**Employer Service Level Agreement**

**(Apprenticeship Training)**

**DATED 30/08/2023.**

**(1)** **University College London**  
  
**(the PROVIDER)**

**and**

**(2)   DEFRA**   
**(the EMPLOYER)**

**SERVICES AGREEMENT**

**relating to Apprenticeship Training**

Version January 2023

**PARTIES, COMMENCEMENT AND DURATION**

1. **Date**

The date of this Agreement is 30th August 2023.

1. **Parties**

This Agreement is made between:

University College London, incorporated and registered in England and Wales with company number RC000631, whose registered office is at Gower Street, London, WC1E 6BT (the Training Provider); and

DEFRA, a government department in England (the Employer).

each ‘a Party’ and together ‘the Parties’

1. **Commencement and Duration**
2. This Agreement shall commence on the Commencement Date and shall continue, unless terminated either:

* by one Party serving on the other not less than 30 days’ notice to terminate this Agreement in relation to new apprenticeship starts, such notice to expire no earlier than the first anniversary of the commencement of this Agreement or (as the case may be) any subsequent anniversary; or
* pursuant to clause 16.

**DEFINITIONS AND INTERPRETATIONS**

1. **Interpretation**
2. 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 services which are incidental or ancillary unless the context otherwise requires to the Training Services and ‘the Agreed Services’ shall mean all Agreed Services agreed pursuant to every Request for New Training Services under this agreement as varied by any applicable Change Control Note or Mandatory Change Notice; |
| **Apprentice** | means an individual employed by the Employer 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 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; |
| **Awarding Body** | means the approved qualification-awarding body for the applicable Apprenticeship Standard; |
| **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 Control Note** | means a Change Control Note pursuant to clause 6; |
| **Charges** | means the charges specified in Schedule 5 Training Services or Schedule 6 Request for New Training 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 4; |
| **Confidential Information** | Information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in clause 14; |
| **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 sits his/her final assessment; |
| **Digital Account** | means the Employer’s digital account held under the ESFA Rules; |
| **Data Controller** | means the person or organisation who determines the purposes for which and the manner in which any Personal Data is processed; |
| **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, including the items provided pursuant to clause 8; |
| **End Point Assessment Organisation** | means the approved qualification-awarding body for the applicable Apprenticeship Framework; |
| **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 Digital Account with Digital Apprenticeship Service, the ESFA or through Government-Employer co-investment; |
| **Mandatory Change Notice** | shall have the meaning given in clause 6.9; |
| **Personal Data** | means data relating to a living individual who can be identified from that data (or from that data and other information in the Data Controller’s possession or likely to come into the Data Controller’s possession). |
| **Request for Services** | means a request for services made in accordance with clause 5; |
| **RFS Agreement Date** | means the date which is the RFS Agreement Date pursuant to clause 5.9; |
| **ESFA** | means the Education and Skills Funding Agency; |
| **ESFA Rules** | means the ESFA’s funding rules as contained in: *Apprenticeship funding: - rules for training providers* in force for the applicable year and as amended from time to time; |
| **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 Provider’s 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 5; and |
| **VAT** | means value added tax where chargeable under the Value Added Tax Act 1994. |

1. Clause, Schedule and paragraph headings shall not affect the interpretation of this Agreement.
2. A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
3. 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.
4. A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
5. Unless the context otherwise requires, words in the singular shall include the plural and in the plural, shall include the singular.
6. Unless the context otherwise requires, a reference to one gender shall include a reference to each other gender.
7. This Agreement shall be binding on, and ensure to the benefit of, the Parties to this Agreement and their respective personal representatives, successors and permitted assigns, and references to any Party shall include that Party's personal representatives, successors and permitted assigns.
8. A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time
9. A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
10. A reference to writing or written does not include fax and email.
11. Any obligation on a Party not to do something includes an obligation not to allow that thing to be done.
12. 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.
13. 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.
14. Any words following the terms including, include 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.
15. Words or phrases defined in the ESFA Rules shall have the same meaning in this document.

**ORDERING SERVICES**

1. **Requests for Services**
2. The Employer may add new services to the Training Services Schedule by making a request to supply a new Standard (‘a Request for New Training Services’) to the Training Provider pursuant to this clause 5.
3. The Training Provider shall provide the Agreed Services from the date specified in the Request for New Training Services that relates to those services.
4. Each Request for Services shall be processed in the following manner.
5. The Employer shall specify in writing to the Training Provider the Training Services that it wishes to procure (‘the Requested Services’) and shall provide the Training Provider with such information as the Training Provider may require in order to enable the Training Provider to prepare a draft Request for New Training Services for the Requested Services.
6. Following receipt of the information requested pursuant to clause 5.4 the Training Provider shall, as soon as reasonably practicable either:

* inform the Employer that it declines to provide the Requested Services; or
* provide the Employer with a draft Request for New Training Services.

1. Each Request for New Training Services shall state:

* the services to be provided by the Training Provider;
* the timetable for their performance;
* the Charges;
* whether the Requested Services are Levy Funded;
* whether the Employer or the Training Provider shall be responsible for recording the required details of the Apprenticeship with the ESFA; and
* the matters listed in the template request for services set out in Schedule 6.

7. If the Training Provider provides the Employer with a draft Request for New Training Services the Training Provider and the Employer shall negotiate in good faith that draft Request for Services and without any obligation on either Party to agree, both Parties shall sign and date the draft Request for Services once it is agreed.

8. When a Request for New Training Services has been agreed and signed in accordance with clause 5.8 the services specified in that Request for New Training Services shall be Agreed Services and the date of the signed Request for New Training Services shall be the RFS Agreement Date.

1. Each Request for New Training Services shall form part of this Agreement and shall not form a separate contract.
2. **Changes to Services**
3. 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 Control Procedure set out in this clause.
4. 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.
5. 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 Control Note’).
6. Each Proposed Change Control 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 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.

1. The Training Provider and the Employer shall negotiate each Proposed Change Control Note in good faith and without any obligation on either Party to agree, both Parties shall sign the Proposed Change Control Note once it is agreed.
2. A Proposed Change Control Note when signed by the Employer and the Training Provider shall thereupon become a Change Control Note and shall constitute an amendment to this Agreement.
3. 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’).

**TRAINING PROVIDER RESPONSIBILITIES**

1. **Training Provider Responsibilities**
2. If the Agreed Services are Levy Funded the Training Provider shall observe and perform the terms set out in Schedule 1.
3. 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.
4. The Training Provider shall (and shall ensure that its sub-contractors shall):

* provide the Agreed Services in accordance with a Request for Services in all material respects;
* provide the Agreed Services in accordance with Good Industry Practice;
* use all reasonable endeavours to meet any performance dates specified in a Request for Services;
* specify in the Request for Services a manager (‘the Account Manager’) in respect of the Agreed Services, to act on behalf of the Training Provider on all matters relating to the Agreed Services;

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

* Data and Privacy Policy; and
* Training Provider Complaints Policy.

**EMPLOYER RESPONSIBILITIES**

1. **Employer General Responsibilities**
2. If the Agreed Services are Levy Funded the Employer shall observe and perform the terms set out in Schedule 2.
3. The Employer shall:

* co-operate with the Training Provider in all matters relating to the Agreed Services;
* specify in the Request for Services a manager (‘the Contract Manager’) in respect of the Agreed Services, to act on behalf of the Employer on all matters relating to the Agreed Services;
* provide the Training Provider at no charge with such access to the Employer's premises, data and other facilities as the Training Provider may reasonably require; Such access shall be reasonably agreed between the parties
* provide the Training Provider in a timely manner and within no later than 5 Business Days with all such documents, information and materials in any form (whether owned by the Employer or a third party) as the Training Provider may reasonably require in order to carry out this obligation and ensure that they are accurate and complete in all material respects;
* inform the Training Provider of all health and safety and security requirements and other policies that apply at the Employer's premises or otherwise for the purposes of this Agreement;
* ensure that all the Employer's Equipment is in good working order and suitable for the purposes for which it is used and conforms to all relevant United Kingdom standards or requirements;
* obtain and maintain all necessary licences and consents and comply with all applicable laws as may be required to enable the: Training Provider to provide the Agreed Services, the installation of the Training Provider's Equipment, the use of all Employer Materials and the use of the Employer's Equipment, in all cases before the date on which the Agreed Services are to start;
* make any complaint to the Training Provider in accordance with the Training Provider’s Complaints Policy provided pursuant to clause 7.4.

1. In this Clause 8 any reference to the Training Provider shall include its agents, subcontractors, consultants and employees.
2. **Employer Apprenticeship Responsibilities**
3. The Employer shall:

* work with the Training Provider and each Apprentice to agree an Apprenticeship Standard or Framework, Training Agreement and Individual Learning Plan for each Apprentice;
* pay Apprentices at least the minimum wage required by law;
* assist the Apprentice with their development as much as possible to the reasonable satisfaction of the Training Provider;
* permit the Training Provider to apply for Additional Funding for the benefit of Apprentices; and
* indemnify the Training Provider for all costs and expenses reasonably incurred by the Training Provider if it is prevented by the Employer from attending and inspecting the Employer’s premises, or if the Apprentice fails to keep an appointment with the Training Provider owing to any act or omission of the Employer.

**COMMON RESPONSIBILITIES**

1. **Common Responsibilities**
2. If the Agreed Services are Levy Funded, each of the Parties shall observe and perform the terms set out in Schedule 3.

**INVOICING AND PAYMENT**

1. **Charges, invoicing and payment**
2. The Employer is responsible for payment of the Charges.
3. To the extent that Charges are not actually paid by the ESFA from the Digital Account, or the Agreed Services are not Levy Funded, the Training Provider shall invoice the Employer for the Charges monthly for services rendered before the end of the previous month and the Employer shall pay such invoices within 30 days of receipt.

**INTELLECTUAL PROPERTY, DATA AND CONFIDENTIALITY**

1. **Intellectual Property Rights**
   1. Each Party (or its licensors, as applicable ) shall retain ownership of all Intellectual Property Rights in any materials created by that Party and used for the delivery of Agreed Services (the Project Materials)
   2. Each Party:

* hereby grants to the other Party , its agents, subcontractors or consultants, a non-exclusive, non-transferable, royalty free licence to use the Project Materials to the extent necessary to provide the Agreed Services;
* warrants that the receipt and use in the performance of this Agreement by the other Party  , its agents, subcontractors or consultants of the  Project Materials shall not infringe the rights, including any Intellectual Property Rights, of any third party; and
* shall keep the other Party indemnified against all damages, costs, claims and expenses suffered or incurred by the  other Party 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 the Project Materials.
  1. If either Party (Indemnifying Party) is required to indemnify the other Party (IndemnifiedParty) under this clause 12, the Indemnified Party shall:
* notify the Indemnifying Party in writing of any claim against it in respect of which it wishes to rely on the indemnity (IPRsClaim);
* allow the Indemnifying Party, at its own cost, to conduct all negotiations and proceedings and to settle the IPRs Claim, always provided that the Indemnifying Party shall obtain the Indemnified Party's prior approval of any settlement terms, such approval not to be unreasonably withheld;
* provide the Indemnifying Party with such reasonable assistance regarding the IPRs Claim as is required by the Indemnifying Party, subject to reimbursement by the Indemnifying Party of the Indemnified Party's costs so incurred; and
* not, without prior consultation with the Indemnifying Party, make any admission relating to the IPRs Claim or attempt to settle it, provided that the Indemnifying Party considers and defends any IPRs Claim diligently, using competent counsel and in such a way as not to bring the reputation of the Indemnified Party into disrepute.

1. Data Protection

## In this Clause 13 the following definitions shall apply:

## **Controller** means a person which, alone or jointly with others, determines the purposes and means of the processing of personal data;

## **Data Protection Laws** means all laws and regulations relating to the Processing of Personal Data as the same may be in force including without limitation the Data Protection Act 2018, the General Data Protection Regulation (EU 2016/679), the Privacy and Electronic Communications (EC Directive) Regulations 2003, and all other subordinate or successor legislation and all applicable regulations, directives, orders and codes of practice in force from time to time;

## **Data Subject** means the individual to which the personal data relates;

## **Personal Data** means any information relating to an identified or identifiable living individual;

## **Personal Data Breach** means the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal data;

## **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, and Process, Processes and Processed shall be construed accordingly; and

## **Processor** means a person which processes Personal Data on behalf of a Controller.

## Each party shall, at its own expense, ensure that it complies with and assist the other party to comply with the requirements of Data Protection Laws relating to the use of Personal Data.

## The Employer shall indemnify and hold harmless the Training Provider from and against all costs, expenses, damages, loss, liabilities, demands, claims actions or proceedings whatsoever which the Training Provider may suffer or incur as a consequence of any breach of Data Protection Laws by and/or through the Employer, including by any Preferred Suppliers.

## The parties acknowledge and agree that:

### this Agreement may require the Processing of Personal Data by the Employer on behalf of the Training Provider;

### UCL alone shall determine the purposes for which and the manner in which Personal Data will be Processed by the Employer on behalf of the Training Provider under this Agreement; and

### UCL shall be the Controller and the Employer shall be the Training Provider’s Processor in respect of all such Personal Data.

## Where, under or in connection with this Agreement, the Employer Processes Personal Data on behalf of the Training Provider as the Training Providers’ Processor, the Employer shall Process Personal Data on behalf of the Training Provider in connection with the provision of the Services for the duration of this Agreement. The Personal Data that the Employer Processes will be Personal Data collected by or provided to the Employer in connection with the provision of the Services and, unless otherwise stated in the Assignment, will:

### be Personal Data of the Training Provider’s staff, students, contacts, or commercial partners' staff and/or individuals that are part of the Training Provider’s research projects; and

### consist of non-sensitive types of Personal Data, such as the Data Subjects' names, addresses and email addresses; in some cases more sensitive types of Personal Data, such as health details and criminal convictions data; together with other types of Personal Data that are required to be processed in connection with the provision of the Services.

## Where, under or in connection with the Contract, the Employer Processes Personal Data on behalf of the Training Provider as the Training Provider’s Processor, the Employer shall:

### process the Personal Data only:

#### on the written instructions of the Training Provider and to the extent reasonably necessary for the performance by the Employer of its obligations under the Contract. The Employer shall immediately inform the Training Provider if, in its opinion, Processing the Personal Data in accordance with a written instruction received from the Training Provider or in the performance of its obligations under the Contract infringes Data Protection Laws to which either the Training Provider or the Employer (in its capacity as a Processor) is subject; or

#### as otherwise required by European Union law or individual European Union member state law to which the Employer is subject, in which case the Employer shall inform the Training Provider of that legal requirement before Processing the Personal Data (unless that law, on important grounds of public interest, prohibits the Employer from informing the Training Provider);

### not disclose the Personal Data to any person except as required or permitted by this Agreement or with the Training Provider’s prior written consent;

### without prejudice to Clause 14 (Confidentiality) ensure that all persons authorised by the Employer to Process the Personal Data:

#### process the Personal Data in accordance with provisions of this Clause 13; and

#### are under an appropriate contractual or other legal obligation to keep the Personal Data confidential;

### notwithstanding any other provision of this Agreement, and taking into account the state of the art, the nature, scope, context and purposes of the Processing and the risks to Data Subjects, implement appropriate technical and organisational measures Breaches;

### not engage another Processor to Process the Personal Data on behalf of UCL (**Sub-processor**) except with the Training Provider’s prior written consent. The Employer shall, prior to engaging a Sub-processor, enter into a written contract with the Sub-processor that imposes on the Sub-processor obligations that are the same as, or more onerous than, the obligations imposed on the Employer under this Clause 13. The Employer shall remain fully liable and responsible for all acts and omissions of its Sub-processors and the acts and omissions of those employed or engaged by its Sub-processors as if they were its own. An obligation on the Employer to do, or to refrain from doing, any act or thing shall include an obligation upon the Employer to procure that its employees, staff, agents and its Sub-processors' employees, staff and agents also do, or refrain from doing, such act or thing;

### not transfer or Process the Personal Data outside the United Kingdom, nor disclose the Personal Data to any party located outside the United Kingdom, except with the Training Provider’s prior written consent. Where such consent is given by the Training Provider, the Employer shall take such actions and enter into such written agreements as the Training Provider may require in order to help ensure that such transfer, disclosure or Processing complies with the Data Protection Laws to which the Training Provider is subject;

### provide such assistance and cooperation as the Training Provider may require from time to time in relation to the Personal Data to help the Training Provider comply with its obligations under the Data Protection Laws to which it is subject, including (without limitation) its obligations in relation to:

#### keeping Personal Data secure;

#### dealing with Personal Data Breaches;

#### carrying out data protection impact assessments; and

#### dealing with requests from Data Subjects to exercise their legal rights in relation to their Personal Data.

## This shall include the Employer entering into such other written agreements as may be required by the Training Provider from time to time to enable the Training Provider to comply with the Data Protection Laws to which the Training Provider is subject;

### notify the Training Provider without undue delay after, and in any event within 24 hours of, becoming aware of a Personal Data Breach in respect of the Personal Data;

### at the Training Provider’s option, permanently and securely delete or return to the Training Provider all the Personal Data promptly on termination of the Contract, and delete any existing copies of the Personal Data save to the extent that the Employer is required to retain copies of the Personal Data by European Union law or individual European Union member state law to which the Employer is subject; and

### make available to the Training Provider all information necessary to demonstrate its compliance with its obligations under this Clause 13.

## The Training Provider reserves the right to audit the Employer’s compliance with its obligations under this Clause 13, or to appoint a third party to carry out such audits.

## The Employer acknowledges and understands that Personal Data relating to the Employer’s employees and agents will be Processed by the Training Provider in connection with the Contract. The Employer shall inform each such Data Subject that its Personal Data may be processed by the Training Provider in connection with the Contract in the manner and for the purposes described in:

#### the UCL General Privacy Notice, available at <https://www.ucl.ac.uk/legal-services/privacy/general-privacy-notice>; and

#### any other privacy notices applicable to the Data Subject which are provided or made available to the Employer by the Training Provider from time to time.

1. This Clause 13 shall survive termination or expiry of this Agreement.

1. **Confidentiality**
   1. Each party may be given access to Confidential Information from the other party in order to perform its obligations under this Agreement. A party's Confidential Information shall not be deemed to include information that:
      1. is or becomes publicly known other than through any act or omission of the receiving party;
      2. was in the other party's lawful possession before the disclosure;
      3. is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or
      4. is independently developed by the receiving party, which independent development can be shown by written evidence.
   2. Subject to clause 14.4, each party shall hold the other's Confidential Information in confidence and not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this Agreement.
   3. Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this Agreement.
   4. A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction, provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 14.4, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.
   5. No party shall make, or permit any person to make, any public announcement concerning this Agreement without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.
   6. The above provisions of this clause 14 shall survive termination of this Agreement, however arising.

**LIABILITY**

1. **Limitation of Liability**
2. 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.

1. Subject to clause 15.1, 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;
* loss of agreements or contracts;
* loss of anticipated savings;
* loss of or damage to goodwill;
* loss of use or corruption of software, data or information; and
* any indirect or consequential loss.

1. Subject to clause 15.1, 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.
2. 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 MATTERS**

1. **Termination**
2. Without affecting any other right or remedy available to it, either Party may terminate the Agreed Services pursuant to any Request for Services or this Agreement 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;
* 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 any of its creditors.

1. **Consequences of Termination**
2. On termination or expiry of this Agreement, unless expressly stated otherwise in the termination notice any uncompleted Requests for Service shall continue until the applicable Agreed Services are completed, provided that the Training Provider shall be entitled to cease to perform the Agreed Services on notice in writing.
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.
4. **Force Majeure**
   * 1. Neither party shall be liable for any delay or failure to meet its obligations under this Contract due to any cause outside its reasonable control, including (without limitation), inclement weather, Acts of God, war, riot, malicious acts of damage, civil commotion, strike, lockout, industrial dispute, refusal of license, power failure or fire. If performance of the service is substantially prevented for a continuous period of 6 months by virtue of any of the aforesaid events, then either party may terminate this Contract by written notice to the other.

**ABOUT THIS AGREEMENT**

1. **Assignment and Other Dealings**
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.
3. The Training Provider may 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 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 in Schedule 1.
4. **Variation**
   1. No variation of this agreement shall be effective unless it is in writing and signed by the Parties (or their authorised representatives).
5. **Waiver**
6. 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.
7. **Severance**
8. If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Agreement.
9. 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.

1. **Entire Agreement**
2. 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.
3. 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.
4. **No Partnership or Agency**
5. Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the Parties, constitute any Party the agent of another Party, or authorise any Party to make or enter into any commitments for or on behalf of any other Party.
6. Each Party confirms it is acting on its own behalf and not for the benefit of any other person.
7. **Third Party Rights**
   * 1. No one other than a Party to this Agreement, their successors and permitted assignees, shall have any right to enforce any of its terms.
8. **Notices**
9. 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); or
10. Any notice shall be deemed to have been received: on signature of a delivery receipt;
11. 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.
12. **Counterparts**
13. 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.
14. No counterpart shall be effective until each Party has executed and delivered at least one counterpart.

**DISPUTES**

1. **Multi-Tiered Dispute Resolution Procedure**
2. 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 this clause:

* 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 Account Manager and the Employer Contract Manager (together ‘Members of the Leadership Team’) 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; and

1. 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 CEDR Model Mediation Procedure.
2. 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.
* The commencement of mediation shall not prevent the Parties commencing or continuing court proceedings in relation to the Dispute under clause 28.3 sub clause 5 which clause shall apply at all times.
* 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 30.

1. **Governing Law**
   * + 1. This Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

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

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

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| A blue signature on a white background  Description automatically generated  ………………………………………………………  Authorised Signatory |
| Signed by Professor Claudio de Magalhães, Head of the Bartlett School of Planning For and on behalf of University College London |
| Date 30/08/2023 |

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| ………………………………………………………  Authorised Signatory |
| Signed by Emily Whelan  For and on behalf of DEFRA |
| Date 30/08/2023 |
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**THE SCHEDULES**

**SCHEDULE 1**

**Training Provider Responsibilities**

1. The Training Provider undertakes that it shall in accordance with the ESFA Rules:

* prepare and redistribute the Individual Learning Plan and Commitment Statement at the outset of an Apprentice’s programme;
* extend the actual end-date of the apprenticeship as required if the working hours of the Apprentice fall below 30 hours a week;
* check the eligibility of the individual Apprentice at the start of their apprenticeship programme;
* only use funds in the Employer’s Digital Account or government-employer co-investment for those who are eligible;
* retain evidence of each Apprentice’s eligibility for as long as reasonably necessary;
* carry out a thorough assessment to identify the additional learning support (Additional Funding) the Apprentice needs and if appropriate record in the ILR that an Apprentice has a learning support need;
* agree and record the outcomes of the additional learning support assessment, deliver support in line with the identified needs, record all outcomes in the evidence pack, and retain evidence of the assessment;
* conduct a thorough Functional Skills assessment based on the national literacy and numeracy standards if an Apprentice requires further training before being able to achieve a Level 2 Standard and the Training Provider is seeking funding for this;
* contract with an organisation which will carry out the final assessment for the Apprentice (Apprentice Assessment Organisation) of the Employer’s choosing, and agree with it the arrangements for end-point assessments, re-takes and payments and for this purpose the Employer shall choose an Apprentice Assessment Organisation reasonably acceptable to the Training Provider within 14 days of the Training Provider requiring it to do so and if the Employer shall fail to do so the Training Provider is hereby authorised in the name and on behalf of the Employer to choose such Apprentice Assessment Organisation as the Training Provider thinks fit;
* make payment to the Apprentice Assessment Organisation for conducting the end-point assessment and keep records of all such payments;
* directly deliver some of the apprenticeship training and/or on-programme assessment associated with each Employer’s apprenticeship programme and the volume of involvement must have some substance (i.e. be more than nominal) if are sub-contracted;
* not use a subcontractor for the delivery of the Agreed Services unless:
* it is on the published Register of Apprenticeship Training Providers and has applied via the main or supporting application routes; or
* it is not on the published Register of Apprenticeship Training Providers but will deliver less than £100,000 of apprenticeship training and on-programme assessment under contract across all main providers and employer-providers between 1 May and 31 March.
* manage, monitor and regularly assess for quality its delivery subcontractors through visits and face to face interviews to ensure high-quality delivery in accordance with the ESFA Rules;
* collect employer co-investments every three months (*or shorter if less credit being given*) and report the value received on the ILR;
* apply for the apprenticeship completion certificate within three months of completion of learning if an Apprenticeship Framework is being used;

1. In accordance with the ESFA Rules if any subcontractor is used by the Training Provider to provide any of the Agreed Services the Training Provider warrants that:

* it has the knowledge, skills and experience of contracting with, and managing, delivery subcontractors; and
* it has not assessed that subcontractor as unsuitable.

1. In accordance with the ESFA Rules, the Training Provider warrants that it will not**:**

* accept information from the Employer without confirmation from the ESFA that the information is acceptable for the purposes it is being used;
* use Employer or government account funds for an apprentice’s programme where they or another Party claim funding from another government department or other agency for the same purpose;
* claim funding for any part of any apprentice’s programme that duplicates provision they have received from any other source;
* keep the same planned end-date on the ILR if the working hours of the Apprentice fall below 30 hours a week;
* commence an Apprentice’s programme if it there is no prospect of the Apprentice completing the programme within the amount of time available;
* enrol an Apprentice without confirmation that they are not enrolled on another apprenticeship;
* enrol an Apprentice without ensuring that they meet the eligibility requirements or have permission to work in England;
* claim funding for individuals who do not meet the eligibility requirements set out in the ESFA Rules;
* request any employer contribution to the cost of an apprenticeship up to the maximum value of the funding band if the Employer employing fewer than 50 people recruits an eligible apprentice; and
* use the same staff to provide end-point assessment to a group of Apprentices they have trained.

**SCHEDULE 2**

**Employer’s responsibilities**

1. The Employer undertakes that it shall in accordance with the ESFA Rules:

* promptly provide accurate and up to date information to the reasonable satisfaction of the Training Provider;
* provide the Training Provider with all reasonable support and information it requires in relation to the Apprentice and the Apprenticeship;
* at all times provide the Training Provider with up to date information on the Apprentice’s employment status or breaks in learning;
* immediately notify the Training Provider of any changes to the Apprentice’s employment status;
* promptly provide the Training Provider with such information as it may reasonably require for it to obtain funds from the Employer’s Digital Account or the government-Employer co-investment, including but not limited to evidence:
  + of the Apprentice’s eligibility to receive funding at the start of the Apprenticeship programme;
  + of the Apprentice’s employment by either the Employer or a connected company as defined by HM Revenue and Customs;
  + of the Apprentice’s average weekly hours;
  + that the job allows the Apprentice to gain wider employment experience;
  + that the total amount of time spent on an Apprenticeship meets the ESFA’s minimum duration funding rule if an Apprentice is changing their Apprenticeship Framework/Standard, transfers between providers, or takes a break in learning; and
  + that the Employer employs an average of 49 or fewer employees if the Employer is relying on additional funding from the government.

1. involve the Apprentice in active learning or monitored workplace practice throughout the Apprenticeship programme to the reasonable satisfaction of the Training Provider;
2. extend the working hours of the Apprentice as the Training Provider may reasonably require if the Training provider determines that the Apprentice has worked below the minimum number of hours required to complete the Apprenticeship;
3. disclose any reason why the Apprentice may not have enough time to complete the Apprenticeship;
4. ensure that the Apprentice will spend at least 50% of his working hours in England over the duration of the Apprenticeship;
5. ensure that the Apprentice is not already enrolled on any other Apprenticeship programme;
6. ensure that each Apprentice is eligible to work in England;
7. promptly provide the Training Provider with any information it may reasonably require in relation to previous Apprenticeship training or qualifications that any Apprentice may have received;
8. promptly provide the Training Provider with all information it may reasonably require in relation to Apprenticeship Grant for Employers (AGE) claims;
9. promptly pay all sums owed to the Training Provider in relation to the Apprenticeship including the full difference between band maximums and agreed prices, or for any mandatory co-investment;
10. appoint an Apprentice Assessment Organisation to deliver end-point assessment from the Register of Apprentice Assessment Organisations unless otherwise agreed that the Training Provider will appoint one.
11. The Employer hereby appoints the Training Provider to record the required details of the Apprenticeship with the ESFA or the Employer shall promptly record the required details of the Apprenticeship with the ESFA through the Digital Account; and
12. promptly confirm with the ESFA the spending of funds from the Digital Account.
13. In accordance with the ESFA Rules, the Employer undertakes that it shall not:

* require Apprentices to make financial contributions towards the cost of the Apprenticeship programme;
* require the Training Provider to seek Additional Funding in relation to Learning Support if in the Training Provider’s reasonable opinion, the Additional Funding is being used to support the Apprentice with everyday difficulties not directly related to the Apprenticeship; and
* withdraw Apprentices and re-start Apprenticeships that originally commenced before 1 May 2017 when the ESFA Rules came into force.

1. In accordance with the ESFA Rules, the Employer warrants that it shall indemnify the Training Provider against all loss damages costs claims and expenses suffered or incurred by the Training Provider as a result of:

* the Employer failing to disclose any information to the Training Provider that was reasonably required by the Training Provider, including but not limited to:
  + where a Training Provider is unable to claim Additional Funding due to the employer’s failure to provide sufficient information within a reasonable period of time
  + any change of circumstance relating to the Employer, its Digital Account or the Apprentice

**SCHEDULE 3**

**Common Responsibilities**

1. Each of the Training Provider and the Employer undertakes with the other that it shall in accordance with the ESFA rules**:**
   * enter into a written Training Agreement in relation to each Apprentice at the start of and for the entire length of the Apprenticeship;
   * agree when the Apprentice has obtained sufficient skills, knowledge and behaviours to sit their end-point assessment and for this purpose the Employer shall agree a time proposed by the Training Provider within 14 days of the Training Provider requiring it to do so and if the Employer shall fail to do so the Training Provider is hereby authorised in the name and on behalf of the Employer and the Training Provider to decide that time as the Training Provider thinks fit;
   * take the costs of the end-point assessment and any re-takes into account when agreeing the Charges; and
   * include the contact details and website for the Training Provider on the written agreement with the Apprentice and on the Training Agreement.
2. Each of the Training Provider and the Employer undertakes to the other that it shall not:

* use funds in the Employer’s Digital Account or government-employer co-investment for any of the following:
* enrolment, induction, prior assessment, initial diagnostic testing or similar activity;
* accommodation costs where the apprentice is resident away from their home base, because of the requirements of their day-to-day work or because this is convenient for the Employer;
* travel costs for apprentices under any circumstances;
* Apprentice wages;
* personal protective clothing and safety equipment required by the apprentice to carry out their day-to-day work;
* capital purchases;
* any training or optional modules in excess of those required, educational trips or trips to professional events not specified in the apprenticeship standard or needed to achieve the apprenticeship framework;
* re-sits for qualifications or end-point assessment needed for the apprenticeship where no additional learning is required;
* time spent by employees / managers supporting Apprentices, mentoring or the time arranging training support;
* training assessment, exams or tests in any skills and knowledge solely and specifically required to acquire licences to practice, or the certification of any licence to practice, where these are a legal requirement;
* specific services not related to the delivery and administration of the apprenticeship; including company induction, bespoke or additional training or assessment not needed to meet the apprenticeship requirements;
* off-the-job training delivered only by distance learning, not including online and other blended learning activities; or
* repeating the same regulated qualification where the apprentice has previously achieved it unless it is a requirement of the apprenticeship or for any GCSE.

1. If the Training Provider is to sub-contract all or part of the Agreed Services, the Parties shall agree 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.

**SCHEDULE 4**

**The Training Agreement (Commitment Statement) [***Signed and agreed with individual Apprentices and Employer]*

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

* the planned content and schedule for eligible training (and must also include end-point assessment if they are undertaking a standard);
* what is expected 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 and key milestones for mandatory or other qualification achievements;
* details on which elements are eligible for funding from the Employer’s Digital Account or government-Employer co-investment and necessary to meet any end-point assessment, those which are extra and not eligible for co-investment but will be fully funded by the employer, and those fully funded by the ESFA including English and maths; and
* the list of all organisations delivering the training including English and maths.
* 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:
* Employer; commitment to wages and time off to study in the working day; and
* Provider; support and guidance available and how to access this.

**SCHEDULE 5**

**The Training Services**

1. Funded Apprenticeship Training Courses

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Apprenticeship Standard / Framework | Funding source (Levy / Co-Investment) | Training costs price per learner – (£) | EPA Maximum price per learner – (£) | Total charges price per learner – (£) | Additional services included in Apprenticeship funding |
| Chartered town planner (Degree) | Levy |  |  | £27,000 | Cost of field trip(s) included within course fee. Course fee charged via the levy account monthly in arrears |
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1. Additional Services Excluded from Apprenticeship Funding

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| --- | --- | --- |
| Additional Service | Cost to Employer (£) | Payment Terms |
| None | N/a | N/A |
|  |  |  |

1. Start Date(s):

The training services will begin in September 2023

1. Company and individual responsible for recording the required details of the Apprenticeship with the ESFA using the Apprenticeship Service:
   1. Responsible Company University College London
   2. Responsible Individual: Dr Ben Clifford, UCL Bartlett School of Planning
2. Provider Account Manager: Audrey Fenwick, UCL Finance and Business Affairs
3. Employer Contract Manager: Emily Whelan
4. Apprentice Work Location and Training Location(s): England only
5. Essential Employer Materials or Training:

None

**SCHEDULE 6**

**Request for New Training Services**

1. Funded Apprenticeship Training Courses

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Apprenticeship Standard / Framework | Funding source (Levy / Co-Investment) | Price per learner – (£) | Price per learner – EPA Maximum (£) | Additional services included in Apprenticeship funding |
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1. Additional Services Excluded from Apprenticeship Funding

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| --- | --- | --- |
| Additional Service | Cost to Employer (£) | Payment Terms |
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1. Start Date(s) and Term(s):

The training services will begin on [Start Date] and end on [End Date]

1. Company and individual responsible for recording the required details of the Apprenticeship with the ESFA using the Apprenticeship Service:
   1. Responsible Company [Employer Name]
   2. Responsible Individual: [Name]
2. Provider Account Manager: [Account Manager]
3. Employer Contract Manager: [Employer Contract Manager}
4. Apprentice Work Location and Training Location(s): England only
5. Essential Employer Materials or Training:

[Optional]