****

**DEFINITIONS AND INTERPRETATIONS**

1. **Interpretation**

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

**ORDERING, INVOICING AND PAYMENT**

1. **Ordering Services**

The Employer may order any of the Training Services by making a request (‘a Request for Services’)

to the Training Provider pursuant to this clause 5.

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

Each Request for Services shall state the matters listed in the template request for services set out in Schedule 8.

The Training Provider and the Employer shall negotiate in good faith each Request for Services and the Employer shall provide the Training Provider with such information as it may reasonably require to enable it to assess the prior learning of any Apprentice or prospective Apprentice and without any obligation on either Party to agree, both Parties shall sign and date the draft Request for Services once it is agreed.

When a Request for Services has been agreed and signed in accordance with clause 5.4 the service specified in that Request for Services shall be Agreed Services and the date of the signed Request for Services shall be the RFS Agreement Date.

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

1. **Changes to Services**

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

Notwithstanding any other provisions of this Agreement, where the Training Provider reasonably considers that a change to the Agreed Services is required in order to comply with any requirement of the ESFA taking effect after the RFS Agreement Date including any modification of the ESFA Rules the Training Provider shall be entitled by notice in writing to the Employer (‘a Mandatory Change Notice’) to make such changes as it may reasonably decide are necessary to comply as specified in such Mandatory Change Notice with effect from a time specified in that notice and the Employer shall pay the Training Provider such amount as the Training Provider may reasonably determine to be the additional cost (if any) of providing the Agreed Services as so varied (‘the Mandatory Additional Cost Payment’).

1. **Charges, Invoicing and Payment**

The Employer is responsible for payment of the Charges.

To the extent that the Charges are not actually paid by the ESFA from the Apprenticeship Service Account, or the Agreed Services are not Levy Funded, the Training Provider shall be entitled to invoice the Employer for the Charges in accordance with the Payment Schedule and otherwise at any time for services rendered at any time before the end of the most recently ended month and the Employer shall pay such invoices within 30 days of receipt provided however that the Training Provider shall only be entitled to the Completion Payment once the Apprentice has undertaken all mandatory elements of the framework or all elements of the applicable end-point assessment for standards (as the case may be).

The Charges are stated exclusive of applicable VAT.

The Training Provider shall promptly on request provide a VAT invoice to the Employer in respect of such of the Charges for the Agreed Services as are subject to VAT.

Without prejudice to the obligation on the Employer to pay the Charges the Employer shall provide such assistance to the Training Provider as the Training Provider may reasonably require to obtain any payment to which it may be entitled in respect of the Agreed Services or otherwise pursuant to this agreement under the ESFA Rules.

If and to the extent that the Training Provider receives a payment from the Levy Funding 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.

Without prejudice to any other rights of the Training Provider, any invoice that is not paid when due shall bear interest at the rate of 3 per cent above the base rate for the time being of Barclays Bank plc.

1. **TRAINING PROVIDER RESPONSIBILITIES**

5.1 The Training Provider shall deliver the Services to the Employer:

5.1.1 in accordance with and for the duration of the relevant Apprenticeship Programme

5.1.2 Using reasonable skill and care;

5.1.3 in compliance with the Funding Rules <https://www.gov.uk/guidance/apprenticeship-funding-rules> and the ESFA/Training Provider agreement; <https://www.gov.uk/government/publications/apprenticeship-funding-legal-agreement-for-training-providers>

5.1.4 in compliance with the Law and associated codes and guidance from time to time in force.

5.1.5 in compliance with the quality codes and guidance issued by the QAA (including the QAA UK Quality Code) OFS, Ofsted, and/or any other relevant regulatory body introduced from time to time (as the case may be).

5.2 The Training Provider shall enter into written agreements with all relevant:

5.3.1 Subcontractors; and

5.3.2 Apprentice Assessment Organisations;

as specified in the relevant Apprenticeship Programme.

5.3 The Training Provider shall ensure that any Subcontractor meets the requirements of the Funding Rules and 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.

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

5.5 The Training Provider shall enter into a Commitment Statement as required by the Funding Rules.

1. **Employer Obligations**

6.1 The Employer shall:

6.1.1 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);

6.1.2 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 Funding Rules [**https://www.gov.uk/guidance/apprenticeship-funding-rules**](https://www.gov.uk/guidance/apprenticeship-funding-rules) and the ESFA/Training Provider agreement [**https://www.gov.uk/government/publications/apprenticeship-funding-legal-agreement-for-training-providers**](https://www.gov.uk/government/publications/apprenticeship-funding-legal-agreement-for-training-providers)

(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 QAA, OFS Ofsted

and/or any

other relevant regulatory body introduced from time to time (as the case may be)

6.1.3 enter into and procure to the extent it is reasonably able to do so that each Apprentice enters into:

(a) an Apprenticeship Agreement; and

(b) a Commitment Statement as required by the Funding Rules,

Confirmation of which must be provided in Schedule 1

Each of which must be in place for the entire length of the Apprenticeship and meet the requirements of the Funding Rules. The Apprenticeship Agreement will be held by the Employer and a signed copy will be distributed to the Apprentice. The Commitment Statement will be held by the Employer, Training Provider, and Apprentice. The Employer must provide the Training Provider promptly with copies of any documentation that has been subject to revision by the Employer and the Apprentice from time to time;

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

6.1.5 notify in writing the Training Provider of any Break in Learning;

6.1.6 confirm by providing signed declarations in Schedule 1:

(a) each Apprentice’s eligibility for apprenticeship funding;

(b) any eligibility for 16-18-year-old incentive payments (if applicable);

(c) the average number of employees employed by the Employer in the 365 days immediately preceding the first day of an Apprenticeship and (if applicable) the Employer’s eligibility for small employer incentive payment;

(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 and the ESFA/Training Provider agreement;

(e) the address or addresses where the Apprentice shall be carrying out their working hours; and

(f) whether learning support is available to support Apprentices with additional learning needs,

6.1.7 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;

The Employer may employ the Apprentice, with the prior permission of the Training provider, for fewer than 30 hours a week provided that:

(i) the Training Provider agrees that there is a case for the Apprentice to work fewer than 30 hours a week;

(ii) the Employer records the proposed number of hours each week; and

(iii) The Employer keeps a record of the circumstances which has led it to believe that a reduction in hours is appropriate.

(iv) 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 20% of each Apprentice’s employed hours to be used for off-the-job 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; Such release extends to training courses that the Training Provider may insert into the programme or believe to be of benefit to the Apprentice following review on an ongoing basis.

(iii) providing the Apprentice, the use of equipment necessary to enable the Apprentice to fulfil training objectives;

(iv) cooperating with the Training Provider to arrange for any necessary End-Point Assessment and allowing the Apprentice to attend the same

6.1.8 comply with the terms of any agreement between the Employer and the ESFA and to aid the Training Provider to fulfil its obligations under the Funding Rules;

6.1.9 provide payment to the Training Provider for resits for academic qualifications or End-Point Assessment required by the Approved Apprenticeship Standard where no extra learning takes place before the re-take;

6.1.10 comply with any Mandatory Policies.

6.2 To secure an efficient working relationship between the Training Provider and the Employer and to protect the interests of the Apprentice, the Employer shall:

6.2.1 cooperate 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;

6.2.2 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;

6.2.3 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;

6.2.4 immediately notify the Training Provider in writing when it becomes aware or develops a reasonable suspicion that

6.2.4 (a) the Apprentice wishes to withdraw from the Apprenticeship;

6.2.4 (b) it is no longer able to deliver the Apprenticeship;

6.2.4 (c) there is any change of circumstances that affect the amount of funding that can be claimed;

6.2.4 (d) there becomes a reasonable doubt as to an Apprentice’s ability to complete the Apprenticeship.

6.2.5 immediately notify the Training Provider if the Apprentice informs the Employer that they no longer wish to continue with the Apprenticeship; and

6.2.6 appoint an Employer’s Representative and promptly notify the Training Provider of any change of the Employer’s Representative from time to time.

6.3 In the event of any of the above scenarios, the Employer and Training Provider will work together to resolve by mutual agreement and in accordance with the Funding Rules. For avoidance of doubt, where there is conflict, compliance with the Funding Rules will always take priority in any decision taken.

1. **Change of circumstances**

Where training and/or assessment is no longer being delivered owing to a change in circumstance the Employer shall pay:

the cost of the Charges for the training and any end-point assessment delivered up to and

including to the termination date; and

any mandatory co-investment due for any training or end-point assessment already delivered

as reasonably determined by the Training Provider and if the Training Provider determines that

there has been an over-payment of Charges by the Employer the Training Provider shall repay

to the Employer the amount of the over-payment.

For the purposes of this clause if an apprentice leaves without completing their apprenticeship, the termination date shall be the last date of learning, including the apprenticeship programme learning aim, is the date the Training Provider has evidence the apprentice was still in learning for any learning that was part of their apprenticeship.

**General Terms and Conditions**

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

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

**Schedule 1**

**Definitions and Interpretations**

The definitions and rules of interpretation set out below shall apply in this 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 Request for Services under this agreement as varied by any applicable Change Note or Mandatory Change Notice; |
| **Apprentice** | means an individual employed by the Employer or by a connected company or charity as permitted by the ESFA rules under an Apprenticeship Agreement who is an Apprentice under the ESFA Rules and in relation to whom the Training Provider is to provide any of the Agreed Services; |
| **Apprenticeship** | means the training and employment of an Apprentice in accordance with the ESFA Rules; |
| **Apprenticeship Agreement** | means a written contract of employment between the Apprentice and the Employer including a statement on the skill, trade or occupation in which the Apprentice is being trained; |
| **Apprenticeship Framework** | means a framework approved by the ESFA and published by the Secretary of State and assessed through this Agreement; |
| **Apprenticeship Standard** | means a standard approved by the ESFA and published by the Secretary of State, and assessed through a standardised exam, more particularly described in the ESFA Rules; |
| **Apprenticeship Service Account** | means the Employer’s apprenticeship service account under the ESFA Rules; |
| **Awarding Organisation** | means the approved qualification-awarding organisation for the applicable Apprenticeship; |
| **Business Day** | means a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business; |
| **Business Hours** | means the period from 9.00am to 5.00pm on any Business Day; |
| **Change Note** | means a Change Note pursuant to clause 6 and Schedule 4; |
| **Charges** | means the charges specified in a Request for Services for the Agreed Services together with any Mandatory Additional Cost Payment; |
| **Commencement Date** | means the date of this Agreement; |
| **Commitment Statement** | means the statement agreed between the Parties as set out in Schedule 6; |
| **Control** | shall be as defined in section 1124 of the Corporation Tax Act 2010, and the expression change of control shall be construed accordingly; |
| **Completion Payment** | means the payment for the 20% of the Charges for each Apprenticeship that under the ESFA Rules is only paid once an Apprentice takes part of their end point assessment (apprenticeship standard) or applied for their apprenticeship framework certificate, including as the case may be Apprenticeships funded by Transferred Levy Funds;; |
| **Confidential Information** | means any information that a Party has or acquires before, on orafter the date of this Agreement that is confidential in nature concerning the other Party including, without limitation, its business, affairs, customers, clients, suppliers, plans or strategy or that of any member of the group of companies to which the other Party belongs; |
|  |  |
| **Data Protection Law** | means the General Data Protection Regulation EU 2016/679 (GDPR) and any national laws or regulations implementing or constituting a replacement or successor data protection regime to that governed by GDPR (including the Data Protection Act 2018); |
| **Employer's Equipment** | means any equipment, including tools, systems, cabling or facilities, provided by the Employer, its agents, subcontractors or consultants which is used directly or indirectly in the supply of the Agreed Services including any such items specified in a Request for Services; |
| **Employer Materials** | 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. |
| **End-Point Assessment Organisation** | means an approved organisation on the ESFA’s Register of End Point Assessment Organisations.; |
| **ESFA** | means the Education and Skills Funding Agency; |
| **ESFA Rules** | means the ESFA’s funding rules as contained in: *Apprenticeship funding and performance-management rules for main providers* as amended from time to time; [Provider Support Manual 19/20 version 2](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/870376/ProviderSupportManual_19_20_version_2_Final.pdf) |
| **Force Majeure Event** | means any circumstance not within a Party's reasonable control including, without limitation:  (a) acts of God, flood, drought, earthquake or other natural disaster;  (b) terrorist attack, civil commotion or riots, war, threat of or preparation for war;  (c) nuclear, chemical or biological contamination;  (d) any law or any action taken by a government or public authority;  (e) collapse of buildings, fire, explosion or accident;  (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);  (g) non-performance by suppliers or subcontractors (other than by companies in the same group as the Party seeking to rely on this clause); and  (h) interruption or failure of utility service; |
| **Functional Skills** | means Functional Skills for the purposes of the ESFA Rules; |
| **Good Industry Practice** | means standards, practice methods and procedures conforming to applicable legal requirements and that degree of care and skill diligence and prudence which would be reasonably expected of an experienced person engaged in providing services similar in nature to the Training Services in a similar type and size of undertaking and under the same or similar circumstances as anticipated by this Agreement; |
| **ILR** | means the individualised learner record which the Training Provider submits to the ESFA; |
| **Individual Learning Plan** | 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; |
| **Intellectual Property Rights (IPRs)** | means patents, rights to inventions, copyright and moral rights, trademarks 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; |
| **Learning Support** | means support available for Apprentices with learning difficulties or disabilities; |
| **Levy Funded** | means intended by the Employer to be funded in whole or in part with Levy Funding; |
| **Levy Funding** | means funding provided by the ESFA through either the Employer’s Apprenticeship Service Account with Apprenticeship Service, the ESFA or through Government-Employer Co-investment; |
| **Mandatory Additional Cost Payment** | shall have the meaning given in clause 6.2; |
| **Mandatory Change Notice** | shall have the meaning given in clause 6.2; |
| **Mandatory Policies** | means the Employer's business policies listed in Schedule 7, as amended by notice to the Training Provider from time to time; |
| **Payment Schedule** | means the schedule for payment agreed between the Parties as stated at Schedule 10; |
|  |  |
| **Recruit an Apprentice Service** | means the government provided service which allows training providers to post and manage apprenticeship vacancies on behalf of employers eligible to make use of the service; |
| **Request for Services** | means a request for services made in accordance with clause 5; |
|  |  |
| **RFS Agreement Date**  **RoATP** | means the date which is the RFS Agreement Date pursuant to clause 5.5;  means the Register of Apprenticeship Providers as published by the ESFA from time to time; |
| **Termination Conditions** | means the conditions specified in Schedule 2 paragraphs 5.1.1, 5.1.2 and 5.1.3; |
| **Training Provider's Equipment** | means any equipment, including tools, systems, cabling or facilities, provided by the Training Provider to the Employer and used directly or indirectly in the supply of the Agreed Services, including any such items specified in a Request for Services but excluding any such items which are the subject of a separate agreement between the parties under which title passes to the Employer; |
| **Training Materials** | 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; |
| **Training Services** | means the services set out in Schedule 9; |
| **Transferred Levy Funds** | means Levy Funding transferred from one employer to another employer as permitted under the ESFA Rules; and |
| **VAT** | means value added tax chargeable under the Value Added Tax Act 1994. |

Clause, Schedule and paragraph headings shall not affect the interpretation of this Agreement.

A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

The Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Schedules.

A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.

Unless the context otherwise requires, words in the singular shall include the plural and, in the plural, shall include the singular.

Unless the context otherwise requires, a reference to one gender shall include a reference to each other gender.

This Agreement shall be binding on, and inure to the benefit of, the Parties to this Agreement and their respective personal representatives, successors and permitted assigns, and references to any Party shall include that Party's personal representatives, successors and permitted assigns.

A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.

A reference to writing or written does not include fax and email.

Any obligation on a Party not to do something includes an obligation not to allow that thing to be done.

A reference to this Agreement or to any other agreement or document referred to in this Agreement is a reference of this Agreement or such other agreement or document as varied or novated (in each case, other than in breach of the provisions of this Agreement) from time to time.

References to clauses and Schedules are to the clauses and Schedules of this Agreement and references to paragraphs are to paragraphs of the relevant Schedule.

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.

Words or phrases defined in the ESFA Rules shall have the same meaning in this document.

The provisions of this Agreement which are stated to apply if the Agreed Services are Levy Funded shall be construed consistently with the ESFA Rules.

**Schedule 2**

**General Terms and Conditions**

**Intellectual Property Rights**

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.

Each Party (or its licensors, as applicable) shall retain ownership of all IPRs in its Materials.

Each Party hereby grants to the other a non-exclusive, non-transferable, royalty free licence to use its Materials to the extent reasonably necessary for the Training Provider to provide the Agreed Services.

Each Party:

warrants that the receipt and use in the performance of this Agreement by the other, its agents, subcontractors or consultants of its Materials will not infringe the rights, including any Intellectual Property Rights, of any third party; and

shall keep the other indemnified against all damages, costs, claims and expenses suffered or incurred by it as a result of any actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the receipt or use in the performance of this Agreement of its Materials.

**Data Protection and Data Processing**

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

**Confidentiality**

Each Party undertakes that it shall not at any time during this Agreement, and for a period of five years after termination of this Agreement, disclose to any person any Confidential Information of the other Party or of any member of the group of companies to which the other Party belongs, except as permitted by paragraphs 3.2 and 3.3.

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

to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the Party's rights or carrying out its obligations under or in connection with this Agreement provided that such Party shall procure that its employees, officers, representatives or advisers to whom it discloses the other Party's Confidential Information comply with this paragraph 3; and

as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

Each Party may disclose the other Party’s Confidential Information if, to the extent to which either Party can prove to the other’s reasonable satisfaction that the Confidential Information:

is, or has become, generally available to the public other than as a direct or indirect result of the information being disclosed by a Party or its representatives in breach of this Agreement;

was available on a non-confidential basis to a Party prior to disclosure to it by the other Party;

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

the Parties agree in writing that the information is not confidential.

**Anti-bribery and anti-corruption**

Each party undertakes that it shall:

comply with all applicable laws, statutes, regulations relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010; and

not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK.

**Limitation of Liability**

Nothing in this Agreement shall limit or exclude either Party’s liability for:

death or personal injury caused by its negligence;

fraud or fraudulent misrepresentation; or

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.

Subject to paragraph 4.1, the Training Provider shall not be liable to the Employer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with this Agreement for:

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

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

any indirect or consequential loss.

Subject to paragraph 4.1, the Training Provider's total liability to the Employer, whether in contract, tort (including negligence), for breach of statutory duty, misrepresentation or otherwise, arising under or in connection with the performance or contemplated performance of this Agreement shall be limited to the total Charges paid during the 12 months immediately preceding the date on which the claim arose.

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

**Termination**

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

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

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;

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.

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

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

there is a change of Control of the Employer.

**Consequences of Termination**

On termination or expiry of this Agreement:

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

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

the Employer shall promptly return all the Training Provider's Equipment and if the Employer fails to do so, the Training Provider may enter the Employer's premises and take possession of the Training Provider's Equipment;

until the Training Provider's Equipment has been returned or repossessed, the Employer shall be solely responsible for its safe keeping; and

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

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.

**Employer Delay and Force Majeure**

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

The corresponding obligations of the other Party shall be suspended, and it’s time for performance of such obligations extended, to the same extent as those of the Affected Party.

If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than 3 months, the Party not affected by the Force Majeure Event may terminate this Agreement by giving 1 month written notice to the Affected Party and paragraph 6 shall apply.

Notwithstanding the other provisions of this paragraph 7.4 if the Training Provider's performance of its obligations under this Agreement is prevented or delayed by any act or omission of the Employer, its agents, subcontractors, consultants or employees then, without prejudice to any other right or remedy it may have, the Training Provider shall be allowed an extension of time to perform its obligations equal to the delay caused by the Employer or further if reasonably required by the Training Provider.

**Assignment and Other Dealings**

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 this Agreement without the consent of the other Party.

The Training Provider may in accordance with the other provisions of this Agreement sub-contract 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 this agreement.

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.

**Variation**

Subject to clause 6, no variation of this agreement shall be effective unless it is in writing and signed by the Parties (or their authorised representatives).

**Waiver**

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

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

**Severance**

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

**Entire Agreement**

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

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

**Partnership and Agency**

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

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

For the purpose of obtaining any payment to which the Training Provider may be entitled in respect of the Agreed Services or otherwise pursuant to this Agreement under the ESFA Rules and by way of security the Employer hereby irrevocably appoints the Training Provider to be its attorney in its name and on its behalf to do anything necessary or desirable to obtain such payment

**Third Party Rights**

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

**Notices**

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

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

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.

**Counterparts**

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

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

**Disputes**

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

**Governing Law and Jurisdiction**

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

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

**Schedule 3**

**Data** **Protection** **Wording**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Each Party agrees to only process Shared Personal Data for the Agreed Purposes and such other purpose as the Data Subjects may consent from time to time

Each Party shall comply with all applicable requirements of the Data Protection Law with respect to its Processing of the Shared Personal Data.

Each party agrees to only Process the Shared Personal Data for the Agreed Purpose on the terms set out in this Agreement. This clause is in addition to, and does not relieve, remove or replace a Party's obligations under the Data Protection Law.

The Data Discloser shall, in respect of Shared Personal Data, ensure that its privacy notices are clear and shall provide sufficient information to the Data Subjects for them to understand what of their Personal Data the Data Discloser is sharing with the Data Receiver, the circumstances in which it will be shared, the purposes for the data sharing and the identity of the Data Receiver.

The Data Receiver undertakes to inform the Data Subjects the purposes for which it will Process their Personal Data and provide all of the information that it must provide in accordance with Data Protection Law, to ensure that the Data Subjects understands how their Personal Data will be Processed by the Data Receiver.

The Training Provider may, at its sole discretion, request that the Employer provide evidence in a form acceptable to the Training Provider of the Employer's compliance with Data Protection Law.

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

The Data Receiver shall not engage a third-party Data Processor to Process the Shared Personal Data without the prior written consent of the Data Discloser, provided that the Training Provider may appoint a Permitted Data Processor without requiring further consent from the Employer.

Where the Data Receiver ('the Data Controller' for the purpose of paragraphs 9 and 10) appoints a third party as Data Processor for the purpose of Processing Shared Personal Data it shall ensure that the Data Processor has in place appropriate technical and organisational measures to meet the requirements of Data Protection Law and protect Data Subject rights.

The Data Controller shall enter into a written agreement which provides that the Data Processor shall Process Shared Personal Data only in accordance with the following:

the Data Processor shall only Process the Shared Personal Data on documented instructions from the Data Controller, including with regard to transfers of Personal Data to a third country or an international organisation, unless required to do so by applicable law to which the Data Processor is subject; in such a case, the Data Processor shall inform the Data Controller of that legal requirement before Processing, unless that law prohibits such information on important grounds of public interest;

the Data Processor shall ensure that persons authorised to Process the Personal Data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality;

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

the pseudonymisation and encryption of Personal Data;

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

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

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

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

with reference to paragraph 10.3.4, in assessing the appropriate level of security, account shall be taken in particular of the risks that are presented by Processing, in particular from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to Personal Data transmitted, stored or otherwise processed;

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

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

the notification described in paragraph 10.5.1 shall at least:

describe the nature of the Personal Data breach, including where possible: the categories and approximate number of Data Subjects concerned, and the categories and approximate number of Personal Data records concerned;

communicate the name and details of the data protection officer or other contact point where more information can be obtained;

describe the likely consequences of the Personal Data breach; and

describe the measures taken or proposed to be taken to address the Personal Data breach, including, measures to mitigate its possible adverse effects;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

with regard to paragraph 10.11, the Data Processor shall immediately inform the Data Controller if, in its opinion, an instruction infringes Data Protection Law.

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

**Data Processing Particulars**

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

|  |  |
| --- | --- |
| **Scope:** | Processing of Personal Data by the Training Provider under the terms of this Agreement whereby the Training Provider provides a programme of academic learning for apprenticeships to Apprentices of the Employer. |
| **Nature:** | 1. The collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of Apprentice Personal Data in connection with the Training Provider providing a programme of academic learning for apprenticeships,  2. The collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of Employer Staff Personal Data in connection with the Training Provider providing a programme of academic learning for apprenticeships to the Employer's apprentices |
| **Purpose:** | The provision by the Training Provider of a programme of academic learning for apprenticeships to the Employer's apprentices  Communication between the Training Provider and the Employer in relation to the provision by the Training Provider of a programme of academic learning for apprenticeships to the Employer's apprentices |
| **Period for which Shared Personal Data will be retained:** | Apprentice Personal Data (other than the Training Records) until [six months] after the Apprenticeship End Date, or until the Agreement terminates, whichever is earlier.  Employer's Staff Personal Data- for the period of time for which the information is required to facilitate the running of the Apprenticeship or until this Agreement terminates (whichever is earlier), and for [6 months] thereafter. |
| **Types of Personal Data:** | name, address, date of birth, email address, telephone number, health details, academic results and progress |
| **Categories of Data Subject:** | * Apprentices of the Employer. * Staff of the Employer. * Staff of the Training Provider. * \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. |
| **Permitted Data Processors** | * Any person providing the Training Services on behalf of the Training Provider; * IT service providers (for the purpose of hosting, supporting or maintaining the Training Provider's IT systems, including any back-up and disaster recovery systems * End Point Assessors |

**Part B. Processing by Employer**

|  |  |
| --- | --- |
| **Scope:** | Processing of Personal Data by the Employer under the terms of this Agreement whereby the Training Provider provides a programme of academic learning for apprenticeships to Apprentices of the Employer. |
| **Nature:** | The collection, recording, organisation, structuring etc of apprentice personal data as per Part A above. |
| **Purpose:** | The provision by the Training Provider of a programme of academic learning for apprenticeships to the Employer's apprentices |
| **Period for which Personal Data will be retained:** | Apprentice Personal Data until [six months] after the Apprenticeship End Date, or until the Agreement terminates, whichever is earlier. |
| **Types of Personal Data:** | name, address, date of birth, email address, telephone number, ULN, NI, health details, disabilities, academic results and progress |
| **Categories of Data Subject:** | Apprentices of the Employer.  • Staff of the Employer.  • Staff of the Training Provider.  • OTHERS - \_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| **Permitted Data Processors** |  |

**Schedule 4**

**Change Procedure**

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.

A request to amend this Agreement or the Agreed Services by either Party shall be made in writing to the other in the form of a note (‘a Proposed Change Note’).

Each Proposed Change Note shall state:

the name of the Party requesting the change;

the date of the request;

the reason for the change;

full details of the change;

the price, if any, of the change;

the likely impact of the change on other aspects of this Agreement including:

the timetable for the provision of the Agreed Services;

the effect on the Charges;

the training to be provided;

the use of sub-contractors;

working arrangements;

other contractual issues; and

a timetable for implementation of the change.

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.

A Proposed Change Note when signed by the Employer and the Training Provider shall thereupon become a Change Note and shall constitute an amendment to this Agreement.

**Schedule 5**

**Dispute Resolution Procedure**

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.

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.

If the Managers are unable to resolve the Dispute within 30 days of service of the Dispute Notice, the Dispute shall be referred to the chief executive officer of the Employer and chief executive officer of the Training Provider (together ‘the chief executive officers’) who shall attempt in good faith to resolve it.

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.

Unless otherwise agreed between the Parties, the mediator shall be nominated by CEDR.

to initiate the mediation, a Party shall serve notice in writing (‘an ADR notice’) to the other Party to the Dispute, requesting a mediation;

a copy of the ADR notice should be sent to CEDR; and

the mediation will start not later than 30 days after the date of the ADR notice.

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.

The commencement of mediation shall not prevent the Parties commencing or continuing court proceedings in relation to the Dispute at any time.

**Schedule 6**

**The Commitment Statement**

The Commitment Statement shall include in accordance with the ESFA rules:

the planned content and schedule for eligible training including the end-point assessment if they are undertaking a standard;

what is expected from and offered by the Employer, Training Provider (and any subcontractors) and the Apprentice to achieve the Apprenticeship;

a summary of:

details of the Apprenticeship being followed, including start and end-dates for the apprenticeship training and (where applicable) end-point assessment, dates relating to the practical period of training and key milestones for mandatory or other qualification achievements making clear whether or not the component has been used towards the calculation of the minimum 20% off-the-job training requirement;

the amount of off-the-job training that will be delivered to meet the minimum 20% requirement; the individual's prior learning must be taken into account before calculating the off-the-job requirements and designing the programme;

details on which elements are eligible for funding from the Employer’s Apprenticeship Service Account or Government-Employer Co-investment and necessary to meet any end-point assessment, those which are extra and not eligible for co-investment but will be fully funded by the Employer, and those fully funded by the ESFA including English and maths; and

the list of all organisations delivering the training including English and maths and the End-Point Assessment Organisation (where applicable);

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:

Apprentice: attendance and study time;

Employer: commitment to wages and time off to study in the working day; and

Training Provider: support and guidance available and how to access this.

details of tripartite progress reviews (main provider, employer, apprentice), including the frequency and format, to discuss progress to date against the commitment statement and the immediate next steps required.

the process for resolving any queries or complaints regarding the Apprenticeship, including quality; this must include details of the escalation route within the Training Provider’s own organisation and the escalation process to the ESFA through the apprenticeship helpline.

**Schedule 7 Mandatory Policies** (please refer to individual Agreement)

**Schedule 8 Request for Services** (please refer to individual Agreement)

**Schedule 9 The Training Services** (please refer to individual Agreement)

**Schedule 10**

**Payment Schedule**

From the 1st of April 2019 (until further notice). If an employer has not paid the levy and would like to train an Apprentice, they will need to co-invest 5% of the Maximum Funding Value of the Framework or Standard over and above the Employer Contribution and will benefit from government funding to cover the remaining 95% of the Maximum Funding Value of the Framework/Standard. This will also apply to any levy-paying employer who wants to invest more in Apprenticeship training than they hold in their digital account. In this case, if in any single month a levy-paying employer has insufficient funds available in their digital account to meet the full costs of training and assessment, they will need to co-invest 5% of the remaining balance, with government paying the remainder. The only exception to this requirement applies to small employers employing fewer than 50 people if, on the first day of their Apprenticeship, the Apprentice is aged between 16 and 18 years old or is aged between 19 and 24 years old and either has an EHC plan provided by their local authority or has been in care of their local authority as defined in P97 of the funding rules.

All employers will need to meet, in full, any agreed costs above the funding band limit for any particular Apprenticeship.

If a learner completes the formal training courses and then withdraws or fails to engage with the remainder of the programme or EPA process the client may be liable for the losses incurred by GKA. This will be assessed on a case by case basis and depending on the reasons, a reconciliation will be carried out to calculate the difference between the cost incurred by GKA versus the Funding received for the learner and the client will be expected to pay GKA the difference. This is to ensure that the Apprentice Levy Funding is not being utilised for the sole purpose of obtaining vendor qualifications.