider determines that there has been an over-payment of Charges by the Employer the Training Provider shall repay to the Employer the amount of the over-payment.
- 16.2 For the purposes of this clause if an Apprentice leaves without completing their apprenticeship, the termination date shall be the last date of learning, including the apprenticeship programme learning aim, is the date the Training Provider has evidence the apprentice was still in learning for any learning that was part of their apprenticeship.
- 16.3 The Employer shall notify the Training Provider where an Apprentice is dismissed by reason of redundancy.

## **17 General Terms and Conditions**

17.1 The general terms and conditions set out in Schedule 2 shall apply.

This Agreement has been entered into as a deed and delivered on the date stated at the beginning of it.

## Schedule 1

### Definitions and Interpretations

1.1 The definitions and rules of interpretation set out below shall apply in this Agreement.

<b>Additional Funding</b>	means either funding for Apprentices in need of Functional Skills or Learning Support;
<b>Agreed Services</b>	means the Training Services and any other services to be provided by the Training Provider pursuant to clause 2, including unless the context otherwise requires services which are incidental or ancillary to the Training Services and 'the Agreed Services' shall mean all Agreed Services agreed pursuant to every Request for Services under this agreement as varied by any applicable Change Note or Mandatory Change Notice;
<b>Alternative Apprenticeship</b>	Means an Apprenticeship where the Apprentice has been made redundant and on the day of dismissal is within six months of the final day of their Apprenticeship practical period; or has completed at least 75% of the Apprenticeship practical period; or an Apprenticeship for particular office holders namely constables of English police forces and ministers or trainee ministers of religious denominations;
<b>Apprentice</b>	means an individual employed by the Employer or by a connected company or charity as permitted by the ESFA rules under an Apprenticeship Agreement who is an Apprentice under the ESFA Rules and in relation to whom the Training Provider is to provide any of the Agreed Services;
<b>Apprenticeship</b>	means the training and employment of an Apprentice in accordance with the ESFA Rules;
<b>Apprenticeship Agreement</b>	means a written contract of employment between the Apprentice and the Employer including a statement on the skill, trade or occupation in which the Apprentice is being trained;
<b>Apprenticeship Standard</b>	means a standard approved by the ESFA and published by the Secretary of State, and assessed through a standardised exam, more particularly described in the ESFA Rules;
<b>Apprenticeship Service Account</b>	means the Employer's apprenticeship service account under the ESFA Rules;
<b>Awarding Organisation</b>	means the approved qualification-awarding organisation for the applicable Apprenticeship;

<b>Business Day</b>	means a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business;
<b>Business Hours</b>	means the period from 9.00am to 5.00pm on any Business Day;
<b>Change Note</b>	means a Change Note pursuant to clause 3 and Schedule 4;
<b>Charges</b>	means the charges specified in a Request for Services for the Agreed Services together with any Mandatory Additional Cost Payment;
<b>Commencement Date</b>	means the date of this Agreement;
<b>Commitment Statement</b>	means the statement agreed between the Parties as set out in Schedule 6;
<b>Control</b>	shall be as defined in section 1124 of the Corporation Tax Act 2010, and the expression change of control shall be construed accordingly;
<b>Completion Payment</b>	means the payment for the 20% of the Charges for each Apprenticeship that under the ESFA Rules is only paid once an Apprentice takes their end point assessment, including as the case may be Apprenticeships funded by Transferred Levy Funds;
<b>Confidential Information</b>	means any information that a Party has or acquires <b>before, on or</b> after the date of this Agreement that is confidential in nature concerning the other Party including, without limitation, its business, affairs, customers, clients, suppliers, plans or strategy or that of any member of the group of companies to which the other Party belongs;
<b>Data Protection Law</b>	means the UK GDPR as defined in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018, and any national laws or regulations implementing or constituting a replacement or successor data protection regime to that governed by the UK GDPR (including the Data Protection Act 2018);
<b>Employer's Equipment</b>	means any equipment, including tools, systems, cabling or facilities, provided by the Employer, its agents, subcontractors or consultants which is used directly or indirectly in the supply of the Agreed Services including any such items specified in a Request for Services;
<b>Employer Materials</b>	means all documents, information, items and materials in any form, whether owned by the Employer or a third party, which are provided by the Employer to the Training Provider in connection with the Agreed Services, including the items provided pursuant to clause 9;
<b>End-Point Assessment Organisation</b>	means an approved organisation on the ESFA's Register of End Point Assessment Organisations;

<b>ESFA</b>	means the Education and Skills Funding Agency;
<b>ESFA Rules</b>	means the ESFA's funding rules as contained in: <i>Apprenticeship funding and performance-management rules for main providers August 2019 to July 2020 dated July 2019</i> as amended from time to time;
<b>Force Majeure Event</b>	means any circumstance not within a Party's reasonable control including, without limitation: <ul style="list-style-type: none"> <li>(a) acts of God, flood, drought, earthquake or other natural disaster;</li> <li>(b) terrorist attack, civil commotion or riots, war, threat of or preparation for war;</li> <li>(c) nuclear, chemical or biological contamination;</li> <li>(d) any law or any action taken by a government or public authority;</li> <li>(e) collapse of buildings, fire, explosion or accident;</li> <li>(f) any labour or trade dispute, strikes, industrial action or lockouts (other than in each case by the Party seeking to rely on this clause, or companies in the same group as that Party);</li> <li>(g) non-performance by suppliers or subcontractors (other than by companies in the same group as the Party seeking to rely on this clause); and</li> <li>(h) interruption or failure of utility service;</li> </ul>
<b>Functional Skills</b>	means Functional Skills for the purposes of the ESFA Rules;
<b>Good Industry Practice</b>	means standards, practice methods and procedures conforming to applicable legal requirements and that degree of care and skill diligence and prudence which would be reasonably expected of an experienced person engaged in providing services similar in nature to the Training Services in a similar type and size of undertaking and under the same or similar circumstances as anticipated by this Agreement;
<b>Government-Employer Co-investment Funding</b>	means funding provided via government-employer co-investment in accordance with the ESFA Rules;
<b>ILR</b>	means the individualised learner record which the Training Provider

submits to the ESFA;

<b>Intellectual Property Rights (IPRs)</b>	means patents, rights to inventions, copyright and moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;
<b>Learning Support</b>	means support available for Apprentices with learning difficulties or disabilities;
<b>Mandatory Additional Charges</b>	shall have the meaning given in clause 6.2;
<b>Mandatory Change Notice</b>	shall have the meaning given in clause 3.2;
<b>Mandatory Policies</b>	means the Employer's business policies listed in Schedule 7, as amended by notice to the Training Provider from time to time;
<b>Payment Schedule</b>	means the schedule for payment agreed between the Parties as stated at Schedule 10;
<b>Qualifying Charges</b>	such of the Charges as qualify for Government-Employer Co-investment Funding by the ESFA;
<b>Recruit an Apprentice Service</b>	means the government provided service which allows training providers to post and manage apprenticeship vacancies on behalf of employers eligible to make use of the service;
<b>Relevant Percentage</b>	means in relation to any Apprenticeship the Employer's co-investment rate for Government-Employer Co-Investment funding in accordance with the ESFA Rules;
<b>Request for Services</b>	means a request for services made in accordance with clause 2;
<b>RFS Agreement Date</b>	means the date which is the RFS Agreement Date pursuant to clause 2.5;  means the Register of Apprenticeship Providers as published by the



<b>RoATP</b>	ESFA from time to time.
<b>Termination Conditions</b>	means the conditions specified in Schedule 2 paragraphs 6.1.1, 6.1.2 and 6.1.3;
<b>Training Provider's Equipment</b>	means any equipment, including tools, systems, cabling or facilities, provided by the Training Provider to the Employer and used directly or indirectly in the supply of the Agreed Services, including any such items specified in a Request for Services but excluding any such items which are the subject of a separate agreement between the parties under which title passes to the Employer;
<b>Training Materials</b>	means all documents, information, items and materials in any form, whether owned by the Training Provider or a third party, which are used by the Training Provider in connection with the Agreed Services;
<b>Training Plan</b>	means in relation to each Apprentice a plan agreed between the Employer, the Training Provider and the Apprentice setting out how the Apprentice will develop the skills required under the Apprenticeship Standard;
<b>Training Services</b>	means the services set out in Schedule 9;
<b>Transferred Levy Funds</b>	means levy funding provided by the ESFA which is transferred from one employer to another employer as permitted under the ESFA Rules; and
<b>VAT</b>	means value added tax chargeable under the Value Added Tax Act 1994.

- 1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this Agreement.
- 1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 The Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Schedules.
- 1.5 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6 Unless the context otherwise requires, words in the singular shall include the plural and, in the plural, shall include the singular.
- 1.7 Unless the context otherwise requires, a reference to one gender shall include a reference to each other gender.

- 1.8 This Agreement shall be binding on, and ensure to the benefit of, the Parties to this Agreement and their respective personal representatives, successors and permitted assigns, and references to any Party shall include that Party's personal representatives, successors and permitted assigns.
- 1.9 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.10 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.11 A reference to writing or written does not include fax and email.
- 1.12 Any obligation on a Party not to do something includes an obligation not to allow that thing to be done.
- 1.13 A reference to this Agreement or to any other agreement or document referred to in this Agreement is a reference of this Agreement or such other agreement or document as varied or novated (in each case, other than in breach of the provisions of this Agreement) from time to time.
- 1.14 References to clauses and Schedules are to the clauses and Schedules of this Agreement and references to paragraphs are to paragraphs of the relevant Schedule.
- 1.15 Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.16 Words or phrases defined in the ESFA Rules shall have the same meaning in this document.
- 1.17 The provisions of this Agreement which are stated to apply if the Agreed Services are Government-Employer Co-investment Funded or funded by Transferred Levy Funds shall be construed consistently with the ESFA Rules.

## Schedule 2

### General Terms and Conditions

#### 1 Intellectual Property Rights

- 1.1 In this paragraph 1 'its Materials' means in relation to the Training Provider the Training Materials and in relation to the Employer the Employer Materials.
- 1.2 Each Party (or its licensors, as applicable) shall retain ownership of all IPRs in its Materials.
- 1.3 Each Party hereby grants to the other a non-exclusive, non-transferable, royalty free licence to use its Materials to the extent reasonably necessary for the Training Provider to provide the Agreed Services;
- 1.4 Each Party:
- 1.4.1 warrants that the receipt and use in the performance of this Agreement by the other, its agents, subcontractors or consultants of its Materials will not infringe the rights, including any Intellectual Property Rights, of any third party; and
  - 1.4.2 shall keep the other indemnified against all damages, costs, claims and expenses suffered or incurred by it as a result of any actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the receipt or use in the performance of this Agreement of its Materials.

#### 2 Data Protection and Data Processing

- 2.1 The Parties shall comply with the Data Protection Wording set out at Schedule 3.

#### 3 Confidentiality

- 3.1 Each Party undertakes that it shall not at any time during this Agreement, and for a period of five years after termination of this Agreement, disclose to any person any Confidential Information of the other Party or of any member of the group of companies to which the other Party belongs, except as permitted by paragraphs 3.2 and 3.3.
- 3.2 Each Party may disclose the other Party's Confidential Information:
- 3.2.1 to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the Party's rights or carrying out its obligations under or in connection with this Agreement provided that such Party shall procure that its employees, officers, representatives or advisers to whom it discloses the other Party's Confidential Information comply with this paragraph 3; and
  - 3.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

- 3.3 Each Party may disclose the other Party's Confidential Information if, to the extent to which either Party can prove to the other's reasonable satisfaction that the Confidential Information:
- 3.3.1 is, or has become, generally available to the public other than as a direct or indirect result of the information being disclosed by a Party or its representatives in breach of this Agreement;
  - 3.3.2 was available on a non-confidential basis to a Party prior to disclosure to it by the other Party;
  - 3.3.3 is developed by or for a Party independently of the information disclosed by the other Party; or
  - 3.3.4 the Parties agree in writing that the information is not confidential.

#### **4 Anti-bribery and anti-corruption**

- 4.1 Each party undertakes that it shall:
- 4.1.1 comply with all applicable laws, statutes, regulations relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010; and
  - 4.1.2 not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK.

#### **5 Limitation of Liability**

- 5.1 Nothing in this Agreement shall limit or exclude either Party's liability for:
- 5.1.1 death or personal injury caused by its negligence;
  - 5.1.2 fraud or fraudulent misrepresentation; or
  - 5.1.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession) or any other liability which cannot be limited or excluded by applicable law.
- 5.2 Subject to paragraph 5.1, the Training Provider shall not be liable to the Employer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with this Agreement for:
- 5.2.1 loss of profits; sales or business; anticipated savings; goodwill;
  - 5.2.2 loss of use or corruption of software, data or information; or
  - 5.2.3 any indirect or consequential loss.
- 5.3 Subject to paragraph 5.1, the Training Provider's total liability to the Employer, whether in contract, tort (including negligence), for breach of statutory duty, misrepresentation or otherwise, arising under or in connection with the performance or contemplated performance

of this Agreement shall be limited to the total Charges paid during the 12 months immediately preceding the date on which the claim arose.

- 5.4 The terms implied by section 3, 4 and 13 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from this Agreement.

## **6 Termination**

- 6.1 Without affecting any other right or remedy available to it, either Party may terminate this Agreement in its entirety or only in relation to the Agreed Services agreed pursuant to any Request for Services with immediate effect by giving written notice to the other Party if:

6.1.1 the other Party commits a material breach of any term of this Agreement and such breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;

6.1.2 the other Party repeatedly breaches any of the terms of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement;

6.1.3 the other Party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986.

- 6.2 Without affecting any other right or remedy available to it, the Training Provider may terminate this Agreement with immediate effect by giving written notice to the Employer if:

6.2.1 the Employer fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment; or

6.2.2 there is a change of Control of the Employer.

## **7 Consequences of Termination**

- 7.1 On termination or expiry of this Agreement:

7.1.1 unless expressly stated otherwise in the termination notice this Agreement shall continue in relation to any uncompleted Agreed Services agreed pursuant to every Request for Services until those services are completed, provided that the Training Provider shall be entitled to cease to perform these Agreed Services on notice in writing;

7.1.2 the Employer shall immediately pay to the Training Provider all Charges due in respect of the Agreed Services or otherwise and whether or not the Training Provider is entitled to be paid any of those charges out of the Government-Employer Co-investment Funding or Transferred Levy Funds;

- 7.1.3 the Employer shall promptly return all of the Training Provider's Equipment and if the Employer fails to do so, the Training Provider may enter the Employer's premises and take possession of the Training Provider's Equipment;
  - 7.1.4 until the Training Provider's Equipment has been returned or repossessed, the Employer shall be solely responsible for its safe keeping; and
  - 7.1.5 the Training Provider shall on request return any of the Employer Materials not used up in the provision of the Agreed Services.
- 7.2 Termination or expiry of this Agreement shall not affect any rights, remedies, obligations or liabilities of the Parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiry.

## **8 Employer Delay and Force Majeure**

- 8.1 If a Party ('the Affected Party') is prevented, hindered or delayed in or from performing any of its obligations under this Agreement by a Force Majeure Event, the Affected Party shall not be in breach of this Agreement or otherwise liable for any such failure or delay in the performance of such obligations. Without prejudice to paragraph 8.3 the time for performance of such obligations shall be extended while the effects of Force Majeure Event prevails.
- 8.2 The corresponding obligations of the other Party shall be suspended, and its time for performance of such obligations extended, to the same extent as those of the Affected Party.
- 8.3 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than 3 months, the Party not affected by the Force Majeure Event may terminate this Agreement by giving 1 month written notice to the Affected Party and paragraph 7 shall apply.
- 8.4 Notwithstanding the other provisions of this paragraph 8.4 if the Training Provider's performance of its obligations under this Agreement is prevented or delayed by any act or omission of the Employer, its agents, subcontractors, consultants or employees then, without prejudice to any other right or remedy it may have, the Training Provider shall be allowed an extension of time to perform its obligations equal to the delay caused by the Employer or further if reasonably required by the Training Provider.

## **9 Assignment and Other Dealings**

- 9.1 Subject to paragraph 9.2, neither Party may assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under this Agreement without the consent of the other Party.
- 9.2 The Training Provider may in accordance with the other provisions of this Agreement subcontract performance of the Agreed Services to any sub-contractor with the consent of the Employer such consent not to be unreasonably withheld and provided for the avoidance of doubt that the Training Provider shall remain responsible for performance of the Agreed Services by that sub-contractor and if the Apprenticeship is Government-Employer Co-

investment Funded or funded by Transferred Levy Funds the Training Provider shall remain responsible for complying with its responsibilities under this agreement.

## 10 **Variation**

Subject to clause 3, no variation of this agreement shall be effective unless it is in writing and signed by the Parties (or their authorised representatives).

## 11 **Waiver**

11.1 A waiver of any right or remedy under this Agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default.

11.2 A failure or delay by a Party to exercise any right or remedy provided under this Agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this Agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.

## 12 **Severance**

If any provision or part-provision of this Agreement is invalid, illegal or unenforceable, the Parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

## 13 **Entire Agreement**

13.1 This Agreement constitutes the entire Agreement between the Parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

13.2 Each Party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement. Each Party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.

## 14 **Partnership and Agency**

14.1 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between either of the Parties, constitute either Party the agent of the other, or save as otherwise expressly provided authorise either Party to make or enter into any commitments for or on behalf of the other.

14.2 Each Party confirms it is acting on its own behalf and not for the benefit of any other person.

14.3 For the purpose of obtaining any payment to which the Training Provider may be entitled in respect of the Agreed Services or otherwise pursuant to this Agreement under the ESFA Rules and by way of security the Employer hereby irrevocably appoints the Training Provider

to be its attorney in its name and on its behalf to do anything necessary or desirable to obtain such payment

**15 Third Party Rights**

No one other than a Party their successors and permitted assignees, shall have any right to enforce any of its terms.

**16 Notices**

16.1 Any notice given to a Party under or in connection with this Agreement shall be in writing and shall be delivered by hand or by pre-paid first-class recorded or other next Business Day signed for delivery service at its registered office (if a company) or its principal place of business (in any other case).

16.2 Any notice shall be deemed to have been received: on signature of a delivery receipt.

16.3 This clause does not apply to the service of any proceedings or any documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

**17 Counterparts**

17.1 This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

17.2 No counterpart shall be effective until each Party has executed and delivered at least one counterpart.

**18 Disputes**

If a dispute arises out of or in connection with this Agreement or the performance, validity or enforceability of it the Parties shall follow the procedure set out in Schedule 5.

**19 Governing Law and Jurisdiction**

19.1 This Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

19.2 Each Party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Agreement or its subject matter or formation.



## Schedule 3

### Data Protection Wording

1 The definitions set out at Schedule 1 of this Agreement shall apply to this Schedule 3. In addition, the following definitions shall also apply:

**Agreed Purposes:** means the purposes set out in parts A and B of Appendix 1 to this Schedule and such other purpose as the Parties may agree in writing from time to time.

**Apprentice Personal Data:** means Personal Data about apprentices of the Employer;

**Data Controller:** means the natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the Processing of Personal Data; where the purposes and means of such Processing are determined by Union or Member State law, the Data Controller or the specific criteria for its nomination may be provided for by Union or Member State law;

**Data Discloser:** a Party who discloses Personal Data to the other under or in connection with this Agreement.

**Data Processor:** means a natural or legal person, public authority, agency or other body which Processes Personal Data on behalf of the Data Controller;

**Data Receiver:** a Party who receives Personal Data from the other under or in connection with this Agreement.

**Data Subject:** means an identified or identifiable natural person about whom Personal Data is processed; an identifiable natural person is one who can be identified, directly or indirectly, by reference to the Personal Data;

**Personal Data:** means information relating to a Data Subject such as a name, an identification number, location data, online identifier or one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that person, including opinions about a Data Subject.

**Processing:** means any operation or set of operations which is performed on Personal Data or on sets of Personal Data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction;

**Special Category Personal Data:** Personal Data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership; genetic or biometric data processed for the purpose of uniquely identifying a natural person; data concerning health or data concerning a natural person's sex life or sexual orientation;

**Shared Personal Data:** the Personal Data to be shared between the parties for the Agreed Purpose, including the Apprentice Personal Data and the Staff Personal Data and such other Personal Data as agreed from time to time between the parties for the purpose of giving effect to this Agreement.

**Staff Personal Data:** Personal Data about the employees, consultants, agents and others engaged by one of the parties.

2 This Schedule sets out the framework for the sharing of Personal Data between the Parties as Data Controllers.

- 3 Each Party agrees to only process Shared Personal Data for the Agreed Purposes and such other purpose as the Data Subjects may consent from time to time
- 4 Each Party shall comply with all applicable requirements of the Data Protection Law with respect to its Processing of the Shared Personal Data.
- 5 Each party agrees to only Process the Shared Personal Data for the Agreed Purpose on the terms set out in this Agreement. This clause is in addition to, and does not relieve, remove or replace a Party's obligations under the Data Protection Law.
- 6 The Data Discloser shall, in respect of Shared Personal Data, ensure that its privacy notices are clear and shall 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 the identity of the Data Receiver.
- 7 The Data Receiver undertakes to inform the Data Subjects the purposes for which it will Process their Personal Data and provide all of the information that it must provide in accordance with Data Protection Law, to ensure that the Data Subjects understands how their Personal Data will be Processed by the Data Receiver.
- 8 The Training Provider may, at its sole discretion, request that the Employer provide evidence in a form acceptable to the Training Provider of the Employer's compliance with Data Protection Law.

#### **Use of Data Processors and Sub-Processors**

- 9 The Data Receiver shall not engage a third-party Data Processor to Process the Shared Personal Data without the prior written consent of the Data Discloser, provided that the Training Provider may appoint a Permitted Data Processor without requiring further consent from the Employer.
- 10 Where the Data Receiver ('the Data Controller' for the purpose of paragraphs 9 and 10) appoints a third party as Data Processor for the purpose of Processing Shared Personal Data it shall ensure that the Data Processor has in place appropriate technical and organisational measures to meet the requirements of Data Protection Law and protect Data Subject rights.
- 11 The Data Controller shall enter into a written agreement which provides that the Data Processor shall Process Shared Personal Data only in accordance with the following:
  - 11.1 the Data Processor shall only Process the Shared Personal Data on documented instructions from the Data Controller, including with regard to transfers of Personal Data to a third country or an international organisation, unless required to do so by applicable law to which the Data Processor is subject; in such a case, the Data Processor shall inform the Data Controller of that legal requirement before Processing, unless that law prohibits such information on important grounds of public interest;
  - 11.2 the Data Processor shall ensure that persons authorised to Process the Personal Data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality;

11.3 taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of Processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, the Data Processor shall implement appropriate technical and organisational measures to ensure a level of security appropriate to the risk, including inter alia as appropriate:

11.3.1 the pseudonymisation and encryption of Personal Data;

11.3.2 the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services;

11.3.3 the ability to restore the availability and access to Personal Data in a timely manner in the event of a physical or technical incident; and

11.3.4 a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the Processing;

11.3.5 any specific measures set out in Appendix 1 to this Schedule 3;

11.4 with reference to paragraph 11.3.4, in assessing the appropriate level of security, account shall be taken in particular of the risks that are presented by Processing, in particular from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to Personal Data transmitted, stored or otherwise processed;

11.5 in the event of an actual or suspected Personal Data breach involving the Shared Personal Data, the Data Controller shall take overall responsibility for any Personal Data breach obligations under Data Protection Law. The Data Processor shall conform to the reasonable requirements of the Data Controller in respect of Personal Data breach notification requirements under Data Protection Law, including;

11.5.1 notifying the Data Controller without undue delay, and not later than 48 hours after having become aware of the Personal Data breach, to enable the Data Controller to fulfil its notification requirements to the ICO; and

11.5.2 the notification described in paragraph 11.5.1 shall at least:

- (a) describe the nature of the Personal Data breach, including where possible: the categories and approximate number of Data Subjects concerned and the categories and approximate number of Personal Data records concerned;
- (b) communicate the name and details of the data protection officer or other contact point where more information can be obtained;
- (c) describe the likely consequences of the Personal Data breach; and
- (d) describe the measures taken or proposed to be taken to address the Personal Data breach, including, measures to mitigate its possible adverse effects;

11.6 each party shall be responsible for any obligation it has with regards to the rights of Data Subjects, save that if a Data Subject exercises, or purports to exercise any of their rights under Data Protection Law in respect of Personal Data then:

11.6.1 the Data Processor shall inform the Data Controller and the Data Controller may, at its discretion, provide any response to the Data Subject having regard to both the Data Controller's and the Data Processor's obligations under Data Protection Law;

11.6.2 the Data Processor shall not respond to the Data Subject unless instructed to do so by the Data Controller; and

11.6.3 the Data Processor shall promptly provide all information in its possession or control that the Data Controller requires in order to respond to the Data Subject;

11.7 where the Data Controller seeks to implement a new type of Processing activity under this Agreement, in particular where the Data Controller is making use of new technologies, the Data Processor shall either:

11.7.1 carry out a data protection impact assessment (**DPIA**) assessing the impact of the envisaged Processing activity on the protection of Personal Data; or

11.7.2 provide the Data Controller with all such cooperation and reasonable assistance as required to enable the Data Controller to carry out the DPIA and implement measures to mitigate the risks to Personal Data and the rights and freedoms of the Data Subjects; and

where the results of the DPIA indicate that the Processing activity will result in a high risk to the rights and freedoms of natural persons, the Data Processor shall assist the Data Controller in notifying the Processing activity to the Information Commissioner's Office (**ICO**) and implementing the agreed measures, prior to the commencement of the new Processing activity.

11.8 the Data Controller and Data Processor shall take steps to ensure that any natural person acting under the authority of the Data Controller or the Data Processor who has access to Personal Data does not Process them except on instructions from the Data Controller, unless he or she is required to do so by applicable law;

11.9 the Data Processor shall not engage another Data Processor without first informing the Data Controller of any intended changes concerning the addition or replacement of other Data Processors, thereby giving the Data Controller the opportunity to object to such changes;

11.10 where a Data Processor engages another Data Processor for carrying out specific Processing activities on behalf of the Data Controller, the same data protection obligations as set out in this Agreement shall be imposed on that other Data Processor by way of a contract or other legal act under applicable law, in particular providing sufficient guarantees to implement appropriate technical and organisational measures in such a manner that the Processing will meet the requirements of Data Protection Law. Where that other Data Processor fails to fulfil its data protection obligations, the initial Data Processor shall remain

fully liable to the Data Controller for the performance of that other Data Processor's obligations;

11.11 taking into account the nature of the Processing, the Data Processor shall assist the Data Controller by appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of the Data Controller's obligation to respond to requests for exercising the Data Subject's rights laid down in Data Protection Law;

11.12 at the choice of the Data Controller, the Data Processor shall delete or return all the Personal Data to the Data Controller after the end of the provision of the Agreed Services relating to Processing, and delete existing copies unless applicable law requires storage of the Personal Data;

11.13 the Data Processor shall make available to the Data Controller all information necessary to demonstrate compliance with the obligations laid down under Data Protection Law and allow for and contribute to audits, including inspections, conducted by the Data Controller or another auditor mandated by the Data Controller; and

11.14 with regard to paragraph 11.11, the Data Processor shall immediately inform the Data Controller if, in its opinion, an instruction infringes Data Protection Law.

12 Where either Party is acting as a Data Processor on behalf of the other Party, the provisions of paragraph 10 shall apply directly between the Parties.

## Appendix 1

### Data Processing Particulars

#### Part A. Processing by the Training Provider

<b>Scope:</b>	Processing of Personal Data by the Training Provider under the terms of this Agreement whereby the Training Provider provides a programme of academic learning for apprenticeships to Apprentices of the Employer.
<b>Nature:</b>	<p>1. The collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of Apprentice Personal Data in connection with the Training Provider providing a programme of academic learning for apprenticeships,</p> <p>2. The collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of Employer Staff Personal Data in connection with the Training Provider providing a programme of academic learning for apprenticeships to the Employer's apprentices</p>
<b>Purpose:</b>	<p>The provision by the Training Provider of a programme of academic learning for apprenticeships to the Employer's apprentices</p> <p>Communication between the Training Provider and the Employer in relation to the provision by the Training Provider of a programme of academic learning for apprenticeships to the Employer's apprentices</p> <p>[Other]</p>
<b>Period for which Shared Personal Data will be retained:</b>	Apprentice Personal Data (other than the Training Records) until [six months] after the Apprenticeship End Date, or until the Agreement

	<p>terminates, whichever is earlier.</p> <p>Employer's Staff Personal Data- for the period of time for which the information is required to facilitate the running of the Apprenticeship or until this Agreement terminates (whichever is earlier), and for [6 months] thereafter.</p>
<b>Types of Personal Data:</b>	[the Training Provider to insert types of Personal Data to be processed including Special Categories - e.g., name, address, date of birth, email address, telephone number, health details, academic results and progress...]
<b>Categories of Data Subject:</b>	<ul style="list-style-type: none"> <li>• Apprentices of the Employer.</li> <li>• Staff of the Employer.</li> <li>• Staff of the Training Provider.</li> <li>• [OTHERS - PLEASE COMPLETE].</li> </ul>
<b>Permitted Data Processors</b>	<ul style="list-style-type: none"> <li>• Any person providing the Training Services on behalf of the Training Provider;</li> <li>• IT service providers (for the purpose of hosting, supporting or maintaining the Training Provider's IT systems, including any back-up and disaster recovery systems)</li> <li>• End Point Assessors</li> </ul>

## Schedule 4

### Change Procedure

- 1 Any discussions which may take place between the Employer and the Training Provider in connection with a possible change shall be without prejudice to the rights of either Party.
- 2 A request to amend this Agreement or the Agreed Services by either Party shall be made in writing to the other in the form of a note ('a Proposed Change Note').
- 3 Each Proposed Change Note shall state:
  - 3.1 the name of the Party requesting the change;
  - 3.2 the date of the request;
  - 3.3 the reason for the change;
  - 3.4 full details of the change;
  - 3.5 the price, if any, of the change;
  - 3.6 the likely impact of the change on other aspects of this Agreement including:
    - 3.6.1 the timetable for the provision of the Agreed Services;
    - 3.6.2 the effect on the Charges;
    - 3.6.3 the training to be provided;
    - 3.6.4 the use of sub-contractors;
    - 3.6.5 working arrangements;
    - 3.6.6 other contractual issues; and
  - 3.7 a timetable for implementation of the change.
- 4 The Training Provider and the Employer shall negotiate each Proposed Change Note in good faith and without any obligation on either Party to agree, both Parties shall sign the Proposed Change Note once it is agreed.
- 5 A Proposed Change Note when signed by the Employer and the Training Provider shall thereupon become a Change Note and shall constitute an amendment to this Agreement.



## Schedule 5

### Dispute Resolution Procedure

- 1 Either Party may give to the other written notice ('a Dispute Notice'), setting out the nature and particulars of the disputed matter ('the Dispute') together with relevant supporting documents.
- 2 On service of a Dispute Notice, the Contract Manager and the Training Manager (together 'the Managers') shall attempt in good faith to resolve the dispute.
- 3 If the Managers are unable to resolve the Dispute within 30 days of service of the Dispute Notice, the Dispute shall be referred to the chief executive officer of the Employer and chief executive officer of the Training Provider (together 'the chief executive officers') who shall attempt in good faith to resolve it.
- 4 If the chief executive officers are unable to resolve the Dispute within 30 days of it being referred to them, the Parties shall attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure.
- 5 Unless otherwise agreed between the Parties, the mediator shall be nominated by CEDR.
- 5.1 to initiate the mediation, a Party shall serve notice in writing ('an ADR notice') to the other Party to the Dispute, requesting a mediation;
- 5.2 a copy of the ADR notice should be sent to CEDR; and
- 5.3 the mediation will start not later than 30 days after the date of the ADR notice.
- 6 If the Dispute is not resolved within 90 days after service of the ADR notice, or either Party fails to participate or to continue to participate in the mediation before the expiration of the said period of 90 days, or the mediation terminates before the expiration of the said period of 90 days, the Dispute shall be finally resolved by the courts of England and Wales in accordance with clause 19.
- 7 The commencement of mediation shall not prevent the Parties commencing or continuing court proceedings in relation to the Dispute at any time.

## Schedule 6

### The Commitment Statement

- 1 The Commitment Statement shall include in accordance with the ESFA rules:
  - 1.1 the planned content and schedule for eligible training including the end-point assessment if they are undertaking a standard;
  - 1.2 what is expected from and offered by the Employer, Training Provider (and any subcontractors) and the Apprentice to achieve the Apprenticeship;
  - 1.3 a summary of:
    - 1.3.1 details of the Apprenticeship being followed, including start and end-dates for the apprenticeship training and (where applicable) end-point assessment, dates relating to the practical period of training and key milestones for mandatory or other qualification achievements making clear whether or not the component has been used towards the calculation of the minimum 20% off-the-job training requirement;
    - 1.3.2 the amount of off-the-job training that will be delivered to meet the minimum 20% requirement; the individual's prior learning must be taken into account before calculating the off-the-job requirements and designing the programme;
    - 1.3.3 details on which elements are eligible for funding from the Employer's Apprenticeship Service Account or Government-Employer Co-investment and necessary to meet any end-point assessment, those which are extra and not eligible for co-investment but will be fully funded by the Employer, and those fully funded by the ESFA including English and maths;
    - 1.3.4 the list of all organisations delivering the training including English and maths and the End-Point Assessment Organisation (when known);
  - 1.4 roles and responsibilities for the Employer, Training Provider and Apprentice and arrangements for how the three parties will work together. This must include contact details and the expected commitment from each party to ensure the smooth running and day-to-day delivery of the Apprenticeship, including:
    - 1.4.1 Apprentice: attendance and study time;
    - 1.4.2 Employer: commitment to wages and time off to study in the working day; and
    - 1.4.3 Training Provider: support and guidance available and how to access this.
  - 1.5 details of tripartite progress reviews (main provider, employer, apprentice), including the frequency and format, to discuss progress to date against the commitment statement and the immediate next steps required.

- 1.6 the process for resolving any queries or complaints regarding the Apprenticeship, including quality; this must include details of the escalation route within the Training Provider's own organisation and the escalation process to the ESFA through the apprenticeship helpline;
- 1.7 confirmation from the Employer that the Apprentice will be allowed to undertake off-the-job training within their normal working hours in addition to English and maths training if required.