

**Dated: 24/11/2023**

**(1) Gower College Swansea**

**and**

**(2) Employer Name:  
Driver and Vehicle Standards Agency (DVSA)**

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**Apprenticeship Training  
Services Agreement**

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**THIS AGREEMENT** is dated: **24/11/2023**

**Parties:**

<b>(1) TRAINING PROVIDER</b>	
<b>Training Provider:</b>	Gower College Swansea
<b>Training Provider's Address:</b>	Gower College Swansea, Tycoch Road, Tycoch, Swansea, SA2 9EB
<b>Training Provider's UKPRN:</b>	10030408
<b>Training Provider's VAT Number:</b>	241 6529 15
<b>Training Provider's Representative:</b>	Name: XXXXXX redacted under FOIA section 40 Title: XXXXXX redacted under FOIA section 40 Email: XXXXXX redacted under FOIA section 40 Telephone: XXXXXX redacted under FOIA section 40 Postal Address: XXXXXX redacted under FOIA section 40

<b>(2) EMPLOYER</b>	
<b>Employer:</b>	Driver and Vehicle Standards Agency (DVSA)
<b>Company Number:</b>	Not applicable
<b>Employer's Address:</b>	Berkeley House, Croydon Street, Bristol, BS5 0DA
<b>Employer's Representative:</b>	Name: XXXXXX redacted under FOIA section 40 Title: XXXXXX redacted under FOIA section 40 Email: XXXXXX redacted under FOIA section 40 Telephone: XXXXXX redacted under FOIA section 40

**Will any part of the Apprenticeship Programme be delivered by a Subcontractor?**    ☐ Yes    ☒ No

**If yes:**

<b>SUBCONTRACTOR:</b>	
<b>Subcontractor:</b>	N/A
<b>Company Number:</b>	
<b>Subcontractor's Address:</b>	
<b>Subcontractor's Representative:</b>	Name: Title: Email: Telephone: Postal Address:

## **1. Definitions and Interpretation**

### **1.1** The following definitions and rules of interpretation apply in this Agreement.

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

**Apprentice Assessment Organisation** means any organisation on the Register of Apprentice Assessment Organisations which is selected by an Employer and contracted by a Training Provider to carry out End-Point Assessment;

**Apprenticeship** means the training and (where applicable) End-Point Assessment for an employee as part of a genuine job with an accompanying skills development programme;

**Apprenticeship Agreement** means (a) an approved English apprenticeship agreement; or (b) an apprenticeship agreement within the meaning given in section 32 of the Apprenticeship, Skills, Children and Learning Act 2009 as it applies in relation to England by virtue of provision made under section 115(9) of the Deregulation Act 2015;

**Apprenticeship Framework** means a document which contains the qualifications and other requirements to meet the statutory Apprenticeship requirements of the Governments in England and Wales;

**Apprenticeship Levy** is a levy on UK employers to fund new apprenticeships;

**Apprenticeship Programme** means a programme of Training set out in Schedule 1;

**Apprenticeship Programme Completion Date** means the date on which the last Apprentice successfully completes the relevant End-Point Assessment (including following any resits necessary for such successful completion);

**Apprenticeship Service** means the digital interface to services designed to support the uptake of apprenticeships;

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

**Authorised Representative** means the Training Provider's Representative or the Employer's Representative as the case may be;

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

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

**Charges** means the full cost of the Services provided in accordance with the Apprenticeship Programme(s) as set out the relevant Apprenticeship Programme including the cost of any resits pursuant payable to **clause 4.1.9** and additional costs pursuant to **clause 18.2**;

**Commitment Statement** means a statement held by the Training Provider, the Apprentice and the Employer which sets out how the Apprentice will be supported to successful achievement of the Apprenticeship, and is signed by the Apprentice, the Employer and the Training Provider;

**Digital Account** is the area on the apprenticeship service where the Employer can manage its funding and apprentices, view its account balance and plan its spending;

**EIRs** means the Environmental Information Regulations 2004 (SI 2004/3391) together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations;

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

**End-Point Assessment** means 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 any relevant Approved Apprenticeship Standard or Apprenticeship Framework;

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

**ESFA Contingency** means the action following change in employer, apprentice or provider circumstances set out in the Funding Rules (on page 33 after paragraph P206 in Version 2 of the Funding Rules);

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

**Expiry Date** means the first anniversary of the commencement of this Agreement;

**FOIA** means the Freedom of Information Act 2000, and any subordinate legislation made under the Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation;

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

**Funding Rules** means the Apprenticeship Funding and Performance Management Rules for Training Providers as revised and amended from time to time and available at: <https://www.gov.uk/guidance/apprenticeship-funding-rules#the-latest-rules-2022-to-2023>

**Incentive Payment** means an incentive payment made available to employers and paid to training providers on employers' behalf by the ESFA such as the apprenticeship grant for employers (AGE);

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

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

**Mandatory Policies** means the policies of the Training Provider set out in Schedule 2 or made known to the Employer, as may be updated from time to time;

**Regulated Activity** in relation to children shall have the same meaning as set out in Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006 and in relation to vulnerable adults shall have the same meaning as set out in Part 2 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006;

**Services** means the provision of training services in respect of the Apprenticeship Programmes, as further detailed in Schedule 1;

**Subcontractor** means a person or organisation selected by the Employer and the Training Provider to deliver part of the Training on behalf of the Training Provider under this Agreement and whose details are set out in this Agreement;

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

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

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

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

**Working Day** means Monday to Friday, excluding any public holidays in England and Wales.

- 1.2 Clause and Schedule headings do not affect the interpretation of this Agreement.
- 1.3 References to clauses and Schedules are (unless otherwise provided) references to the clauses and Schedules of this Agreement.
- 1.4 If there is an inconsistency between any of the provisions in the main body of this Agreement and the Schedules, the provisions in the main body of this Agreement shall prevail.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.
- 1.6 A reference to a statute or statutory provision or the Funding Rules is a reference to it as amended, extended or re-enacted from time to time.
- 1.7 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time.
- 1.8 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.9 Words or phrases defined in the Funding Rules shall have the same meaning in this Agreement.
- 1.10 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

## **2. Commencement and Duration**

- 2.1 This Agreement shall commence on the date when it has been signed by both parties and shall continue until the later of:
  - 2.1.1 the Expiry Date;
  - 2.1.2 the latest Apprenticeship Programme Completion Date to occur provided that the relevant Apprenticeship Programme giving rise to such date has commenced prior to the Expiry Date.
- 2.2 The Expiry Date may be amended by agreement between the parties in writing.

### **3. Training Provider Obligations**

- 3.1 The Training Provider shall deliver the Services to the Employer:
  - 3.1.1 in accordance with and for the duration of the relevant Apprenticeship Programme;
  - 3.1.2 using reasonable skill and care;
  - 3.1.3 in compliance with the Funding Rules; and
  - 3.1.4 in compliance with the Law and associated codes and guidance from time to time in force.
- 3.2 The Training Provider shall enter into written agreements with all relevant:
  - 3.2.1 Subcontractors; and
  - 3.2.2 Apprentice Assessment Organisations,as specified in this Agreement.
- 3.3 The Training Provider shall monitor the quality of Training delivered by a Subcontractor through such means as it considers appropriate including regular meetings, audits and observations of teaching, learning and assessment.
- 3.4 Subject to the Employer fulfilling the obligations set out in **clause 4**, the Training Provider shall use its reasonable endeavours to recover sums in respect of the Charges from the ESFA.
- 3.5 Without prejudice to the generality of the obligation set out in **sub-clause 3.1.3**, the Training Provider shall not:
  - 3.5.1 commence an Apprentice's programme if there is no prospect of the Apprentice completing the programme within the amount of time available;
  - 3.5.2 enrol an Apprentice without confirmation that they are not enrolled on another Apprenticeship or another DfE funded FE/HE programme contrary to the Funding Rules;
  - 3.5.3 enrol an Apprentice without ensuring that they meet the eligibility requirements or have permission to work in England;
  - 3.5.4 claim funding for individuals who do not meet the eligibility requirements set out in the Funding Rules;
  - 3.5.6 claim funding from the Employer's Digital Account other than for training or assessment in accordance with the Funding Rules;
  - 3.5.7 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:
    - (a) aged between 16 and 18 years old (or 15 years old if the apprentice's 16th birthday is between the last Friday of June and 31 August)

- (b) aged between 19 and 24 years old and either has:
  - (i) an EHC plan provide by their local authority; or
  - (ii) has been in the care of their local authority as defined in the Funding Rules;

3.5.8 provide end-point assessment to any apprentices it has trained.

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

##### **4.1 The Employer shall:**

- 4.1.1 from the commencement of the relevant Apprenticeship Programme, employ and pay the Apprentice in accordance with the Law, agreed employment terms and conditions for the duration of the relevant Apprenticeship Programme which shall be not less than the period set out in the relevant Apprenticeship Programme (subject to earlier termination of this Agreement in accordance with its terms and/or the Apprentice's employment contract);
- 4.1.2 promptly do all acts and not omit to do anything reasonably requested of the Employer by the Training Provider for the purposes of the Training Provider's:
  - (a) compliance with the Funding Rules; and
  - (b) obtaining any payment to which it may be entitled under the Funding Rules;
- 4.1.3 enter into and procure that each Apprentice enters into:
  - (a) an Apprenticeship Agreement; and
  - (b) a Commitment Statement as required by the Funding Rules, each of which must be in place for the entire length of the Apprenticeship and meet the requirements of the Funding Rules and made available to the Training Provider on request;
- 4.1.4 provide such training and/or carry out such actions as are assigned to the Employer in the Apprenticeship Programme and in any event support each Apprentice in their learning and development to the reasonable satisfaction of the Training Provider;
- 4.1.5 notify the Training Provider in writing of any Break in Learning;
- 4.1.6 confirm promptly on request by providing signed declarations to the Training Provider:
  - (a) each Apprentice's eligibility for 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 three years 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;
- (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;

4.1.7 ensure, and on request confirm, that:

- (a) the Apprentice is employed for a minimum of 30 hours per week (or, if less, ensure, and on request confirm, that the minimum duration of the Apprenticeship will be extended accordingly) and that training both on and off the job is included in those hours of employment;
- (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 at least 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 Apprenticeship Programme;
  - (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

4.1.8 comply with the terms of any agreement between the Employer and the ESFA;

4.1.9 provide payment for resits for qualifications or End-Point Assessment required by the Approved Apprenticeship Standard or Apprenticeship Framework where no extra learning takes place before the re-take; and

4.1.10 comply with the Mandatory Policies.

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

- 4.2.1 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;
  - 4.2.2 allow the Training Provider, its staff, auditors, contractors or agents, including the Training Provider's Representative, access to the Apprentice, the Employer's premises and any relevant records or documents, including health and safety records, to allow the Training Provider to comply with the Training Provider's obligations under this Agreement. Such access shall be as reasonably agreed between the parties or on reasonable notice from the Training Provider;
  - 4.2.3 promptly notify the Training Provider in writing when it becomes aware or develops a reasonable suspicion that the Apprentice wishes to withdraw from the Apprenticeship;
  - 4.2.4 immediately notify the Training Provider if the Apprentice informs the Employer that they no longer wish to continue with the Apprenticeship;
  - 4.2.5 appoint an Employer's Representative and promptly notify the Training Provider of any change of the Employer's Representative from time to time; and
  - 4.2.6 without prejudice to the generality of the foregoing, use best endeavours to co-operate with the Training Provider in all matters relating to this Agreement.
- 4.3 The Employer shall be responsible for management of the Digital Account and shall use best endeavours to ensure that payments are timely and accurate.
- 4.4 The Employer acknowledges and confirms that:
- 4.4.1 the minimum duration of each Apprenticeship is one year at a minimum of 30 hours a week; and
  - 4.4.2 the minimum duration of the Apprenticeship will be extended on a pro rata basis if an Apprentice is employed for fewer than 30 hours a week.

## **5. Charges and Payments**

- 5.1 The Employer shall pay the Charges to the Training Provider to the extent that the Charges have not been recovered by the Training Provider from the ESFA.
- 5.2 The Training Provider shall send invoices in respect of the Unfunded Charges to the Employer at the frequency set out in the relevant Apprenticeship Programme (or if the Apprenticeship Programme does not so specify, on a monthly basis). The Employer shall pay such invoices within thirty (30) days from the date of the invoice.
- 5.3 Subject to the Employer providing the bank account details of the company or other legal person that employs the relevant Apprentice, the Training Provider shall pay to the Employer any Incentive Payments received from the ESFA on behalf of the Employer within thirty (30) days of receipt or such other timescale as may be specified in the Funding Rules.

- 5.4 Where for any reason the ESFA requires the Training Provider to return any Incentive Payments or any other payment, the Employer shall pay to the Training Provider an amount equal to the sum required to be returned. The Training Provider shall notify the Employer of any requirement to return payments to the ESFA and the Employer shall pay such amount to the Training Provider within thirty (30) days of such notice.
- 5.5 All sums payable by or to the Training Provider or the Employer are exclusive of VAT. In the case of any VAT payable, the VAT shall be due within thirty (30) days from the date of a valid VAT invoice.
- 5.6 Without prejudice to the rights of either party under this Agreement, any sums that remain unpaid after their due date shall bear interest at the rate of four per cent (4%) above the Bank of England base rate from time to time.

## **6. Dispute Resolution**

- 6.1 In the event of a dispute arising between the parties in relation to this Agreement (a **Dispute**), either party may serve written notice on the other stating the nature of the dispute (a **Dispute Notice**).
- 6.2 After service of the Dispute Notice, the following procedure shall be followed by the parties (all periods specified in this **clause 6.2** shall be extendable by mutual agreement):
- 6.2.1 within five (5) days, the Training Provider's Representative and the Employer's Representative shall meet to attempt to settle the Dispute (each party acting in good faith);
- 6.2.2 if the Training Provider's Representative and the Employer's Representative are unable to reach a settlement within twenty one (21) days from the date of service of the Dispute Notice, the chief executive officers of each of the parties shall meet within the following fourteen (14) days to attempt to settle the Dispute; and
- 6.2.3 if no settlement results from the meeting specified in **clause 6.2.2**, for the following fifty six (56) days the parties shall attempt to settle the Dispute by mediation (in accordance with the CEDR Model Mediation Procedure) by an independent mediator appointed by CEDR unless otherwise agreed between the parties, with costs to be shared equally between the parties.
- 6.3 The commencement of mediation shall not prevent the parties commencing or continuing court proceedings in relation to the Dispute under **clause 19.10** which clause shall apply at all times.
- 6.4 If no settlement is reached under **clause 6.2**, the Dispute shall be finally resolved by the courts of England and Wales in accordance with **clause 19.10** of this Agreement. 6.4 In addition to the process set out in **clauses 6.1** to **6.4**, Apprentices and Employers can contact the apprenticeship helpline regarding apprenticeship concerns, complaints and enquiries:

National Apprenticeship Helpdesk  
Email: [helpdesk@manage-apprenticeships.service.gov.uk](mailto:helpdesk@manage-apprenticeships.service.gov.uk)

Telephone: 0800 015 0400

Information on apprenticeship for employer and learners can also be found

<https://help.apprenticeships.education.gov.uk/hc/en-gb>

## **7. Termination**

- 7.1 Without prejudice to any rights that have accrued under this Agreement or any of its rights or remedies, either party may at any time terminate this Agreement or any part of it with immediate effect by giving written notice to the other party if:
- 7.1.1 the other party commits a material breach of any term of this Agreement (other than failure to pay any amounts due under this Agreement) and (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
  - 7.1.2 the other party repeatedly breaches any of the terms of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement;
  - 7.1.3 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
  - 7.1.4 the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
  - 7.1.5 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or on connection with the winding up of that other party;
  - 7.1.6 an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party;
  - 7.1.7 the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;
  - 7.1.8 a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;

- 7.1.9 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- 7.1.10 any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in **clause 7.1.3 to clause 7.1.9** (inclusive);
- 7.1.11 the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business;
- 7.1.12 the other party's funding agreement with the ESFA is terminated.
- 7.2 If the Training Provider ceases to be an ESFA approved training provider (so indicated at the date of this Agreement by being listed on the Register of Apprenticeship Training Providers) then the provisions of **clause 8.5** shall apply.
- 7.3 The Employer may terminate this Agreement immediately by written notice in the event of all Apprentices on the Apprenticeship leaving their employment or being dismissed from their employment.
- 8. Consequences of Termination**
- 8.1 Other than as set out in this Agreement, neither party shall have any further obligation to the other under this Agreement after its termination.
- 8.2 Any provision of this Agreement which expressly or by implication is intended to come into or continue in force on or after termination of this Agreement, including **clause 1, clause 5.1.2, clause 8, clause 10, clause 11, clause 13, clause 14, clause 15, clause 16 and clause 19** shall remain in full force and effect.
- 8.3 Termination or expiry of this Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry.
- 8.4 On termination (for any reasons) or expiry of this Agreement:
- 8.4.1 the Employer shall be liable to pay the Training Provider's reasonable costs in accordance with this Agreement;
- 8.4.2 the Employer shall immediately pay to the Training Provider all Charges due at the date of termination or expiry pursuant to the Apprenticeship Programmes;
- 8.4.3 to the extent that the Employer has paid the Charges pursuant to **clause 8.4.2** and the Training Provider recovers funding from the ESFA in respect of those Charges, the Training Provider shall, provided that the

Employer does not owe any other sums to the Training Provider, reimburse the Employer those sums paid pursuant to **clause 8.4.2**;

- 8.4.4 each party shall promptly return to the other any equipment, documents, information or materials owned by the other party (or a third party) and used in connection with the Services; and
  - 8.4.5 each party shall cooperate in good faith to ensure that no Apprentice is materially disadvantaged by the termination of this Agreement.
- 8.5 If the Training Provider ceases to be an ESFA approved training provider then:
- 8.5.1 this Agreement shall continue in full force and effect in respect of Apprentices who have started their Apprenticeship prior to the date on which the Training Provider ceased to be an ESFA approved training provider and the Apprenticeship Programme Completion Date for the purposes of **clause 2.1.2** shall be the date on which the last such Apprentice successfully completes the relevant End-Point Assessment; and
  - 8.5.2 this Agreement shall terminate in respect of any person who was due to become an Apprentice on or after the date on which the Training Provider ceased to be an ESFA approved training provider and the Training Provider shall use its reasonable endeavours to assist such persons in their transition to another training provider.

## **9. ESFA Contingencies**

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

## **10. Force Majeure**

Neither party shall be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure results from events, circumstances or causes beyond its reasonable control. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for one ninety (90) days or more, the party not affected may terminate this Agreement by giving thirty (30) days' written notice to the other party.

## **11. Liabilities and Insurance**

- 11.1 Neither party excludes or limits liability to the other party for:
- 11.1.1 fraud or fraudulent misrepresentation;
  - 11.1.2 death or personal injury caused by negligence;
  - 11.1.3 a breach of any obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or

- 11.1.4 any matter for which it would be unlawful for the parties to exclude liability.
- 11.2 Subject to clause 11.1, neither party shall in any circumstances be liable to the other whether in contract, tort (including for negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, for:
- 11.2.1 any loss (whether direct or indirect) of profits, business, business opportunities, revenue, turnover, reputation or goodwill;
- 11.2.2 loss (whether direct or indirect) of anticipated savings or wasted expenditure (including management time); or
- 11.2.3 any loss or liability (whether direct or indirect) under or in relation to any other contract.
- 11.3 Subject to **clause 11.1** and except in relation to the indemnity contained in **clause 15.3**, the parties' total aggregate liability in contract, tort (including negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement or any collateral contract shall be limited to the total Charges payable during the 12 months immediately preceding the date on which the claim arose or, if the claim arose during the first twelve months of this Agreement being in force, the Charges payable during the first twelve months of this Agreement.
- 11.4 **Insurance**
- Each party shall at its own cost effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by that party, arising out of the its performance of the agreement, including death or personal injury, loss of or damage to property or any other loss.
- 11.5 The terms of any insurance or the amount of cover shall not relieve the insured party of any liabilities under this Agreement.

## **12. Safeguarding**

- 12.1 The Employer acknowledges that the Training Provider has a statutory duty to safeguard and promote the welfare of individuals under the age of 18 years old and vulnerable adults over the age of eighteen (18) years old pursuant to the Safeguarding Vulnerable Groups Act 2006.
- 12.2 The Employer shall and shall ensure that the Employer's employees, contractors and agents:
- 12.2.1 ensure that all individuals engaged in Regulated Activity are subject to a valid enhanced disclosure check for regulated activity undertaken through the Disclosure and Barring Service;
- 12.2.2 comply with the requirements of the the Safeguarding Vulnerable Groups Act 2006 to the extent that they apply to the Employer; and

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

12.3 The Employer shall by signing this Agreement, be deemed to have read the Training Provider's policy and guidance relating to safeguarding (the current copy of which is contained in Schedule 2) and will comply with its contents, as updated and notified to the Training Provider from time to time, at all times.

### **13. Health and Safety**

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

13.1.1 all applicable Law regarding health and safety; and

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

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

### **14. Confidentiality**

14.1 Subject to **clause 14.2**, the parties shall keep confidential all matters relating to this Agreement and shall use all reasonable endeavours to prevent their employees, contractors, agents and other personnel from making any disclosure to any person of any matters relating to it.

14.2 **Clause 14.1** shall not apply to any disclosure of information:

14.2.1 required by any applicable law, provided that **clause 16** shall apply to any disclosures required under the FOIA or the EIRs;

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

14.2.3 where a party can demonstrate that such information is already generally available and in the public domain otherwise than as a result of a breach of **clause 14.1**;

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

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

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



## **15. Intellectual Property**

- 15.1 Each party shall retain ownership of all Intellectual Property Rights in any materials created by that party and used for the delivery of an Apprenticeship Programme (the **Project Materials**).
- 15.2 Each party shall make available to the other free of charge and hereby grants to the other party a non-exclusive, non-transferable, royalty free licence to use their Project Materials for the duration of the relevant Apprenticeship Programme.
- 15.3 Each party shall indemnify the other against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Right in the performance of a party's obligations under this Agreement, except to the extent that they have been caused by or contributed to by the indemnified party's acts or omissions.

## **16. Data Protection and Freedom of Information**

- 16.1 The Employer acknowledges that the Training Provider is subject to the requirements of the Data Protection Act 1998 FOIA, EIRs and, from 25 May 2018, the General Data Protection Regulation (Regulation (EU) 2016/679), all as amended from time to time. The Training Provider acknowledges that the Employer is subject to the requirements of the Data Protection Act 1998 and, from 25 May 2018, the General Data Protection Regulation (Regulation (EU) 2016/679), as amended from time to time.
- 16.2 The Employer shall offer such prompt and reasonable assistance to the Training Provider as the Training Provider may request from time to time, to assist it in complying with its information disclosure obligations under the legislation set out at **clause 16.1**.
- 16.3 Where the Training Provider or the Employer handles any personal or sensitive personal data (within the meaning of the Data Protection Act 1998 and/or the General Data Protection Regulation (Regulation (EU) 2016/679)), including in relation to the Apprentices or Apprentices, they undertake to comply with their respective obligations under that legislation.
- 16.4 Where the Employer receives a request for information under FOIA or the EIRs relating to the operation of this Agreement, the Employer shall promptly pass the request to the Training Provider and shall not respond directly to any such request without the Training Provider's prior written consent.

## **17. Equality Legislation**

- 17.1 Each party shall (and shall procure that its employees, contractors, agents and other personnel shall):
  - 17.1.1 perform its obligations under this Agreement (including those in relation to the Services) in accordance with all applicable equality law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);

17.1.2 at all times comply with the provisions of the Human Rights Act 1998 in the performance of this Agreement.

## **18. Contract Variation**

18.1 No variation to this Agreement other than pursuant to **clause 18.3** shall have effect unless agreed in writing and signed by both parties pursuant to **clause 18.2**.

### **18.2 Change Protocol**

18.2.1 In the event either party (acting reasonably) requires a change (**Change**) to this Agreement, the parties shall discuss any such Change proposed by the other and such discussion shall result in a written request for a Change being submitted by the requesting party to the other party.

18.2.2 The parties shall work together in good faith to assist the requesting party in preparing a written recommendation for a Change which shall set out:

- (a) the title of the Change;
- (b) the originator and the date of the request;
- (c) the reason for the Change;
- (d) the full details of the Change, including any specification or service standards;
- (e) the price, if any, of or associated with the Change;
- (f) a timetable for implementation;
- (g) the impact, if any, of the Change on other aspects of this Agreement, including contractual documentation and resources;
- (h) provision for signature of the request by all parties to signal acceptance of the Change; and
- (i) any other relevant information reasonably requested by any party.

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

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

18.3 Where in the reasonable opinion of the Training Provider a change to one or more of the Apprenticeship Programmes is required in order to comply with ESFA rules, guidance or instructions issued from time to time (an **ESFA Change**), the Training Provider shall notify the Employer in writing of the ESFA

Change and the ESFA Change shall have effect from such date as may be stated in such notice. Any additional costs reasonably incurred by the Training Provider arising from the ESFA Change shall be payable by the Employer and shall be deemed to be incorporated into the Charges.

## **19. Notices**

19.1 Any notice given to a party under or in connection with this Agreement shall be in writing marked for the attention of the party's Authorised Representative and shall be:

19.1.1 delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or

19.1.2 sent by fax to its main fax number.

19.2 Any notice shall be deemed to have been received:

19.2.1 if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;

19.2.2 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Working Day after posting;

19.2.3 if sent by fax, at 9.00 am on the next Working Day after transmission.

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

## **20. General**

### **20.1 Assignment**

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

### **20.3 Entire Agreement**

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

### **20.4 Waiver**

No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

### **20.5 Counterparts**

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

#### **20.6 No Partnership or Agency**

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

#### **20.7 No Double Recovery**

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

#### **20.8 Further Assurance**

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

#### **20.9 Severability**

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

#### **20.10 Governing Law and Jurisdiction**

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

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

No one other than a party to this agreement shall have the right to enforce any of its terms. A person who is not a party to this agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

**This Agreement has been entered into on the date stated at the beginning of it and expires 3 years after that date the expiry date is the last date for enrolment onto the apprenticeships and the apprenticeship delivery is to be supported until completion of the programme**

**SIGNED BY** for and on behalf of the **TRAINING PROVIDER:**

XXXXXX redacted under FOIA section 40

.....  
Signature

XXXXXX redacted under FOIA section 40  
Print Name

**SIGNED BY** for and on behalf of the **EMPLOYER:**

XXXXXX redacted under FOIA section 40

.....  
Signature

XXXXXX redacted under FOIA section 40  
Print Name

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## Schedule 1

### Apprenticeship Programmes

Although this cohort of apprentices are all undertaking the same Apprenticeship Standard, with added Advice & Guidance elements built into this, they will have different expected end dates, reflecting their differing needs. Therefore there are 3 Schedules for this cohort, reflecting the differences.

Course available for selection as part of this contract:-

Information, Advice & Guidance L3

Information, Advice & Guidance L4

Contact Centre Level 3

Apprenticeship Programme	
<b>Apprenticeship Occupation</b>	
<b>Apprenticeship Standard/Framework</b>	Information, Advice & Guidance (IAG) L3 Information, Advice & Guidance (IAG) L4 Contact Centre Level 3
<b>Name/Level of Qualification</b>	
<b>Entry Requirements</b>	
<b>Planned Start Date</b>	Various
<b>Planned End Date</b>	Various
<b>Location of Training</b>	Gower College/Ellipse Swansea
Number of Apprentices undertaking Apprenticeship Programme	
<b>Number of Apprentices</b>	Maximum number 45 apprentices split 10 x L3 Contact Centre, 5 x L3 IAG and 30 x L4 IAG
Training Provider Actions	
<b>Training to be delivered by Training Provider</b>	<ul style="list-style-type: none"> <li>Teaching, learning &amp; assessment related specifically to the above named qualifications.</li> <li>Employment rights &amp; responsibilities, Prevent and Personal Learning and Thinking Skills</li> </ul>
Employer Actions	

<b>Training to be delivered by Employer</b>	The employer will supply induction training and on the job mentoring, training and experience to support.
<b>Apprentice Assessment Organisation</b>	
<b>Name of Apprentice Assessment Organisation</b>	N/A
<b>Subcontracting</b>	
<b>Name of Subcontractor</b>	N/A
<b>Training to be delivered by Subcontractor</b>	N/A
<b>Training Provider Monitoring of Subcontractor</b>	N/A
<b>Conflicts of interest between Training Provider and Subcontractor</b>	N/A

Functional Skills Provision		
16.	<b>Maths Provision</b>	
17.	<b>English Provision</b>	
18.	<b>Other functional skills</b>	Welsh Essential skills as appropriate
Non-Funded Items		
	<b>Detail of items not eligible for SFA funding</b>	<b>Cost</b>
1.	N/A	N/A
2.		
3.		

Charges	
The agreed Charges (excluding VAT) for the training of each Apprentice under this Agreement is as follows:	
<b>Cost Allocation</b>	<b>Price per Apprentice (£)</b>
Training Provider Training Costs	All costs met through Welsh levy accessed by Gower College
Sub-Contractor Training Costs	
End-Point Assessment Costs	
Training Provider Costs of monitoring/managing subcontractors	
Eligible, evidenced Employer costs (where Employer provides some of the training that can be funded by government)	
Other costs to be funded by the Employer but not eligible for SFA funding	
<b>Total per apprentice</b>	
<b>Total per cohort</b>	



Payment Schedule				
Start Date	Amount due	Your share (or 5% if- non-levy paying & apprentice 18+)	Payment Frequency	First Date for Invoice
Month1	N/A	N/A	Monthly	N/A
Month2			Monthly	
Month3			Monthly	
Month4			Monthly	
Month5			Monthly	
Month6			Monthly	
Month7			Monthly	
Month8			Monthly	
Month9			Monthly	
Month10			Monthly	
Month11			Monthly	
Month12			Monthly	
Month13			Monthly	
Month14			Monthly	
Month15			Monthly	
Month16			Monthly	
Month17			Monthly	
Month18			Monthly	
Month19			Monthly	
Month20			Monthly	
Month21			Monthly	
Month22			Monthly	
Month23			Monthly	
Month24			Monthly	
Month25			Monthly	

Payment Schedule				
Start Date	Amount due	Your share (or 5% if- non-levy paying & apprentice 18+)	Payment Frequency	First Date for Invoice
Month26			Monthly	
Month27			Monthly	
Month28			Monthly	
Month29			Monthly	
Month30			Monthly	
Month31			Monthly	
Month32			Monthly	
Month33			Monthly	
Month34			Monthly	
Month35			Monthly	
Month36			Monthly + 20% Completion	
<b>TOTAL</b>	£ N/a - All costs met through Welsh levy accessed by Gower College			

## **Schedule 1**

### **Mandatory Policies**

Inserted overleaf are the Mandatory Policies set out in the Contract Particulars.

Our Safeguarding Children and Vulnerable Adults Policy can be found by clicking [here](#).

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