



## **GENERAL TERMS AND CONDITIONS**

**relating to**

**Apprenticeship Services Contract**

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Version 2.0

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*IMPORTANT: Please note that these General Terms and Conditions and the information provided in our FAQ's form part of the Apprenticeship Services Contract.*

## DEFINITIONS AND INTERPRETATIONS

### 1 Interpretation

The definitions and rules of interpretation set out in Schedule 6 shall apply to these Terms and Conditions, to the Apprenticeship Services Contract and to the information in the Success Email. The Apprenticeship Services Contract, these General Terms and Conditions and individual Success Emails shall form the entire Agreement between the Training Provider and the Employer.

## ORDERING INVOICING AND PAYMENT

### 2 Apprenticeship Services

- 2.1 The Employer will work with the Training Provider to decide on the most appropriate Training Services for each role that they wish to fill. Training Services are listed in Schedule 4 of the General Terms and Conditions.
- 2.2 Once the Employer has made an offer of employment to an apprenticeship candidate, the Training Provider will confirm the details of the Training Services in a Success Email, which will form part of the Apprenticeship Services Contract.
- 2.3 The Training Provider shall provide the Training Services from the apprenticeship start date specified in the Success Email.
- 2.4 Each Success Email shall state the matters listed in the Success Email contents as set out in Schedule 2.
- 2.5 When a Success Email has been sent to the Employer, the Training Services outlined in that email shall be Agreed Services and the date of the email shall be the Agreement Date.
- 2.6 Each Success Email shall form an addendum of the Apprenticeship Services Contract signed by the Employer and shall not form a separate contract.

### 3 Changes to Services

- 3.1 If either the Employer or the Training Provider wishes to change the Agreement, including the Apprenticeship Services Contract or the Agreed Services outlined in the Success Email, it may at any time request such change in accordance with the Change Procedure set out in Schedule 7.
- 3.2 Notwithstanding any other provisions of The 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 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 with such ESFA Rules as specified in such Mandatory Change Notice with effect from a time specified in that notice and, subject to the Rider below, 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'). *Rider: the Employer may*

*immediately terminate the impacted Agreed Services on written notice if it deems the additional costs to be unreasonable.*

#### **4 Charges, invoicing and payment**

- 4.1 The Employer is responsible for payment of the Co-investment Charges as outlined in the Success Email.
- 4.2 The Training Provider shall be entitled to invoice the Employer for the Co-investment Charges monthly. The Employer shall pay such invoices within 30 days of receipt of such invoices, provided however that the Training Provider shall only be entitled to the Completion Payment once the Apprentice has sat his final assessment.
- 4.3 During the recruitment process and at the time of each Success Email, the Charges shall be estimated charges. The Training Provider shall take reasonable care to accurately estimate the Charges based on the information available at the time.
- 4.4 The Training Provider and the Employer acknowledge that where the Employer is a Levy Payer, fluctuations in the Levy Account Balance of the Employer will have an impact on the level of the Co-investment Charges from month to month. The Training Provider will calculate the actual value of the Charges on a monthly basis using Funding Reports provided by the ESFA.
- 4.5 The Co-investment Charges are stated exclusive of applicable VAT.
- 4.6 The Training Provider shall promptly on request provide a VAT invoice to the Employer in respect of such of the Co-investment Charges for the Agreed Services as are subject to VAT.
- 4.7 Without prejudice to the obligation on the Employer to pay the Co-investment charges the Employer shall provide such assistance to the Training Provider as the Training Provider may require, acting reasonably, to obtain any payment to which it may be entitled in respect of the Agreed Services or otherwise pursuant to The Agreement under the ESFA Rules.
- 4.8 If and to the extent that the Training Provider receives a payment from the Levy Account 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.
- 4.9 The Co-investment Charges shall apply as long as the Apprentice to whom the Co-investment Charges relate remains on the programme. Where an Apprentice withdraws early from the programme, the Co-investment Charges shall apply up until the last day the Apprentice attends the programme.
- 4.10 The Training Provider agrees to cover the cost of the first End Point Assessment undertaken by each apprentice enrolled on an Apprenticeship Standard. The Employer agrees to cover the cost of subsequent end point assessments in the event that the Apprentice fails on their first attempt. The Training Provider will provide written confirmation to the Employer when they believe the Apprentice is ready to sit the End Point Assessment.
- 4.11 Subject to clause 7.10, the Employer shall be liable for 100% of the Charges specified in the Success Email in cases where the Apprentice is forced to withdraw from the programme as a result

of decisions made by the Employer (e.g. office relocation), or where the Employer encourages the Apprentice to withdraw from the programme before they have completed it and offers full or part time employment to the Apprentice outside of the Apprenticeship.

- 4.12 Where an Apprentice is dismissed by the Employer following a capacity or capability process, on grounds of misconduct or gross misconduct or by reason of redundancy, the Co-investment Charges shall apply up until the last day the Apprentice is employed by the Employer and enrolled on the programme.
- 4.13 Without prejudice to any other rights of the Training Provider any invoice that is not paid when due shall bear interest at a rate of 3 per cent.

## **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 Success Email and Good Industry Practice;
  - 5.1.2 use all reasonable endeavours to meet any performance dates specified in a Success Email;
  - 5.1.3 specify in the Success Email a manager ('the Relationship 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 Relationship Manager for the duration of the Agreed Services; and
  - 5.1.4 observe and comply with all health and safety and security requirements that apply at any of the Employer's premises that have been communicated to it under clause 12.1.5, provided that it shall not be liable under The Agreement if, as a result of such observance, it is in breach of any of its obligations under The Agreement.
- 5.2 The Training Provider shall at all times for the duration of The Agreement have and maintain the following policies (as amended from time to time):
- 5.2.1 Data and Privacy Policy;
  - 5.2.2 Training Provider Complaints Policy;
  - 5.2.3 Safeguarding Policy; and
  - 5.2.4 Equality and Diversity Policy.

### **6 Training Provider ESFA Responsibilities**

- 6.1 The Training Provider undertakes that it shall, in accordance with the ESFA Rules:
- 6.1.1 prepare and redistribute the Individual Learning 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 only use funds in the Employer's Digital Account or government-employer co-investment for those who are eligible;
- 6.1.5 retain evidence of each Apprentice's eligibility for as long as reasonably necessary;
- 6.1.6 carry out a thorough assessment to identify the additional learning support the Apprentice needs and if appropriate record in the ILR that an Apprentice has a learning support need;
- 6.1.7 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;
- 6.1.8 in relation to the 16-18 Apprenticeship Incentive:
  - (a) provide the Employer with information on eligibility and timescales for payment;
  - (b) obtain and retain eligibility evidence;
  - (c) promptly submit applications on behalf of eligible employers once the Employer has provided all of the necessary information;
  - (d) make payment to the Employer no later than 30 days after receipt of a valid invoice from the Employer for the sum;
  - (e) investigate and use reasonable endeavours to resolve Employer complaints and issues relating to claims; and
- 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 with an End Point Assessment Organisation of the Employer's choosing, and agree with it the arrangements for end-point assessments, re-takes and payments 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.
- 6.1.11 If the Employer fails to select an End Point Assessment Organisation within a reasonable time the Training Provider is authorised 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 Register of End Point Assessment Organisations and without the Training Provider first notifying the Employer in writing;

- 6.1.12 make payment to the End Point Assessment Organisation for conducting the end-point assessment and keep records of all such payments;
- 6.1.13 collect employer co-investments at least every three months and report the value received on the ILR; and
- 6.1.14 apply for the apprenticeship completion certificate promptly, and within one month of completion of learning if an Apprenticeship Framework is being used.

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

- 7.1 If any subcontractor is used by the Training Provider to provide any of the Agreed Services the Training Provider warrants that it:
  - 7.1.1 has the knowledge, skills and experience of contracting with, and managing, delivery subcontractors;
  - 7.1.2 has assessed the subcontractor as a suitable delivery partner;
  - 7.1.3 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 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;
  - 7.1.5 will manage, monitor and regularly assess for quality its delivery subcontractors through visits and face to face interviews to ensure high-quality delivery in accordance with the ESFA Rules;
  - 7.1.6 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; and
  - 7.1.7 will not permit any subcontractor to subcontract the performance of its obligations.
  - 7.1.8 Shall have a contract with the subcontractor which will specify the matters required to be specified in that subcontract by the ESFA Rules.

## **8 Training Provider assurances**

- 8.1 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; or
  - 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 enrolled on another Apprenticeship;
  - 8.1.5 enrol an Apprentice without ensuring that they meet the eligibility requirements or have permission to work in England;
  - 8.1.6 claim funding for individuals who do not meet the eligibility requirements set out in the ESFA Rules;
  - 8.1.7 claim funding from the Employer Digital Account other than for training or assessment in accordance with the ESFA Rules;
  - 8.1.8 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 recruits an eligible apprentice; and
  - 8.1.9 provide end-point assessment to a group of Apprentices it has trained.
- 8.2 The Training Provider warrants that off the job training will be directly relevant to the apprentice framework as standard and otherwise will comply with the ESFA Rules.

## **EMPLOYER RESPONSIBILITIES**

### **9 Employer General Responsibilities**

- 9.1 The Employer shall:
- 9.1.1 Use commercially reasonable endeavours to co-operate with the Training Provider in all matters relating to the Agreed Services;
  - 9.1.2 specify a manager ('the Employer Main Contact') to act on behalf of the Employer in all matters relating to the Agreed Services;
  - 9.1.3 provide the Training Provider with such access to the Employer's premises, data and other facilities as the Training Provider may require, acting reasonably, in connection with the Agreed Services;
  - 9.1.4 provide the Training Provider in a timely manner with all such documents, information and materials in any form as the Training Provider may request, acting reasonably, in writing;
  - 9.1.5 inform the Training Provider of all health and safety and security requirements that apply at the Employer's premises or otherwise for the purposes of The Agreement;
  - 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 Provide access to a wireless internet network at the Premises of the Employer for the purposes of delivering the Agreed Services;



- 9.1.8 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 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;
- 9.1.9 make any complaint to the Training Provider only in accordance with the Training Provider's Complaints Policy

## **10 Employer Apprenticeship Responsibilities**

- 10.1 The Employer shall:
  - 10.1.1 enter into an Apprenticeship Agreement with each Apprentice for a fixed term of employment of at least 13 months for at least 35 hours per week;
  - 10.1.2 work with the Training Provider and each Apprentice to agree an Apprenticeship Standard or Framework, Commitment Statement and Individual Learning Plan for each Apprentice;
  - 10.1.3 pay Apprentices at least the minimum wage specified by the Training Provider (£13,000 p.a for Tech City Stars apprentices and £10,400 p.a for Future LDN Apprentices) in the first year of their apprenticeship.
  - 10.1.4 assist the Apprentice with their development as much as possible to the reasonable satisfaction of the Training Provider;
  - 10.1.5 to the extent necessary, permit the Training Provider to apply for Additional Funding for the benefit of Apprentices.

## **11 Employer ESFA Responsibilities**

- 11.1 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 as soon as is reasonably practicable upon written request, provide the Training Provider with such information as it may reasonably require for it to obtain funds from the Employer's Digital Account or the government-Employer co-investment, 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 as defined by HM Revenue and Customs;

- (c) that the Apprentice is spending at least 20% of their time on off-the-job training directly relevant to the Apprenticeship Framework or Apprenticeship Standard;
  - (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 Framework/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 subject to the Apprenticeship Agreement ensure that the Apprentice works a minimum of 35 hours a week, including any off-the-job training;
  - 11.1.8 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;
  - 11.1.9 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;
  - 11.1.10 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;
  - 11.1.11 disclose any reason why the Apprentice may not have enough time to complete the Apprenticeship;
  - 11.1.12 ensure that the Apprentice will spend at least 50% of his working hours in England over the duration of the Apprenticeship;
  - 11.1.13 ensure that the Apprentice is not already enrolled on any other Apprenticeship programme;
  - 11.1.14 ensure that each Apprentice is eligible to work in England;
  - 11.1.15 as soon as is reasonably practicable upon written request, 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;
  - 11.1.16 as soon as is reasonably practicable upon written request, provide the Training Provider with all information it may reasonably require in relation to the 16-18 Employer Incentive Payment;

- 11.1.17 as soon as is reasonably practicable, 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 (excluding any mandatory government contribution);
  - 11.1.18 select an End Point Assessment Organisation to deliver end-point assessment from the Register of End Point Assessment Organisations; and
  - 11.1.19 as soon as is reasonably practicable upon written request, confirm with the ESFA the spending of funds from the Digital Account.
- 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 through the Digital Account.
- 11.3 The Employer warrants to the Training Provider that each Apprenticeship under The Agreement is a genuine apprenticeship within the meaning of the ESFA Rules.

## **12 Employer additional Apprentice Responsibilities**

- 12.1 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 (including 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 to support the Apprentice with everyday difficulties not directly related to the Apprenticeship; and

## **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 The Agreement.
- 13.2 Without prejudice to clause 16.1 the Employer shall:
- 13.2.1 as soon as is reasonably practicable upon written request, provide the Training Provider with such information as the ESFA may require to pay the Charges out of the Digital Account; and
  - 13.2.2 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 and in accordance with the terms of The Agreement.

- 13.3 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.

- 13.4 The Employer shall, as soon as is reasonably practicable upon written request, disclose any information to the Training Provider that is reasonably required by the Training Provider, including but not limited to:
- (a) Information that is required in order for the Training Provider to claim Additional Funding;
  - (b) any information which amounts to a change of circumstance relating to the Employer, its Digital Account or the Apprentice;
- 13.5 The Employer shall not undertake any recruitment practice that is detrimental either to the Apprentice or the apprenticeship brand; or
- 13.6 The Employer shall not breach any of the ESFA Rules in relation to The Agreement in such a way that the ESFA has recourse to recover funds from the Training Provider.

## **MUTUAL ESFA RESPONSIBILITIES**

### **14 Positive obligations**

- 14.1 If the Agreed Services are Levy Funded the Training Provider and the Employer undertake with each other that they 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;
  - 14.1.2 For Apprenticeship Standards, agree when the Apprentice has obtained sufficient skills, knowledge and behaviours to sit their end-point assessment and for this purpose the Employer shall agree a time proposed by 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 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; and
  - 14.1.4 include the contact details and website for the Training Provider on the written agreement with the Apprentice and on the Commitment Statement; and
  - 14.1.5 if the Apprenticeship is achieved and the Apprentice does not stay with the Employer, use commercially reasonable endeavours to cooperate with the other to support the Apprentice and seek alternative opportunities.

### **15 Negative obligations**

- 15.1 If the Agreed Services are Levy Funded the Training Provider and the Employer undertake with each other that they shall in accordance with the ESFA Rules, not:
- 15.1.1 use funds in the Employer's Digital Account or government-employer co-investment for any of the following:
    - (a) enrolment, induction, prior 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) off-the-job training delivered only by distance learning, not including online and other blended learning activities; or
- (f) any training or optional modules in excess of those required, educational trips or trips to professional events not specified in the Apprenticeship Standard or needed to achieve the Apprenticeship Framework;
- (g) registration and examination (including certification) costs associated with a licence to practise;
- (h) registration and examination (including certification) costs for non-mandatory qualifications (qualifications that are not specifically listed in the Apprenticeship Standard or Framework);
- (i) 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;
- (j) English and Maths up to Level 2;
- (k) repeating the same regulated qualification where the Apprentice has previously achieved it unless it is a requirement of the Apprenticeship or for any GCSE.
- (l) re-sits for mandatory qualifications or the end-point assessment needed for the Apprenticeship where no additional learning is required;
- (m) 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;
- (n) capital purchases (and the maintenance of capital purchases), including lease agreements, which would have a lifespan beyond the Apprenticeship being funded;
- (o) 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
- (p) specific services not related to the delivery and administration of the Apprenticeship;

15.2 The general terms provisions set out in Schedule 5 shall apply to The Agreement.

15.3 This signatories to The Agreement agree that they have the authority to enter into such agreements on behalf of their respective organisations.

## **SCHEDULES**

**Schedule 1** – The Apprenticeship Services Contract

**Schedule 2** – Requests for Services

**Schedule 3** – Payment Schedule

**Schedule 4** – Schedule of Training Services

**Schedule 5** – General Provisions

**Schedule 6** – Definitions and Interpretation

**Schedule 7** – Change Procedure

**Schedule 8** – Dispute Resolution Procedure

**Schedule 9** – The Commitment Statement

**Schedule 10** – Mandatory Policies

## **SCHEDULE 1**

### **THE APPRENTICESHIP SERVICES CONTRACT**

- 1 The Employer and the Training Provider shall enter into an Apprenticeship Services Contract pursuant to this Schedule 1.
- 2 The Apprenticeship Services Contract relates to the screening, selection and recruitment of Apprentices and governs the mutual responsibilities of the Employer and the Training Provider while the Apprentice is on programme.
- 3 Once the Apprentice is on programme, the Apprenticeship Services Contract will be read in conjunction with the Success Email relating to a particular apprenticeship and the General Terms and Conditions.
- 4 The Apprenticeship Services Contract shall remain in force for all future Apprenticeship starts until such time as the agreement is terminated by either Party.
- 5 The Training Provider's General Terms and Conditions shall apply to all Apprentices placed with the Employer.



## **SCHEDULE 2**

### **SUCCESS EMAILS**

- 1 Once an Apprenticeship Services Contract is in place, the Training Provider shall confirm the details of each Apprenticeship with the Employer in a Success Email. The Success Email will take the form specified by the Training Provider from time to time, and it will contain all of the necessary information as outlined in these Terms and Conditions.
- 2 Success emails shall as a minimum, specify the following:
  - 2.1 Work Start Date
  - 2.2 Starting Salary
  - 2.3 Details of the Apprentice Line Manager
  - 2.4 Date of Apprentice Induction
  - 2.5 Planned end date of the Apprenticeship and the Agreed Services
  - 2.6 Details of the Training Services (Including Apprenticeship Programme and Pathway)
  - 2.7 The title of the Qualifications that the Apprentice will be undertaking
  - 2.8 The name of the Learning and Development Specialist Allocated to deliver the Agreed Services
  - 2.9 The details of the Signup Visit
  - 2.10 Frequency of Workplace Review Visits
  - 2.11 Details of time to be spent on off-the-job training in the workplace
  - 2.12 Details and frequency of day-release training delivered at the premises of the Training Provider
  - 2.13 Details of Co-investment Charges due for the Agreed Service
  - 2.14 A copy of the manager induction handbook for the programme in question
- 3 Success Emails and these General Terms and Conditions shall form part of the Apprenticeship Services Contract and shall not be deemed to be a separate agreement.



## SCHEDULE 3

### PAYMENT SCHEDULE

Subject to the terms of the Apprenticeship Services Contract and as agreed between the Employer and the Training Provider:

- 1 Where the Employer is a Levy Payer, the Training Provider will make the Charges to the Employer monthly by sending an invoice to the employer. Charges will be based on the Funding Cap and as indicated in the Digital Apprenticeship Service End Period Reports.
- 2 Where the Employer is non Levy-Paying, the Training Provider will make the Charges to the Employer monthly by sending an invoice to the employer. Instalments will be calculated as 10% of the Funding Cap as indicated in the Success Email and will be collected by Direct Debit.
- 3 The Charges will be split into equal instalments based on the duration of the apprenticeship as agreed in the Success Email and as indicated in the Digital Apprenticeship Service Account.
- 4 The Training Provider will invoice the Charges to the Employer on or about the 20<sup>th</sup> day of each calendar month and the Employer shall pay invoices within 30 days of receipt.
- 5 The Training Provider will supply the Employer with an invoice detailing the charges in each month for the duration of the apprenticeship.
- 6 Where the apprentice withdraws early, the Charges will be due for each month in which the apprentice was on programme. Charges will not be due if the apprentice withdraws before the 15<sup>th</sup> day of the calendar month to which the Charge applies.

## SCHEDULE 4

### SCHEDULE OF TRAINING SERVICES

1 The apprenticeships offered by the Training Provider and the related information for each apprenticeship, is outlined in the table below.

Title of Apprenticeship	Programme	Pathway	Code	Level	Minimum Duration	Framework / Standard	Awarding Organisation	End Point Assessment Options	Funding Cap	Charges*	Employer Incentive **
IT, Software, Web and Telecoms Professional	Future LDN	Digital Finance	DFI	3	13 months	Framework	Pearson PLC	n/a	£9,000	£900	£1,000
IT, Software, Web and Telecoms Professional	Future LDN	Digital Project Admin	DPA	3	13 months	Framework	Pearson PLC	n/a	£9,000	£900	£1,000
IT, Software, Web and Telecoms Professional	Future LDN	Digital Client Services	DCS	3	13 months	Framework	Pearson PLC	n/a	£9,000	£900	£1,000
IT, Software, Web and Telecoms	Tech City Stars	Digital and Creative	DNC	3	13 months	Framework	Pearson PLC	n/a	£9,000	£900	£1,000

Title of Apprenticeship	Programme	Pathway	Code	Level	Minimum Duration	Framework / Standard	Awarding Organisation	End Point Assessment Options	Funding Cap	Charges*	Employer Incentive**
Professional											
IT, Software, Web and Telecoms Professional	Tech City Stars	IT Support and Networks	ITSN	3	13 months	Framework	Pearson PLC	n/a	£9,000	£900	£1,000
IT, Software, Web and Telecoms Professional	Tech City Stars	Web and Software Development	WSD	3	13 months	Framework	Pearson PLC	n/a	£9,000	£900	£1,000
Software Development Technician	Tech City Stars	n/a	SDT	3	13 months	Standard	British Computer Society (BCS)	BCS	£15,000	£1,500	£1,000
Software Developer	Tech City Stars	n/a	SDE	4	18 months	Standard	British Computer Society (BCS)	BCS City & Guilds	£18,000	£1,800	£1,000

Title of Apprenticeship	Programme	Pathway	Code	Level	Minimum Duration	Framework / Standard	Awarding Organisation	End Point Assessment Options	Funding Cap	Charges*	Employer Incentive**
Network Engineer	Tech City Stars	n/a	NET	4	18 months	Standard	British Computer Society (BCS)	BCS City & Guilds	£18,000	£1,800	£1,000

\* A contribution of up to 10% of the total funding cap is required by the provider where the employer does not have sufficient Levy Funding to fund the entire apprenticeship. Contributions are calculated in real time based on data available from DAS end period reports which are used to inform exact co-investment amounts.

\*\* Employers qualify for an incentive payment where the apprentice is aged 16-18 on the first day of their apprenticeship, or where the apprentice is aged 19-23 on the first day of their apprenticeship and has a Local Authority Health, Care or Education Plan. Payments are due 12 weeks and 52 weeks from the start date of the apprenticeship.

## SCHEDULE 5

### GENERAL PROVISIONS

#### 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 strictly 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 The 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 subject to section 4.3 of this schedule 5, shall keep the other indemnified against all damages, costs, claims and reasonable expenses suffered or incurred by it because 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 The Agreement of its Materials.

#### 2 Data Protection and Data Processing

- 2.1 The Training Provider shall be the Data Controller of all Personal Data obtained by it from each Apprentice or the Employer for the purpose of the Agreed Services.
- 2.2 Each Party shall process Personal Data only in accordance with the Data Protection Act 1998 and where necessary on the other Party's instructions from time to time and shall not process the Personal Data for any purposes other than those expressly authorised.
- 2.3 Each Party shall take reasonable steps to ensure the reliability of all its employees who have access to the Personal Data.
- 2.4 Each Party warrants to the other that it will process the Personal Data in compliance with all applicable laws, enactments, regulations, orders, standards and other similar instruments.
- 2.5 Each Party warrants that, having regard to the state of technological development and the cost of implementing any measures, it will:
- 2.5.1 take appropriate technical and organisational measures against the unauthorised or unlawful processing of Personal Data and against the accidental loss or destruction of, or damage to, Personal Data to ensure a level of security appropriate to:

- (a) the harm that might result from such unauthorised or unlawful processing or accidental loss, destruction or damage; and
- (b) the nature of the data to be protected including, but not limited to, the security measures specified or referred to in the Schedule 8;

2.5.2 take reasonable steps to ensure compliance with those measures.

### 3 Confidentiality

3.1 Each Party undertakes that it shall not 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 paragraph 3.2. **Error! Reference source not found.**

3.2 Each Party may disclose the other Party's Confidential Information:

3.2.1 to its affiliates, and to its affiliates employees, directors, officers, consultants representatives, agents and 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 The Agreement provided that such Party shall procure that such persons 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 or arbitral tribunal of competent jurisdiction or any governmental or regulatory authority (including the rules of any applicable stock exchange).

3.3 The definition of Confidential Information excludes information if it:

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 The Agreement;

3.3.2 was lawfully available to a Party prior to disclosure to it by the other Party;

3.3.3 is, or was, received from a third party which, as far as the Part is aware, was not bound by duties of confidentiality to the other Party; or

3.3.4 is developed by or for a Party independently of the information disclosed by the other Party;

3.4 Upon written request by a Party (which may be via email), the other Party shall as soon as reasonably practicable destroy or return to the requesting Party (at its election) all Confidential Information in the possession of it or its representatives, with any destruction to be confirmed in writing (including via email) to the requesting Party. Notwithstanding the foregoing, a Party and its representatives may retain copies of Confidential Information (i) as it is required to retain by law or regulation (including the rules of any applicable stock exchange), (ii) for bona fide internal compliance purposes, and (iii) that have been created pursuant to automatic archiving and back-up procedures, provided that in such cases any Confidential Information will remain subject to the provisions of The Agreement.

## 4 **Limitation of Liability**

4.1 Nothing in The Agreement shall limit or exclude either Party's liability for:

4.1.1 death or personal injury;

4.1.2 negligence, wilful misconduct, fraud or fraudulent misrepresentation; or

4.1.3 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.

4.2 Subject to paragraph 4.1, neither Party shall be liable to the other, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with The Agreement for:

4.2.1 loss of sales or business; anticipated savings; goodwill;

4.2.2 loss of use or corruption of software, data or information; or

4.2.3 any indirect or consequential loss (other than loss of profits or economic loss)

4.3 Subject to paragraph 4.1, a Party's total liability to the other, 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 The Agreement shall be limited to the higher of (i) five (5) times the total Charges paid during the 12 months immediately preceding the date on which the claim arose, and (ii) the public liability coverage of the Training Provider which is for £5,000,000 for any one claim.

4.4 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 The Agreement.

## 5 **Termination**

5.1 Without affecting any other right or remedy available to it, either Party may terminate the Agreement in its entirety or only in relation to particular Agreed Services pursuant to any Success Email with immediate effect by giving written notice to the other Party if:

5.1.1 the other Party commits a material breach of any term of The 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;

5.1.2 the other Party repeatedly breaches any of the terms of The 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 The Agreement;

5.1.3 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;

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

5.2.1 the Employer fails to pay any amount due under The 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

5.2.2 there is a change of Control of the Employer.

## **6 Consequences of Termination**

6.1 On termination or expiry of The Agreement:

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

6.1.2 the Employer shall immediately pay to the Training Provider all Charges due in respect of the Agreed Services or otherwise under the terms of The Agreement and whether or not the Training Provider is entitled to be paid any of those charges out of the Levy Funding;

6.1.3 the Training Provider shall, on written request, return any of the Employer Materials not used up in the provision of the Agreed Services.

6.2 Termination or expiry of The 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.

## **7 Employer Delay and Force Majeure**

7.1 If a Party ('the Affected Party') is prevented, hindered or delayed in or from performing any of its obligations under The Agreement by a Force Majeure Event, the Affected Party shall not be in breach of The Agreement or otherwise liable for any such failure or delay in the performance of such obligations. Without prejudice to paragraph 7.3 the time for performance of such obligations shall be extended while the effects of Force Majeure Event prevails.

7.2 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.

7.3 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 The Agreement by giving 30 days' written notice to the Affected Party and paragraph 6 shall apply.



7.4 Notwithstanding the other provisions of this paragraph 7.4 if the Training Provider's performance of its obligations under The 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 may be allowed an extension of time to perform its obligations equal to the delay caused by the Employer or as further agreed in writing if reasonably required by the Training Provider.

## **8 Assignment and Other Dealings**

8.1 Subject to paragraph 8.2, 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 The Agreement without the consent of the other Party.

8.2 The Training Provider may in accordance with the other provisions of The 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 Levy Funded the Training Provider shall remain responsible for complying with its responsibilities under The Agreement.

8.3 If any subcontractor undergoes a change of circumstances that affects its ability to continue to deliver any of the Agreed Services, the Training Provider shall be entitled to make such alternative delivery arrangements for each affected Apprentice as it may reasonably decide.

## **9 Variation**

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

## **10 Waiver**

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

10.2 A failure or delay by a Party to exercise any right or remedy provided under The 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 The Agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.

## **11 Severance**

If any provision or part-provision of The 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.

## 12 **Entire Agreement**

- 12.1 The 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.
- 12.2 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 The Agreement. Each Party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in The Agreement.

## 13 **Partnership and Agency**

- 13.1 Nothing in The 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.
- 13.2 Each Party confirms it is acting on its own behalf and not for the benefit of any other person.
- 13.3 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 The Agreement under the SFA 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

## 14 **Third Party Rights**

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

## 15 **Notices**

- 15.1 Any notice given to a Party under or in connection with The 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); or
- 15.2 Any notice shall be deemed to have been received: on signature of a delivery receipt;
- 15.3 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.

## 16 **Counterparts**

- 16.1 The 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.
- 16.2 No counterpart shall be effective until each Party has executed and delivered at least one counterpart.

## 17 Disputes

If a dispute arises out of or in connection with The Agreement or the performance, validity or enforceability of it the Parties shall follow the procedure set out in Schedule 8.

## 18 Governing Law and Jurisdiction

18.1 The 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.

18.2 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 The Agreement or its subject matter or formation.

## SCHEDULE 6

### DEFINITIONS AND INTERPRETATIONS

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

**Additional Funding** means either funding for Apprentices in need of Functional Skills or Learning Support;

**Agreed Services** means the Training Services and any other services to be provided by the Training Provider pursuant to clause 5, 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 Success Email under The Agreement as varied by any applicable Change Note or Mandatory Change Notice;

**The Agreement** means the Apprenticeship Services Contract, the General Terms and Conditions, the Success email and the Frequently Asked Questions as published and updated by the Training Provider from time to time;

**Apprentice** means an individual employed by the Employer under an Apprenticeship Agreement who is an Apprentice under the SFA Rules and in relation to whom the Training Provider is to provide any of the Agreed Services;

**Apprentice Assessment Organisation** means an approved qualification-awarding organisation for the applicable Apprenticeship;

**Apprenticeship** means the training and employment of an Apprentice in accordance with the SFA Rules;

**Apprenticeship** means a written contract of employment between the Apprentice and the Employer including a statement on the skill, trade or occupation

<b>Agreement</b>	in which the Apprentice is being trained;
<b>Apprenticeship Framework</b>	means a framework approved by the Skills Funding Agency and published by the Secretary of State and assessed through The Agreement;
<b>Apprenticeship Standard</b>	means a standard approved by the Skills Funding Agency and published by the Secretary of State, and assessed through a standardised exam, more particularly described in the SFA 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 6 and Schedule 7;
<b>Co-investment Charges or Charges</b>	means the charges specified in a Success Email for the Agreed Services together with any Mandatory Additional Cost Payment;
<b>Commencement Date</b>	means the date of the Apprenticeship Services Contract;
<b>Commitment Statement</b>	means the statement agreed between the Parties as set out in Schedule 9;
<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 SFA Rules is only paid once an Apprentice sits his final exam;
<b>Confidential Information</b>	means any information that a Party has or acquires before, on or after the date of The 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>Digital Account</b>	means the Employer's digital account held under the ESFA Rules;
<b>Data Controller</b>	means the person or organisation who determines the purposes for which and the manner in which any Personal Data is processed;
<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 Success Email;

<b>End Point Assessment</b>	the independent assessment of the Apprentice's knowledge, skills and behaviours carried out by an Apprentice Assessment Organisation at the end of the training to confirm that the Apprentice has met the requirements of the relevant approved Apprenticeship Standard;
<b>End Point Assessment Organisation</b>	means an approved qualification-awarding organisation selected by an Employer and contracted by a Training Provider to carry out End Point Assessment;
<b>ESFA</b>	the Secretary of State for Education, acting through the Education and Skills Funding Agency;
<b>ESFA Rules</b>	means the Common Funding and Performance Management Rules for Apprenticeships as published and updated from time to time by the Education and Skills Funding Agency; <a href="https://www.gov.uk/government/publications/apprenticeship-funding-and-performance-management-rules-2017-to-2018">https://www.gov.uk/government/publications/apprenticeship-funding-and-performance-management-rules-2017-to-2018</a>
<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 <b>12</b> ;
<b>Force Majeure Event</b>	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</li> </ul>

on this clause); and

(h) interruption or failure of utility service;

<b>Frequently Asked Questions</b>	means the Frequently Asked Questions document / webpage as published and updated by the Training Provider from time to time;
<b>Functional Skills</b>	means Functional Skills for the purposes of the SFA 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 The Agreement;
<b>ILR</b>	means the individualised learner record which the Training Provider submits to the SFA;
<b>Individual Learning 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 or Apprenticeship Framework;
<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>Levy Funded</b>	means intended by the Employer to be funded in whole or in part with Levy Funding;
<b>Levy Funding</b>	means funding provided by the SFA through either the Employer's Digital Account with Apprenticeship Service, the SFA or through Government-Employer co-investment;
<b>Mandatory Additional Cost Payment</b>	Shall have the meaning given in Clause 6.2;

<b>Mandatory Change Notice</b>	shall have the meaning given in clause 6.2;
<b>Mandatory Policies</b>	means the Employer's business policies listed in Schedule 6, 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 3;
<b>Personal Data</b>	means data relating to a living individual who can be identified from that data (or from that data and other information in the Data Controller's possession or likely to come into the Data Controller's possession);
<b>Success Email</b>	means a Success Email made in accordance with clause 5;
<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 training providers May 2017 to March 2018 (Version 1)</i> dated February 2017 as amended from time to time;
<b>Termination Conditions</b>	means the conditions specified in Schedule 2 paragraphs 5.1.1, 5.1.2 and 5.1.3;
<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 Success Email 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 Services</b>	means the services set out in Schedule 8; 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 The Agreement.
1.3	A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

- 1.4 The Schedules, the Apprenticeship Services Contract, the Success Email relating to individual Agreed Services all form part of The Agreement and shall have effect as if set out in full in the body of The Agreement. Any reference to The Agreement includes the Schedules, the Apprenticeship Services Contract, the Success Email and the Frequently Asked Questions.
- 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 The Agreement shall be binding on, and enure to the benefit of, the Parties to The 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 The Agreement or to any other agreement or document referred to in The Agreement is a reference of The Agreement or such other agreement or document as varied or novated (in each case, other than in breach of the provisions of The Agreement) from time to time.
- 1.14 References to clauses and Schedules are to the clauses and Schedules of The 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 SFA Rules shall have the same meaning in this document.
- 1.17 The provisions of The Agreement which are stated to apply if the Agreed Services are Levy Funded shall be construed consistently with the SFA Rules.



## SCHEDULE 7

### 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 The 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 The Parties shall agree in good faith which matters must be stated in each proposed change note.
- 4 Each Proposed Change Note shall state:
  - 4.1 the name of the Party requesting the change;
  - 4.2 the date of the request;
  - 4.3 the reason for the change;
  - 4.4 full details of the change;
  - 4.5 the price, if any, of the change;
  - 4.6 the likely impact of the change on other aspects of The Agreement including:
    - 4.6.1 the timetable for the provision of the Agreed Services;
    - 4.6.2 the effect on the Charges;
    - 4.6.3 the training to be provided;
    - 4.6.4 the use of sub-contractors;
    - 4.6.5 working arrangements;
    - 4.6.6 other contractual issues; and
  - 4.7 a timetable for implementation of the change.
- 5 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.
- 6 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 The Agreement.

## **SCHEDULE 8**

### **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 15 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 18.
- 7 The commencement of mediation shall not prevent the Parties commencing or continuing court proceedings in relation to the Dispute at any time.

## SCHEDULE 9

### THE COMMITMENT STATEMENT

- 1 The Commitment Statement shall include in accordance with the SFA rules:
  - 1.1 the planned content and schedule for eligible training (and must also include end-point assessment if they are undertaking a standard);
  - 1.2 what is expected 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 and key milestones for mandatory or other qualification achievements;
    - 1.3.2 details on which elements are eligible for funding from the Employer's Digital 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 SFA including English and maths; and
    - 1.3.3 the list of all organisations delivering the training including English and maths;
  - 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 Employer: commitment to wages and time off to study in the working day; and
    - 1.4.2 Training Provider: support and guidance available and how to access this.
  - 1.5 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 SFA through the apprenticeship helpline.

## **SCHEDULE 10**

### **MANDATORY POLICIES**

The Mandatory Policies are:

- Employer's Health and Safety Policy. This will be collected from the Employer and held on file when the Employer's first apprentice is visited for the first time by an Employee of the Training Provider.