

## **Agreement Terms**

### **1. Definitions and Interpretation**

#### **1.1** The definitions and rules of interpretation in this clause apply to this agreement:

**Accountability Statement** means the “Apprenticeship Accountability Statement” published by the Department for Education which sets out the roles and responsibilities of the various regulatory bodies responsible for regulating Apprenticeships;

**Additional Payment** means additional payments means payments made available to the employers and paid to the training provider on employers’ behalf by the ESFA such as the additional payment for 16 to 18 year olds and eligible 19 to 24 year olds;

**Agreement Particulars** means the particulars of this agreement as set out and attached to this agreement above;

**Agreement Terms** means these terms from clause 1 to 20 (inclusive);

**Apprentice** means a person who works under an Apprenticeship Agreement entered into with the Employer;

**Apprenticeship** means the training and (where applicable) end-point assessment for an employee as part of a job with an accompanying skills development programme in accordance with section A1 of the Apprenticeships, Skills, Children and Learning Act 2009;

**Apprenticeship Agreement** means (a) an approved English apprenticeship agreement; or (b) an apprenticeship agreement within the meaning given in section 32 or section A1(4) of the Apprenticeship, Skills, Children and Learning Act 2009 as it applies in relation to England;

**Apprenticeship Programme** means a programme of Training set out in Schedule 1 or agreed pursuant to clause 4 to 6 (inclusive);

**Apprenticeship Programme Completion Date** means the date on which the last Apprentice provided with Training under this agreement successfully completes the relevant End-Point Assessment (including following any resits or retakes necessary for such successful completion) or withdraws from the Apprenticeship or is deemed to have failed the apprenticeship as defined in the EPA Assessment Plan or Approved Apprenticeship Standard;

**Approved Apprenticeship Standard** has the meaning given in Section A1 of the Apprenticeships, Skills, Children and Learning Act 2009;

**Break in Learning** means a period of time during an Apprenticeship Programme in which the Apprentice is not participating in work with the Employer, nor undertaking any training or learning with the Training Provider and where at the time of notification the Apprentice intends to resume participation in the Apprenticeship at some point in the future. By way of example only, this may be due to illness, pregnancy or other reason which makes them temporarily unable to continue with the Apprenticeship;

**Bribery Act** the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation;

**Charges** means the full cost of the Services provided in accordance with the Apprenticeship Programme(s) as set out the relevant Apprenticeship Programme including the cost of any resits pursuant payable to clause 4.1.8 and additional costs pursuant to clause 19.3;

**Data Controller** has the meaning set out under the Data Protection Legislation;

**Data Processor** has the meaning set out under the Data Protection Legislation;

**Data Protection Legislation** means (i) the Data Protection Act 1998 and, for the periods when they are in force, (ii) the General Data Protection Regulation (Regulation (EU) 2016/679) and the Law Enforcement Directive (Directive (EU) 2016/680) and any applicable national implementing laws as amended from time to time, and (iii) the Data Protection Act 2018 (subject to royal assent);

**Data Subject** has the meaning set out in the Data Protection Legislation;

**Employer Charges** means the eligible, evidenced cost to the Employer of providing the part of the Training allocated to it in an Apprenticeship Programme;

**Employer's Digital Account** the part of the ESFA's apprenticeship service which shows the amount of Funding available to the Employer to spend on Training of Apprentices;

**Employer's Representative** means the person stated as the Employer's representative in the Agreement Particulars or notified to the Training Provider from time to time;

**End-Point Assessment (EPA)** the assessment (and any resits of that assessment) of the Apprentice's knowledge, skills and behaviours carried out by an End-Point Assessment Organisation at the end of the Training to confirm that the Apprentice has met the requirements of any relevant Approved Apprenticeship Standard;

**End-Point Assessment Organisation (EPAO)** means any organisation on the Register of End-Point Assessment Organisations which is selected by an Employer and contracted by a Training Provider to carry out End-Point Assessment except where the Apprenticeship relates to an Integrated Degree Apprenticeship in which case the End-Point Assessment Organisation may be the Training Provider;

**EPA Assessment Plan** means the scheme of assessment approved by the Institute for Apprenticeships in relation to an Approved Apprenticeship Standard which EPAOs use to develop assessment tools and deliver EPAs;

**ESFA** means the Secretary of State for Education, acting through the Educations and Skills Funding Agency, an executive agency of the Department for Education, whose principal address is at Cheylesmore House, Quinton Road, Coventry, CV1 2WT;

**ESFA Contingency** means the action following change in employer, apprentice or provider circumstances set out in the Funding Rules;

**ESFA Contingency Event** means each scenario described in each ESFA Contingency;

**Expiry Date** means the date stated as being the expiry date in the Contract Particulars;

**Funding** the funding paid to the Training Provider on behalf of the Employer towards the cost of Training and End-Point Assessment in accordance with this agreement;

**Funding Rules** the Apprenticeship Funding and Performance Management Rules for Training Providers and, where applicable, the Apprenticeship Funding: Rules for Employer-Providers, both as revised and amended from time to time;

**Good Industry Practice** means the exercise of such degree of skill, diligence and care which would reasonably and ordinarily be expected from a skilled and experienced provider engaged in the discharge of their usual business (as the context so dictates) under the same or similar circumstances as those applicable to this Agreement;

**Incentive Payment** means an incentive payment made available to employers and paid to the Training Provider on employers' behalf by the ESFA;

**Integrated Standard** is an Approved Apprenticeship Standard in which the End-Point Assessment is incorporated into the main learning aim (usually a degree or other full higher education qualification) as defined in the Funding Rules;

**Intellectual Property Rights** means any and all intellectual property rights of any nature anywhere in the world whether registered, registerable or otherwise, including patents, utility models, trademarks, registered designs and domain names, applications for any of the foregoing, trade or business names, goodwill, copyright and rights in the nature of copyright, design rights, rights in databases, moral rights, know-how and any other intellectual property rights which subsist in computer software, computer programs, websites, documents, information, techniques, business methods, drawings, logos, instruction manuals, lists and procedures and particulars of customers, marketing methods and procedures and advertising literature, including the “look and feel” of any websites;

**Law** means all statutes, statutory instruments, regulations, byelaws, rules, judicial rulings and orders made under any statute, directive or by any competent legislative or judicial body in England and Wales;

**Mandatory Policies** means the policies of the Training Provider made known to the Employer from time to time;

**OfS** means the Office for Students or such other statutory or non-statutory body responsible for regulating the higher education sector from time to time and all matters currently assigned to the OfS under the Accountability Statement;

**Ofsted** means the Office for Standards in Education, Children’s Services and Skills Piccadilly Gate, Store Street, Manchester, M1 2WD or such other statutory or non-statutory body responsible for carrying out its functions from time to time (including but not limited to the regulation of the further education sector, teacher training in the higher education sector and all matters assigned to it under the Accountability Statement);

**Personal Data** has the meaning set out the Data Protection Legislation;

**QAA UK Quality Code** means the code published by the QAA which sets out the expectations that all providers of UK higher education are required to meet;

**Quality Assurance Agency** for Higher Education (QAA) means the Quality Assurance Agency for Higher Education, company number 03344784 with registered office Southgate House, Southgate Street, Gloucester, Gloucestershire, GL1 1UB or such other statutory or non-statutory body responsible for carrying out its functions from time to time (including but not limited to monitoring and improving quality in the higher education sector and all matters assigned to it under the Accountability Statement);

**Services** the provision of training services in respect of the Apprenticeship Programmes, as further detailed in Schedule 1 or agreed pursuant to clause 4 to 6 (inclusive);

**Subcontractor** means a person or organisation selected by the Employer and the Training Provider to deliver part of the Training on behalf of the Training Provider under this agreement (and where the Employer is selected to deliver some of the training on behalf of the Training Provider under this agreement, they will also be considered to be a Subcontractor whilst undertaking that delivery);

**Training** means the delivery of training and on-programme assessment by the Training Provider to one or more Apprentices;

**Training Provider’s Representative** means the person stated as the Training Provider’s representative in the Contract Particulars or notified to the Employer from time to time;

**Unfunded Charges** means such parts of the Charges that have not been recovered from the ESFA for any reason other than the default of the Training Provider;

**VAT** means value added tax at the rate prevailing at the time of the relevant supply charged in accordance with the provisions of the Value Added Tax Act 1994;

1.2 Clause and Schedule headings do not affect the interpretation of this agreement;

- 1.3 References to clauses and Schedules are (unless otherwise provided) references to the clauses and Schedules of this agreement;
- 1.4 If there is an inconsistency between any of the provisions in the main body of this agreement and the Schedules, the provisions in the main body of this agreement shall prevail;
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular;
- 1.6 A reference to a statute or statutory provision or the Funding Rules is a reference to it as amended, extended or re-enacted from time to time;
- 1.7 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time;
- 1.8 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;
- 1.9 Words or phrases defined in the Funding Rules shall have the same meaning in this agreement;
- 1.10 a reference to a person includes firms, partnerships and corporations and their successors and permitted assignees or transferees;

## **2. Commencement and Duration**

- 2.1 This agreement shall commence on the date stated in the Contract Particulars and shall continue until the later of:
  - 2.1.1 the Expiry Date;
  - 2.1.2 the latest Apprenticeship Programme Completion Date to occur provided that the relevant Apprenticeship Programme giving rise to such date has commenced prior to the Expiry Date.

## **3. Training Provider Obligations**

- 3.1 The Training Provider shall deliver the Services to the Employer:
  - 3.1.1 in accordance with and for the duration of the relevant Apprenticeship Programme;
  - 3.1.2 using reasonable skill and care;
  - 3.1.3 in compliance with the Funding Rules;
  - 3.1.4 in compliance with the Law and associated codes and guidance from time to time in force.
  - 3.1.5 in compliance with the quality codes, guidance and requirements issued by the OfS, the QAA (including the QAA UK Quality Code) and/or Ofsted (as the case may be)
- 3.2 The Training Provider shall enter into written agreements with all relevant:
  - 3.2.1 Subcontractors; and/or
  - 3.2.2 End-Point Assessment Organisations (except where the Apprenticeship relates to an Integrated Standard and the Training Provider is the End-Point Assessment Organisation);as specified in the relevant Apprenticeship Programme.
- 3.3 The Training Provider shall monitor the quality of Training delivered by a Subcontractor through such means as it considers appropriate including regular meetings, audits and observations of teaching, learning and assessment.

- 3.4 Subject to the Employer fulfilling the obligations set out in clause 4, the Training Provider shall use its reasonable endeavours to recover sums in respect of the Charges from the ESFA.

#### **4. Employer Obligations**

- 4.1 The Employer shall:

4.1.1 from the commencement of the relevant Apprenticeship Programme, employ and pay the Apprentice in accordance with the Law, agreed employment terms and conditions for the duration of the relevant Apprenticeship Programme which shall be not less than the period set out in the relevant Apprenticeship Programme (subject to earlier termination of this agreement in accordance with its terms and/or the Apprentice's employment contract);

4.1.2 promptly do all acts and not omit to do anything reasonably requested of the Employer by the Training Provider for the purposes of the Training Provider's:

- (a) compliance with the Apprenticeship Funding Rules;
- (b) obtaining any payment to which it may be entitled under the Funding Rules; and
- (c) compliance with the quality codes and guidance issued by OfS, QAA and/or Ofsted (as the case may be);

4.1.3 enter into and procure that each Apprentice enters into:

- (a) an Apprenticeship Agreement; and
- (b) a commitment statement as required by the Funding Rules,

Each of which must be in place for the entire length of the Apprenticeship and meet the requirements of the Funding Rules and made available to the Training Provider on request;

4.1.4 provide such training and/or carry out such actions as are assigned to the Employer in the Apprenticeship Programme and in any event support each Apprentice in their learning and development to the reasonable satisfaction of the Training Provider;

4.1.5 notify in writing to the Training Provider of any Break in Learning;

4.1.6 confirm promptly on request by providing signed declarations to the Training Provider:

- (a) each Apprentice's eligibility for apprenticeship funding;
- (b) any eligibility for 16-18 year old Additional Payments (if applicable);
- (c) the average number of employees employed by the Employer in the three hundred and sixty five (365) days immediately preceding the first day of an Apprenticeship and (if applicable) the Employer's eligibility for small employer Additional Payments;
- (d) any other matters on which the Training Provider requires written evidence that is in the possession of the Employer in order for the Training Provider to comply with the Funding Rules;
- (e) the address or addresses where the Apprentice shall be carrying out their working hours;
- (f) whether learning support is available to support Apprentices with additional learning needs;
- (g) compliance with state aid law;
- (h) the number of contracted working hours for which each Apprentice is employed,

- 4.1.7 ensure, and on request confirm, that:
- (a) the Apprentice is employed for a minimum of 30 hours per week and that training both on and off the job is included in those hours of employment or where the Apprentice is employed for less than 30 hours per week the duration of the Apprenticeship has been extended proportionately in accordance with the Funding Rules;
  - (b) the funding for the Apprenticeship is not used to pay the apprentice's wages;
  - (c) the Apprentice is enabled to complete the Apprenticeship within their working hours and make available time for the Apprentice to be able to complete the Apprenticeship Programme including:
    - (i) permitting a minimum of 20% of each Apprentice's employed hours to be used for off-the-job training (including permitting each Apprentice to attend any arranged training);
    - (ii) releasing the Apprentice to the Training Provider for undertaking such training and courses with the Training Provider as set out in the Apprentice Proposal;
    - (iii) providing the Apprentice the use of equipment necessary to enable the Apprentice to fulfil training objectives;
    - (iv) co-operating with the Training Provider to arrange for any necessary End-Point Assessment and allowing the Apprentice to attend the same
- 4.1.8 provide payment for resits for qualifications or End-Point Assessment required by the Approved Apprenticeship Standard where no extra learning takes place before the re-take;
- 4.1.9 comply with any Mandatory Policies.
- 4.1.10 provide the Apprentice with appropriate support and supervision on the job to carry out their job role;
- 4.1.11 work with the Training Provider to ensure each Apprentice who is on an Apprenticeship Programme achieves their minimum entitlement to 20% off the job training over the duration of their Apprenticeship, accepting that from time to time the agreed training schedule may be disrupted unintentionally by either party;
- 4.2 To secure an efficient working relationship between the Training Provider and the Employer and to protect the interests of the Apprentice, the Employer shall:
- 4.2.1 co-operate in good faith with the Training Provider and any Subcontractor and/or Apprentice Assessment Organisation to enable the successful delivery and completion of each Apprenticeship;
  - 4.2.2 where indicated in the Agreement Particulars that the Training Provider will be providing on-line administrative tasks, provide to the Training Provider on request all necessary log-in information to enable the Training Provider to access the Employer's Digital Account for the purposes of confirming the Funding available in respect of an Apprentice and uploading on behalf of the Employer information required pursuant to the Funding Rules relating to the Apprentice, the Apprenticeship Programme and/or other relevant matters;
  - 4.2.3 allow the Training Provider, its staff, auditors, contractors or agents, including the Training Provider's Representative, access to the Apprentice, the Employer's premises and any relevant records or documents, including health and safety records, to allow the Training Provider to comply with the Training Provider's obligations under this agreement. Such

access shall be as reasonably agreed between the parties or on reasonable notice from the Training Provider;

- 4.2.4 promptly notify the Training Provider in writing when it becomes aware or develops a reasonable suspicion that the Apprentice wishes to withdraw from the Apprenticeship;
- 4.2.5 immediately notify the Training Provider if the Apprentice informs the Employer that they no longer wish to continue with the Apprenticeship; and
- 4.2.6 appoint an Employer's Representative and promptly notify the Training Provider of any change of the Employer's Representative from time to time.
- 4.2.7 undertake to notify the Training Provider if the apprentice is dismissed, in writing, within 5 working days;
- 4.2.8 ensure that the apprentice will spend at least 50% of their working hours in England over the duration of the apprenticeship.
- 4.2.9 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.

4.3 In relation to End-Point Assessment:

- 4.3.1 The Employer shall provide to the Training Provider all relevant information about the Apprentice to enable End-Point Assessment to occur;
- 4.3.2 The Employer acknowledges that the Funding Rules require the Training Provider to arrange End-Point Assessments and the Employer shall not enter into any contract or other arrangement with an End-Point Assessment Organisation for the provision of the same. The Employer acknowledges their obligations in relation to End-Point Assessment as per the Apprenticeship funding rules and guidance for employers.

4.4 The Employer warrants that the Employer Charges (where applicable) represent the actual cost of delivering the training allocated to it in the Apprenticeship Programme and no profit element is included in the Employer Charges.

4.5 Where the Employer has identified the candidates to be included in the Apprenticeship Programme, the Training Provider may assess each Apprentice's ability to successfully complete their Apprenticeship, with particular regard to the academic requirements. Where the Training Provider, using their educational expertise, believes that an Apprentice will be unable to successfully complete their Apprenticeship, the Training Provider may either suggest an alternative training programme or require the Employer to withdraw the Apprentice from the Apprenticeship Programme.

**5. Additional Apprenticeship Programmes**

Where indicated in the Contract Particulars, this clause 5 shall have effect.

- 5.1 The Employer may prior to the Expiry Date request that additional Apprenticeship Programmes be delivered to its employees by the Training Provider in accordance with this clause 5.
- 5.2 The Training Provider and the Employer shall discuss the nature and content of the Employer's requirement for an additional Apprenticeship Programme and such a discussion shall result in the Employer requesting either:

- 5.2.1 the provision of one of the Apprenticeship Programmes set out in Schedule 1 (a Repeat Apprenticeship Programme Request) in accordance with clause 5.3; or
- 5.2.2 the development of a new Apprenticeship Programme in accordance with clause 5.4 (a Bespoke Apprenticeship Programme Request).

### **5.3 Repeat Apprenticeship Programmes**

- 5.3.1 The Employer shall notify the Training Provider in a written Repeat Apprenticeship Programme Request which of the Apprenticeship Programmes set out in Schedule 1 that it wants to be repeated and shall provide the Training Provider with sufficient information (in the opinion of the Training Provider acting reasonably) to allow the Training Provider to prepare an updated Apprenticeship Programme (a UAP).
- 5.3.2 Within ten (10) Business Days of receipt of the Repeat Apprenticeship Programme Request, the Training Provider shall:
  - (a) notify the Employer that it declines to repeat the requested Apprenticeship Programme; or
  - (b) provided that the Employer has provided sufficient information, provide the Employer with a UAP (in the form of the Apprenticeship Programmes set out in Schedule 1) containing all relevant information required by the Funding Rules.
- 5.3.3 The parties shall negotiate the contents of the UAP provided pursuant to clause 5.3.2(b) and once agreed between the parties the Employer and the Training Provider shall each indicate such agreement by executing the UAP under hand.
- 5.3.4 A UAP that has been executed by both parties pursuant to clause 5.3.3 shall be deemed to be an Apprenticeship Programme for the purposes of this agreement and shall be incorporated into Schedule 1 accordingly.

### **5.4 Bespoke Apprenticeship Programmes**

- 5.4.1 The Employer shall notify the Training Provider in a written Bespoke Apprenticeship Programme Request that it request a bespoke apprenticeship programme (a BAP) to be developed and delivered. The Bespoke Apprenticeship Programme Request shall contain sufficient information (in the opinion of the Training Provider acting reasonably) for the Training Provider to develop a BAP setting out the Training required.
- 5.4.2 Within twenty (20) Business Days of receipt of the Bespoke Apprenticeship Programme Request, the Training Provider shall:
  - (a) notify the Employer that it declines to offer the requested bespoke Training; or
  - (b) provided that the Employer has provided sufficient information, provide the Employer with a BAP (in the form of the Apprenticeship Programmes set out in Schedule 1) containing all relevant information required by the Funding Rules.
- 5.4.3 The parties shall negotiate the contents of the BAP provided pursuant to clause 5.4.2(b) and once agreed between the parties the Employer and the Training Provider shall each indicate such agreement by executing the BAP under hand.
- 5.4.4 A BAP that has been executed by both parties pursuant to clause 5.4.3 shall be deemed to be an Apprenticeship Programme for the purposes of this agreement and shall be incorporated into Schedule 1 accordingly.

## **6. Charges and Payments**



- 6.1 The Employer shall pay the Charges to the Training Provider to the extent that the Charges have not been recovered by the Training Provider from the ESFA.
- 6.2 the Training Provider shall send invoices in respect of the Unfunded Charges to the Employer as agreed on schedule. The Employer shall pay such invoices within thirty (30) days of the date of the invoice. Payment by Bacs or Direct Debit.
- 6.3 Subject to the Employer providing the bank account details of the company or other legal person that employs the relevant Apprentice, the Training Provider shall pay to the Employer any Incentive Payments received from the ESFA on behalf of the Employer within thirty (30) days of receipt or such other timescale as may be specified in the Funding Rules.
- 6.4 Where for any reason the ESFA requires the Training Provider to return any Incentive Payments or any other payment, the Employer shall pay to the Training Provider an amount equal to the sum required to be returned. the Training Provider shall notify the Employer of any requirement to return payments to the ESFA and the Employer shall pay such amount to the Training Provider within thirty (30) days of such notice.
- 6.5 All sums payable by or to the Training Provider or the Employer are exclusive of VAT. In the case of any VAT payable, the VAT shall be due thirty (30) days after receipt by the receiving party of a valid VAT invoice.
- 6.6 Without prejudice to the rights of either party under this agreement, any sums that remain unpaid after their due date shall bear interest at the rate of eight per cent (4%) above the Bank of England base rate from time to time.
- 6.7 Without prejudice to any other rights of remedy available to it, the Training Provider may suspend delivery of the Services if payments are not received in accordance with clause 6.2. If sums due remain unpaid for more than 30 days after the Employer has been notified in writing to make such payment then the Training Provider may terminate this agreement with immediate effect by giving notice to the Employer.

## **7. Dispute Resolution**

This clause 7 shall have effect provided that where the Contract Particulars state that the Training Provider has its own Complaints Procedure, such Complaints Procedure shall take precedence over and be completed prior to the process set out in clauses 7.1 to 7.3 is commenced.

- 7.1 In the event of a dispute arising between the parties in relation to this agreement, either party may serve written notice on the other stating the nature of the dispute (a **Dispute Notice**).
- 7.2 After service of the Dispute Notice, the following procedure shall be followed by the parties (all periods specified in this clause 7.2 shall be extendable by mutual agreement):
- 7.2.1 within five (5) days, the Training Provider's Representative and the Employer's Representative shall meet to attempt to settle the dispute (each party acting in good faith);
  - 7.2.2 if the Training Provider's Representative and the Employer's Representative are unable to reach a settlement within twenty one (21) days from the date of service of the Dispute Notice, the chief executive officers of each of the parties shall meet within the following fourteen (14) days to attempt to settle the dispute; and
  - 7.2.3 if no settlement results from the meeting specified in clause 7.2.2, for the following fifty six (56) days the parties shall attempt to settle the dispute by mediation (in accordance with the CEDR Model Mediation Procedure) by an independent mediator appointed by CEDR unless otherwise agreed between the parties, with costs to be shared equally between the parties.
- 7.3 If no settlement is reached under clause 7.2 the dispute shall be determined by the English High Court and the parties submit to the exclusive jurisdiction of such court for such purposes.

- 7.4 In addition to the process set out in clauses 7.1 to 7.3, Apprentices and Employers can contact the apprenticeship helpline regarding apprenticeship concerns, complaints and enquiries:

National Apprenticeship Helpline

email: [nationalhelpdesk@apprenticeships.gov.uk](mailto:nationalhelpdesk@apprenticeships.gov.uk)

tel: 0800 015 0400

## **8. Termination**

- 8.1 Without prejudice to any rights that have accrued under this agreement or any of its rights or remedies, either party may at any time terminate this agreement or any part of it with immediate effect by giving written notice to the other party if:

- 8.1.1 the other party commits a material breach of any term of this agreement (other than failure to pay any amounts due under this agreement) and (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
- 8.1.2 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;
- 8.1.3 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 is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- 8.1.4 the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- 8.1.5 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or on connection with the winding up of that other party;
- 8.1.6 an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party;
- 8.1.7 the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;
- 8.1.8 a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- 8.1.9 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- 8.1.10 any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 8.1.3 to clause 8.1.9 (inclusive);
- 8.1.11 the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business;
- 8.1.12 the other party's funding agreement with the ESFA is terminated.
- 8.1.13 the circumstances described in clause 6.7 arise;

8.1.14 The Training Provider fails to remain on RoAPT. The Training Provider will notify the employer of this within 10 working days.

8.2 If the Training Provider ceases to be an ESFA approved training provider (so indicated at the date of this agreement by being listed on the Register of Apprenticeship Training Providers) then the provisions of clause 9.5 shall apply.

## **9. Consequences of Termination**

9.1 Other than as set out in this agreement, neither party shall have any further obligation to the other under this agreement after its termination.

9.2 Any provision of this agreement which expressly or by implication is intended to come into or continue in force on or after termination of this agreement, shall remain in full force and effect.

9.3 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.

9.4 On termination (for any reasons) or expiry of this agreement:

9.4.1 the Employer shall immediately pay to the Training Provider all Charges due at the date of termination or expiry pursuant to the Apprenticeship Programmes;

9.4.2 to the extent that the Employer has paid the Charges pursuant to clause 9.4.1 and the Training Provider recovers funding from the ESFA in respect of those Charges, the Training Provider shall, provided that the Employer does not owe any other sums to the Training Provider, reimburse the Employer those sums paid pursuant to clause 9.4.1;

9.4.3 each party shall promptly return to the other any equipment, documents, information or materials owned by the other party (or a third party) and used in connection with the Services; and

9.4.4 each party shall cooperate in good faith to ensure that no Apprentice is materially disadvantaged by the termination of this agreement.

9.5 If the Training Provider ceases to be an ESFA approved training provider then:

9.5.1 this agreement shall continue in full force and effect in respect of Apprentices who have started their Apprenticeship prior to the date on which the Training Provider ceased to be an ESFA approved training provider and the Apprenticeship Programme Completion Date for the purposes of clause 2.1.2 shall be the date on which the last such Apprentice successfully completes the relevant End-Point Assessment; and

9.5.2 this agreement shall terminate in respect of any person who was due to become an Apprentice on or after the date on which the Training Provider ceased to be an ESFA approved training provider and the Training Provider shall use its reasonable endeavours to assist such persons in their transition to another training provider.

## **10. ESFA Contingencies**

The parties shall take all necessary steps to give effect to the ESFA Contingencies in the event of an ESFA Contingency Event occurring. For the avoidance of doubt, giving effect to the ESFA Contingencies shall not constitute a breach of this agreement.

## **11. Force Majeure**

Neither party shall be in breach of this agreement nor liable for delay in performing, or failure to perform, any of its obligations under this agreement if such delay or failure results from events,

circumstances or causes beyond its reasonable control. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for one ninety (90) days or more, the party not affected may terminate this agreement by giving thirty (30) days' written notice to the other party.

## **12. Liabilities and Insurance**

12.1 Neither party excludes or limits liability to the other party for:

11.1.1 fraud or fraudulent misrepresentation;

11.1.2 death or personal injury caused by negligence;

11.1.3 a breach of any obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or

11.1.4 any matter for which it would be unlawful for the parties to exclude liability.

12.2 Subject to clause 12.1, neither party shall in any circumstances be liable to the other whether in contract, tort (including for negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, for:

11.2.1 any loss (whether direct or indirect) of profits, business, business opportunities, revenue, turnover, reputation or goodwill;

11.2.2 loss (whether direct or indirect) of anticipated savings or wasted expenditure (including management time); or

11.2.3 any loss or liability (whether direct or indirect) under or in relation to any other contract.

12.3 Subject to clause 12.1 and except in relation to the indemnity contained in clause 16.3, the parties' total aggregate liability in contract, tort (including negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of this agreement or any collateral contract shall be limited to the total Charges payable during the 12 months immediately preceding the date on which the claim arose or, if the claim arose during the first twelve months of this agreement being in force, the Charges payable during the first twelve months of this agreement.

## **12.4 Insurance**

Each party shall at its own cost effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by that party, arising out of the its performance of the agreement, including death or personal injury, loss of or damage to property or any other loss.

12.5 The terms of any insurance or the amount of cover shall not relieve the insured party of any liabilities under this agreement.

## **13. Safeguarding**

13.1 The Employer acknowledges that the Training Provider has a statutory duty to safeguard and promote the welfare of individuals under the age of 18 years old and vulnerable adults over the age of eighteen (18) years old pursuant to the Children Act 2004 and the Safeguarding Vulnerable Groups Act 2006.

13.2 The Employer shall and shall ensure that the Employer's employees, contractors and agents:

13.2.1 comply with the requirements of the Children Act 2004 and the Safeguarding Vulnerable Groups Act 2006 to the extent that they apply to the Employer; and

13.2.2 confidentially report to the Training Provider's designated senior person from time to time, any concerns relating to an Apprentice or other learner enrolled with the Training Provider, employee, agent or contractor of the Training Provider.

13.3 The Employer shall by signing this agreement, be deemed to have read the Training Provider's policy and guidance relating to safeguarding and will comply with its contents at all times.

#### **14. Health and Safety**

14.1 The Employer will be subject to an initial Health and Safety visit conducted on behalf of the Training Provider.

14.2 The parties shall perform their obligations under this agreement (including those in relation to the Services) in accordance with:

14.1.1 all applicable Law regarding health and safety; and

14.1.2 the health and safety policy of the other party whilst at the other party's premises (to the extent it has been made known by one party to the other party).

14.3 Each Party shall notify the other as soon as practicable of any health and safety incidents or material health and safety hazards at either party's premises of which it becomes aware and which relate to or arise in connection with the performance of this agreement. Each party shall adopt any necessary associated safety measures in order to manage any such material health and safety hazards.

#### **15. Confidentiality**

15.1 Subject to Clause 15.2, the parties shall keep confidential all matters relating to this agreement and shall use all reasonable endeavours to prevent their employees, contractors, agents and other personnel from making any disclosure to any person of any matters relating to it.

15.2 Clause 15.1 shall not apply to any disclosure of information:

15.2.1 required by any applicable law, provided that Clause 17 shall apply to any disclosures required under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004;

15.2.2 that is reasonably required by persons engaged by a party in the performance of such party's obligations under this agreement;

15.2.3 where a party can demonstrate that such information is already generally available and in the public domain otherwise than as a result of a breach of Clause 15.1;

15.2.4 of any document which the parties to this agreement have agreed contains no commercially sensitive information;

15.2.5 which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party; and

15.2.6 by the Training Provider to any other department, office or agency of the Government.

#### **16. Intellectual Property**

16.1 Each party shall retain ownership of all Intellectual Property Rights in any materials created by that party and used for the delivery of an Apprenticeship Programme (the **Project Materials**).

16.2 Each party shall make available to the other free of charge and hereby grants to the other party a non-exclusive, non-transferable, royalty free licence to use their Project Materials for the duration of the relevant Apprenticeship Programme.

- 16.3 Each party shall indemnify the other against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Right in the performance of a party's obligations under this agreement, except to the extent that they have been caused by or contributed to by the indemnified party's acts or omissions.

**17. Data Protection and Freedom of Information**

- 17.1 The Employer acknowledges that the Training Provider is subject to the requirements of the Data Protection Legislation, the Freedom of Information Act 2000 and the Environmental Information Regulations 2004, all as amended or replaced from time to time. The Training Provider acknowledges that the Employer is subject to the requirements of the Data Protection Legislation as amended or replaced from time to time.
- 17.2 The Employer shall offer such prompt and reasonable assistance to the Training Provider as the Training Provider may request from time to time, to assist it in complying with its information disclosure obligations under the legislation at Clause 17.1.
- 17.3 The Training Provider and the Employer acknowledge that each Party is individually a Data Controller in respect of any Personal Data processed by it and each agrees to comply with its obligations under the Data Protection Legislation.
- 17.4 In the event that one Party wishes to exchange Personal Data with the other Party then that Party (the requesting Party) shall make a written request to the other Party setting out why it considers such a transfer to be compliant with the Data Protection Legislation. It shall be for the other Party to determine whether it is willing to exchange such data in accordance with its obligations under the Data Protection Legislation. The Parties will where possible in order to facilitate the exchange of information anonymise or aggregate such information to the degree that it does not identify any individual. The Parties may agree additional terms or conditions upon which such data is to be shared.
- 17.5 The Parties shall and shall procure that any of their staff and agents involved in the provision of this agreement and any sub-contractor shall comply with their obligations under Data Protection Legislation and shall enter into appropriate arrangements with third parties.
- 17.6 Upon the termination or expiry of this agreement each Party shall ensure that all Personal Data held by it shall be up-to-date and accurate. Where it is necessary in order for the efficient transition of services to the other Party or to a third party to be achieved then the transferring Party shall, having first satisfied itself that such transfer is compliant with all laws, transfer current and required Personal Data to the other party or to the third party in a secure manner and shall take all reasonable steps, at its own cost, to provide the Personal Data in a usable and compatible format.
- 17.7 Historical personal data shall be retained by the Parties in accordance with legal retention requirements. Personal Data which cannot be lawfully retained shall be securely deleted in accordance with Data Protection Legislation and Good Industry Practice.
- 17.8 For the avoidance of doubt, it is stated here that neither Party is a Data Processor on behalf of the other Party in furtherance of their obligations under this agreement. In the event it is established at any time during this agreement that Personal Data is to be processed by the one party on behalf of the other, the parties shall:
- 17.8.1 immediately enter into a data processing agreement on reasonable terms to be determined by the Training Provider to ensure full compliance with Data Protection Legislation; and
- 17.8.2 indemnify and keep the other party indemnified in full for any and all consequences (including a Personal Data breach) arising as a result of that party's failure to comply with any of its obligations under this clause 17.

- 17.9 Failure by the Employer to enter into a data processing agreement in accordance with clause 17.8.1 shall be deemed a material/serious breach which shall entitle the Training Provider to immediately terminate the agreement without consequence or any liability under this agreement;
- 17.10 Any clause in this Contract limiting a party's liability in respect of any obligations, claims, losses, damages or otherwise under the Data Protection Legislation shall not apply
- 17.11 Each Party (the indemnifying Party) agrees to fully indemnify and keep indemnified and defend at its own expense the other Party against all costs, claims, damages or expenses incurred by the other Party or for which the other Party may become liable due to any failure by the indemnifying Party or its employees or agents or sub-contractors to comply with their obligations under this Clause 17.
- 17.12 Where the Employer receives a request for information under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004 relating to the operation of this agreement, the Employer shall promptly pass the request to the Training Provider and shall not respond directly to any such request without the Training Provider's prior written consent.

## **18. Equality Legislation**

- 18.1 Each party shall (and shall procure that its employees, contractors, agents and other personnel shall):
- 18.1.1 perform its obligations under this agreement (including those in relation to the Services) in accordance with all applicable equality law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);
- 18.1.2 at all times comply with the provisions of the Human Rights Act 1998 in the performance of this agreement.

## **19. Contract Variation**

- 19.1 No variation to this agreement other than pursuant to clause 20.3 shall have effect unless agreed in writing and signed by both parties pursuant to clause 20.2.

### **19.2 Change Protocol**

- 19.2.1 In the event either party (acting reasonably) requires a change (**Change**) to this agreement, the parties shall discuss any such Change proposed by the other and such discussion shall result in a written request for a Change being submitted by the requesting party to the other party.
- 19.2.2 The parties shall work together in good faith to assist the requesting party in preparing a written recommendation for a Change which shall set out:
- (a) the title of the Change;
  - (b) the originator and the date of the request;
  - (c) the reason for the Change;
  - (d) the full details of the Change, including any specification or service standards;
  - (e) the price, if any, of or associated with the Change;
  - (f) a timetable for implementation;
  - (g) the impact, if any, of the Change on other aspects of this agreement, including contractual documentation and resources;
  - (h) provision for signature of the request by all parties to signal acceptance of the Change; and

(i) any other relevant information reasonably requested by any party.

19.2.3 If approved, each party shall sign the written recommendation. The signing of the written recommendation shall signify acceptance of a Change by the parties.

19.2.4 Once signed by both parties, the Change shall be immediately effective and the parties shall perform their respective obligations on the basis of the agreed amendment.

19.3 Where in the reasonable opinion of the Training Provider a change to one or more of the Apprenticeship Programmes is required in order to comply with ESFA rules, guidance or instructions issued from time to time by the ESFA, the OfS, QAA or Ofsted (a **regulatory Change**), the Training Provider shall notify the Employer in writing of the ESFA Change and the ESFA Change shall have effect from such date as may be stated in such notice. Any additional costs reasonably incurred by the Training Provider arising from the ESFA Change shall be payable by the Employer and shall be deemed to be incorporated into the Charges.

## **20. General**

### **20.1 Assignment**

No party shall otherwise novate, assign or transfer its rights or obligations under this agreement without the prior written consent of the other party.

### **20.2 Provisions to Remain in Force**

If any term, condition or provision of this agreement shall be held to be invalid, unlawful or unenforceable to any extent, such term, condition or provision shall not affect the validity, legality and enforceability of the other provisions of or any other documents referred to in this agreement.

### **20.3 Entire Agreement**

This agreement and the documents referred to in this agreement contain all the terms which the parties have agreed in relation to the subject matter of this agreement.

### **20.4 Waiver**

No term or provision of this agreement shall be considered as waived by a party to this agreement unless a waiver is given in writing by that party. No waiver shall be a waiver of a past or future default or breach, nor shall it amend, delete or add to the terms, conditions or provisions of this agreement unless (and only to the extent) expressly stated in that waiver.

### **20.5 Counterparts**

This agreement may be executed and delivered in any number of counterparts, each of which so executed will be an original, but together will constitute one and the same instrument.

### **20.6 No Agency**

Nothing in this agreement shall be construed as creating a partnership or as a contract of employment between the parties and neither party shall be, or be deemed to be, an agent of the other party and neither party shall hold itself out as having authority or power to bind the other in any way.

### **20.7 No Double Recovery**

Notwithstanding any other provisions of this agreement, no party shall be entitled to recover compensation or to make a claim under this agreement in respect of any loss that it has incurred to the extent that it has already been compensated in respect of that loss pursuant to this agreement or otherwise.

### **20.8 Further Assurance**



Each party shall do all things and execute all further documents necessary to give full effect to this agreement.

#### **20.9 Severability**

If any provision of this agreement shall be declared invalid, unenforceable or illegal by the courts of any jurisdiction to which it is subject, such provision may be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability or legality of the remaining provisions of this agreement.

#### **20.10 Governing Law**

This agreement and any non-contractual obligation arising out of it is subject to the laws of England and the parties agree that any disputes between the parties shall be subject to the exclusive jurisdiction of the courts of England.

#### **20.11 Third Party Rights**

No term of this agreement is intended to give any entitlement as against any party to any person who is not a party to this agreement and no term of this agreement may be enforced by any person other than a party to this agreement under the Contracts (Rights of Third Parties) Act 1999.

#### **20.12 De Minimis/State Aid**

The De Minimis regulation allows Member States to give comparatively small amounts of support up to a certain limit, which may be paid for almost any purpose, as long as it meets all the conditions set out in the Regulation. Prior notification and approval are not necessary as long as the requirements of the regulation are met.

Legal basis for De Minimis is the Commission Regulation on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union Act.

De Minimis aid is used to describe small amounts (200,000 Euros over a 3 year fiscal period) of support which complies with the De Minimis. The European Commission considers that public funding which complies with the De Minimis regulation has a negligible impact on trade and competition, and does not require notification and approval.