

dated 26/05/2022

University of Portsmouth Higher Education Corporation

and

Driver and Vehicle Standards Agency

**Apprenticeship Training
Services Agreement (“Agreement”)**

CONTRACT PARTICULARS

THIS AGREEMENT is dated **26/05/2022** (hereinafter “Commencement Date”)

EMPLOYER DETAILS	
Employer:	Driver and Vehicle Standards Agency
Company Number:	N/A Government Agency
Number of Employees (headcount):	4600
Employer's address:	Main Office: Berkeley House, Croydon Street, Bristol BS5 0DA
Employer's Authorised Signatory:	Name: XXXXX Redacted under FOIA section 40 Title: Commercial Category Officer Email: XXXXX Redacted under FOIA section 40 Telephone: N/A Postal Address: The Axis Building, 112 Upper Parliament Street, Nottingham, NG1 6LP
TRAINING PROVIDER DETAILS	
Training Provider:	University of Portsmouth Higher Education Corporation (“Training Provider”)
Address:	University House, Winston Churchill, Avenue, Portsmouth, PO1 2UP
UKPRN	10007155
VAT number:	504005214
Training Provider's Representative:	XXXXX Redacted under FOIA section 40 Director of Learning at Work University of Portsmouth, Careers & Employability, 28 Guildhall Walk, Portsmouth, Hants, PO1 2DD 02392 843865 degree-apprenticeship-office@port.ac.uk

CONTRACT PARTICULARS

SPECIFIC TERMS	
Mandatory Documents	<ol style="list-style-type: none"> 1. Commitment Statement 2. Apprenticeship Agreement <p><i>Employers should note: failure to provide the Mandatory Documents by the date specified by the Training Provider may result in the apprenticeship start date being postponed.</i></p>
Expiry Date	30/09/2024 ("Expiry Date") unless otherwise terminated earlier in accordance with this Agreement.
Fixed or Multiple Apprenticeship Programmes	<p>Tick the required option:</p> <p>Fixed: This Agreement is for the Apprenticeship Programme(s) set out in Schedule 1 only and Clause 5 shall not apply <input checked="checked" type="checkbox"/></p> <p>OR</p> <p>Multiple: This Agreement is for multiple Apprenticeship Programmes and Clause 5 shall apply <input type="checkbox"/></p>
Training Provider Administration Service	<p>Tick this box if the Training Provider will be completing on-line administrative tasks on behalf of the Employer and Clause 4.2.3 shall apply <input type="checkbox"/></p>
SCHEDULES	
Schedule 1:	<p>Apprenticeship Programme(s):</p> <ol style="list-style-type: none"> 1. Level 7 Senior Leader Masters Degree 2. 3. 4. 5.
Schedule 2:	The Training Provider's Mandatory Policies

CONTRACT PARTICULARS

This Agreement is entered into on the date set out above and is made up of these Contract Particulars, the Contract Terms and the Schedules stated above.

SIGNED on behalf of the **TRAINING PROVIDER:**

XXXXXX Redacted under FOIA section 40

.....
Signature

26/05/2022

.....
Date

XXXXXX Redacted under FOIA section 40

.....
Print Name

Director of Learning at Work

.....
Role/Title

SIGNED on behalf of the **EMPLOYER:**

XXXXXX Redacted under FOIA section 40

.....
Signature

11.04.2022

.....
Date

XXXXXX Redacted under FOIA section 40

.....
Print Name

Commercial Category Manager

.....
Role/Title

Contract Terms

1. Definitions and Interpretation

1.1 The definitions and rules of interpretation in this clause apply to this Agreement:

Accountability Statement means the prevailing “Apprenticeship Accountability Statement” published by the Department for Education which sets out the roles and responsibilities of the various regulatory bodies responsible for regulating Apprenticeships, which as at the Commencement Date of this Agreement, a copy of which can be found at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/605552/Apprenticeship_Accountability_Statement.pdf

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

Agreed Purposes: for the purposes of administering the academic and on the job training of the Apprentice(s).

Agreement means this apprenticeship training services agreement and any attachments, schedules or annexes attached thereto;

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

Apprenticeship means the training and (where applicable) end-point assessment for an employee as part of a job with an accompanying skills development programme in accordance with section A1 of the Apprenticeships, Skills, Children and Learning Act 2009. An apprenticeship must be either a new job that requires new knowledge and skills or an existing job role, where the individual needs significant new knowledge, skills and behaviours to be occupationally competent;

Apprenticeship Agreement means a complete apprenticeship agreement that complies with relevant statutory requirements, being either (a) an approved English apprenticeship agreement; or (b) an apprenticeship agreement within the meaning given in section 32 or section A1(3) of the Apprenticeship, Skills, Children and Learning Act 2009 as it applies in relation to England;

Apprenticeship Programme means a programme of Training set out in Schedule 1 or agreed pursuant to **clause 5 (Additional Apprenticeship Programmes)** of this Agreement;

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

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

Break in Learning means a period of time during an Apprenticeship Programme in which the Apprentice is not participating in work with the Employer, nor undertaking any training or learning with the Training Provider and where at the time of notification the Apprentice intends to resume participation in the Apprenticeship at some point in the future (as identified pursuant to the flowchart after P265 of the Funding Rules);

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

Business Days means any day from Monday to Friday excluding any public holiday when the banks of London are open for business;

Change is defined in **clause 21.2 (Change Protocol)**;

Charges means the full cost of the Services provided in accordance with the Apprenticeship Programme(s) as set out in the relevant Apprenticeship Programme including the cost of any resits pursuant payable to **clause 4.1.7.6 (Employer Obligations)** and additional costs pursuant to **clause 21.2 (Change Protocol)**;

CMA means the UK Competition and Markets Authority or any successor thereto;

CMA Guidance means guidance issued by the CMA in respect of consumer protection of students in higher education in England and Wales;

Complaints Procedure means the complaints procedure available at the weblink in **Schedule 2 (Training Provider's Mandatory Policies)** or notified to the Employer by the Training Provider from time to time;

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

Consumer Law means the UK Consumer Rights Act 2015, the UK Consumer Protection from Unfair Trading Regulations 2008, the UK Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 all and any subordinate and related legislation and codes of practice related to Students in their capacity as consumers from time to time as may be amended, restated or replaced from time to time;

Contract of Service has the meaning defined in **clause 4.1.1 (Employer Obligations)** of this Agreement which shall constitute a "contract of service" as referred to in the Funding Rules;

Contract Terms means these contract terms from clause 1 to 23 (inclusive);

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

Data Discloser: a Party that discloses Shared Personal Data to the other Party.

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

Data Protection Legislation: the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a Party relating to

the use of Personal Data (including, without limitation, the privacy of electronic communications).

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

Dispute Notice is defined in **clause 7.1 (Dispute Resolution)**;

Employer's Digital Account means the part of the ESFA's apprenticeship service which shows the amount of Funding available to the Employer to spend on Training of Apprentices and information associated with this spend;

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

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

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

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

ESFA means the Secretary of State for Education, acting through the Education 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 Change Actions means the action following change in employer, apprentice or provider circumstances set out in paragraphs P268-P280 of the Funding Rules;

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

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

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 prevailing Apprenticeship funding rules for main providers amended from time to time and available as at the Commencement Date at: <https://www.gov.uk/guidance/apprenticeship-funding-rules>;

Good Industry Practice means the exercise of such degree of skill, diligence and care which would reasonably and ordinarily be expected from a skilled and experienced provider engaged in the discharge of their usual business (as the

context so dictates) under the same or similar circumstances as those applicable to this Agreement;

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

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

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 that apply to the higher education sector;

Mandatory Documents means the documents listed as mandatory documents in the Contract Particulars;

Mandatory Policies means the policies of the Training Provider or other such policies rules or regulations that the Training Provider deems necessary set out in **Schedule 2 (Training Provider’s Mandatory Policies)** or made known to the Employer from time to time;

Modern Slavery Act means the UK Modern Slavery Act 2015 and all and any subordinate and related legislation and codes of practice made under this Act from time to time as may be amended, restated or replaced from time to time;

MSA Offence is defined in **clause 19.1.2.1 (Modern Slavery)**;

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

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

Party means a party to this Agreement as set out in the Contract Particulars attached hereto;

Permitted Recipients: the parties to this Agreement, the employees of each Party and any third parties engaged to perform obligations in connection with this Agreement.

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

Project Materials is defined at **clause 16.1 (Intellectual Property)**;

QAA UK Quality Code means the revised UK Quality Code for Higher Education (which as at the Commencement Date is available at: <https://www.qaa.ac.uk/quality-code>) developed by the QAA on behalf of the UK standing committee for Quality Assessment as the key reference point for UK higher education which sets out the expectations and core practices that are mandatory for all providers of UK higher education, as amended by QAA from time to time;

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

Regulator Change is defined in clause 22.6;

Services the provision of training services in respect of the Apprenticeship Programmes, as further detailed in **Schedule 1** or agreed pursuant to **clause 5 (Additional Apprenticeship Programmes)**;

Shared Personal Data: the personal data to be shared between the parties under this Agreement. Shared Personal Data shall be confined to the following categories of information relevant to the following categories of data subject:

- a) Name, date of birth, home address and academic history of Apprentices;

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

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

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

UAP is defined in **clause 5.1 (Repeat Apprenticeship Programmes)**;

UK Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

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; and

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

- 1.2 Clause and Schedule headings do not affect the interpretation of this Agreement.
- 1.3 References to clauses and Schedules are (unless otherwise provided) references to the clauses and Schedules of this Agreement.
- 1.4 If there is an inconsistency between any of the provisions in the main body of this agreement and the Schedules, the provisions in the main body of this Agreement shall prevail.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural, and in the plural include the singular.
- 1.6 A reference to a statute or statutory provision or the Funding Rules is a reference to it as amended, extended or re-enacted from time to time.
- 1.7 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time.
- 1.8 Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.9 Words or phrases defined in the Funding Rules shall have the same meaning in this Agreement.
- 1.10 A reference to a person includes companies, subsidiaries (both of the foregoing as defined by the Companies Act 2006), firms, partnerships and corporations and their successors and permitted assignees or transferees.

2. Commencement and Duration

- 2.1 This agreement shall commence on the Commencement Date stated in the Contract Particulars and shall continue until the later of:
 - 2.1.1 the Expiry Date; or
 - 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;
 - 3.1.4 in compliance with the Law and associated codes and guidance from time to time in force

- 3.1.5 in compliance with the quality codes, guidance and requirements issued by the OfS, the QAA (including the QAA UK Quality Code) and/or Ofsted (as the case may be).
- 3.2 The Training Provider shall enter into written agreements with all relevant:
 - 3.2.1 Subcontractors; and
 - 3.2.2 End-Point Assessment Organisations (except where the Apprenticeship relates to an Integrated Standard and the Training Provider is the End-Point Assessment Organisation);as specified in the relevant Apprenticeship Programme.
- 3.3 The Training Provider shall monitor the quality of Training delivered by a Subcontractor through such means as it considers appropriate including regular meetings, audits and observations of teaching, learning and assessment.
- 3.4 Subject to the Employer fulfilling the obligations set out in clause 4, the Training Provider shall use its reasonable endeavours to recover sums in respect of the Charges from the ESFA.

4. Employer Obligations

- 4.1 The Employer shall:
 - 4.1.1 from the commencement of the relevant Apprenticeship Programme until completion of the relevant End-Point Assessment or the Apprentice's withdrawal from the Apprenticeship, employ and pay the Apprentice in accordance with the Law, agreed employment terms and conditions (a "**Contract of Service**") 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:
 - 4.1.2.1 compliance with the Funding Rules;
 - 4.1.2.2 obtaining any payment to which it or the Employer may be entitled under the Funding Rules; and
 - 4.1.2.3 compliance with the quality codes and guidance issued by OfS, QAA and/or Ofsted (as the case may be).
 - 4.1.3 enter into and procure that each Apprentice enters into:
 - 4.1.3.1 a Contract of Service
 - 4.1.3.2 an Apprenticeship Agreement; and
 - 4.1.3.2 a commitment statement compliant with 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 with due skill, care and attention and in any event support each Apprentice in their learning and development to the reasonable satisfaction of the Training Provider;
- 4.1.5 notify in writing the Training Provider of any Break in Learning. The parties agree that where there is break in learning, the End Date of this Agreement shall be adjusted to take account of the duration of the Break in Learning;
- 4.1.6 confirm promptly on request by providing signed declarations to the Training Provider:
 - 4.1.6.1 each Apprentice's eligibility for apprenticeship funding;
 - 4.1.6.2 any eligibility for 16-18 year old Additional Payments (if applicable);
 - 4.1.6.3 any eligibility for 19-24 year old with Education, Health and Care plan or has been a Child in Care; Additional Payments (if applicable);
 - 4.1.6.4 any eligibility for care leavers bursary Additional Payments (if applicable);
 - 4.1.6.5 the average number of employees employed by the Employer in the three hundred and sixty-five (365) days immediately preceding the first day of an Apprenticeship and (if applicable) the Employer's eligibility for small employer Additional Payments;
 - 4.1.6.6 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;
 - 4.1.6.7 the address or addresses where the Apprentice shall be carrying out their working hours;
 - 4.1.6.8 whether learning support is available to support Apprentices with additional learning needs;
 - 4.1.6.9 compliance with state aid law;
 - 4.1.6.10 the number of contracted working hours for which each Apprentice is employed and the total number of off-the-job training hours agreed for the full Apprenticeship,
- 4.1.7 ensure, and on request confirm, that:
 - 4.1.7.1 the Apprentice is employed for a minimum of thirty (30) hours per week and that training both on and off-the-job is included in those hours of employment or where the Apprentice is employed for less than thirty (30) hours per week the duration of the Apprenticeship has been extended proportionately in accordance with the Funding Rules;
 - 4.1.7.2 the funding for the Apprenticeship is not used to pay the Apprentice's wages;

4.1.7.3 the Apprentice is enabled to complete the Apprenticeship within their working hours and make available time for the Apprentice to be able to complete the Apprenticeship Programme including:

- i) permitting a minimum of 20% (after statutory leave has been deducted) of each Apprentice's employed hours to be used for off-the-job training (including permitting each Apprentice to attend any rearranged 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;*

*Off-the-job training information can be found
at:www.gov.uk/government/publications/apprenticeships-off-the-job-training*

4.1.7.4 cooperation with the Training Provider to arrange for any necessary End-Point Assessment and allowing the Apprentice to attend the same

4.1.7.5 compliance with the terms of any agreement between the Employer and the ESFA;

4.1.7.6 where not paid for by Funding, provide payment for retakes for qualifications or End-Point Assessment required by the Approved Apprenticeship Standard and not to ask for contribution from the apprentice;

4.1.7.7 compliance with the Mandatory Policies;

4.1.7.8 the Apprentice is provided with appropriate support and supervision on the job to carry out their job role;

4.1.7.9 the Employer shall work with the Training Provider to ensure each Apprentice who is on an Apprenticeship Programme achieves their minimum entitlement to 20% off the job training over the duration of their Apprenticeship, (accepting that from time to time the agreed training schedule may be disrupted unintentionally by either Party) and shall ensure that this requirement is monitored and logged;

4.1.7.10 Mandatory Documents identified in the Specific Terms of the Contract Particulars are returned by the date notified by the Training Provider. Failure to provide Mandatory Documents by this date may (at the Training Providers discretion) result in the commencement date of the Apprenticeship being postponed;

4.1.7.11 all reasonable steps are taken to monitor and act upon harm to Apprentices studying the Apprenticeship Programme(s), such harm including but not limited to bullying and / or harassment howsoever caused;

4.1.7.12 all reasonable steps are taken to comply with, and assist the Training Provider in its compliance with, the general duty on specified authorities in section 26 of the Counter-Terrorism and Security Act 2015 (the Prevent duty) and the duty on partners of a panel in section 38 of the Counter-Terrorism and Security Act 2015 (the Channel co-operation duty); and

4.1.7.13 the Apprentice is permitted to attend all relevant and necessary teaching sessions, subject to the terms of this Agreement, made available to the Apprentice by the Training Provider.

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 End-Point Assessment Organisation to enable the successful delivery and completion of each Apprenticeship, including (where applicable) entering into written agreement with the Training Provider where subcontracting is taking place;
- 4.2.2 if levy funded ensure that the Training Provider is added to the Employer's digital account within two (2) months of the Commencement Date of this Agreement.
 - 4.2.2.1 if non-levy funded ensure that funds are reserved on the Apprenticeship Service prior to the apprentice's start date.
- 4.2.3 where indicated in the Contract Particulars that the Training Provider will be providing on-line administrative tasks, provide to the Training Provider on request all necessary log-in information to enable the Training Provider to access the Employer's Digital Account for the purposes of confirming the Funding available in respect of an Apprentice and uploading on behalf of the Employer information required pursuant to the Funding Rules relating to the Apprentice, the Apprenticeship Programme and/or other relevant matters;
- 4.2.4 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;
- 4.2.5 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;
- 4.2.6 immediately notify the Training Provider if the Apprentice informs the employer that they no longer wish to continue with the Apprenticeship;
- 4.2.7 promptly notify the Training Provider in writing when it becomes aware that either the Apprentice or Employer wishes to terminate their employment;

- 4.2.8 immediately notify the Training Provider if the Apprentice's employment with the Employer ceases;
 - 4.2.9 immediately notify the Training Provider if the Apprentice is made redundant and provide to the Training Provider a copy of the redundancy notice;
 - 4.2.10 immediately confidentially notify the Training Provider if it has any concerns that the Apprentice is or may be engaged in activities or behaviours that may affect the Training Provider's compliance with the general duty on specified authorities in section 26 of the Counter-Terrorism and Security Act 2015 (the Prevent duty) and the duty on partners of a panel in section 38 of the Counter-Terrorism and Security Act 2015 (the Channel co-operation duty);
 - 4.2.11 immediately confidentially notify the Training Provider if it has any concerns including but not limited to, those concerns set out in clause 4.1.7.11, or concerns relating to the health or well-being of the Apprentice concerned;
 - 4.2.12 actively participate in any Apprenticeship progress reviews required; and
 - 4.2.13 appoint an Employer's Representative and promptly notify the Training Provider of any change of the Employer's Representative from time to time.
- 4.3 In relation to End-Point Assessment:
- 4.3.1 the Employer shall provide to the Training Provider all relevant information about the Apprentice to enable End-Point Assessment to occur;
 - 4.3.2 the Employer shall use all reasonable endeavours to ensure that the Apprentice sit the End-Point Assessment; and
 - 4.3.3 the Employer acknowledges that the Funding Rules require the Training Provider to arrange End-Point Assessments and the Employer shall not enter into any contract or other arrangement with an End-Point Assessment Organisation for the provision of the same.
 - 4.3.4 The Employer acknowledges and agrees that should the Apprentice not sit an End-Point Assessment at the direction of the Employer, the Training Provider shall be entitled to invoice the Employer for the funding that the Training Provider would have been entitled to had the Apprentice completed the End-Point Assessment.
- 4.4 The Employer warrants that the Employer Charges (where applicable) represent the actual cost of delivering the training allocated to it in the Apprenticeship Programme and no profit element is included the Employer Charges.
- 4.5 Where the Employer has identified the candidates to be included in the Apprenticeship Programme, the Training Provider may assess each Apprentice's ability to successfully complete their Apprenticeship, with particular regard to the academic requirements. Where the Training Provider, using their educational expertise, believes that an Apprentice will be unable to successfully complete their Apprenticeship, the Training Provider may either suggest an alternative training programme or require the Employer to the withdraw the Apprentice from the Apprenticeship Programme.

5. Additional Apprenticeship Programmes

5. A This **clause 5** shall have effect only if indicated in the Contract Particulars attached to this Agreement.

5.1 The Employer may prior to the Expiry Date request that additional Apprenticeship Programmes be delivered to its employees by the Training Provider in accordance with this **clause 5**.

5.2 The Training Provider and the Employer shall discuss the nature and content of the Employer's requirement for an additional Apprenticeship Programme and such a discussion shall result in the Employer requesting the provision of one of the Apprenticeship Programmes set out in **Schedule 1** in accordance with **clause 5.3**.

5.3 Repeat Apprenticeship Programmes

5.3.1 The Employer shall notify the Training Provider in a written Repeat Apprenticeship Programme Request which of the Apprenticeship Programmes set out in **Schedule 1** that it wants to be repeated and shall provide the Training Provider with sufficient information (in the opinion of the Training Provider acting reasonably) to allow the Training Provider to prepare an updated Apprenticeship Programme (a "**UAP**").

5.3.2 Within ten (10) Business Days of receipt of the Repeat Apprenticeship Programme Request, the Training Provider shall:

5.3.2.1 notify the Employer that it declines to repeat the requested Apprenticeship Programme; or

5.3.2.2 provided that the Employer has provided sufficient information pursuant to clause 5.3.1, provide the Employer with a UAP (in the form of the Apprenticeship Programmes set out in Schedule 1) containing all relevant information required by the Funding Rules.

5.3.3 The Parties shall negotiate the contents of the UAP provided pursuant to clause 5.3.2.2 and once agreed between the Parties the Employer and the Training Provider shall each indicate such agreement by executing the UAP under hand.

5.3.4 A UAP that has been executed by both Parties pursuant to clause 5.3.3 shall be deemed to be an Apprenticeship Programme for the purposes of this Agreement and shall be incorporated into Schedule 1 accordingly.

6. Charges and Payments

6.1 The Employer shall be responsible for the Charges and shall pay the Charges to the Training Provider to the extent that the Charges have not been recovered by the Training Provider from the ESFA.

6.2 The Training Provider shall send invoices in respect of the Unfunded Charges to the Employer 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 of receipt or such longer period as may be agreed.

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

7. Dispute Resolution

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

7.3 If no settlement is reached under **clause 7.2**, the dispute shall be determined by the English Courts and the parties submit to the exclusive jurisdiction of such court for such purposes.

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

National Apprenticeship Helpline

email: nationalhelpdesk@apprenticeships.gov.uk

tel: 0800 015 0400

8. Termination

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

- 8.1.1 the other Party commits a material breach of any term of this Agreement (other than failure to pay any amounts due under this Agreement) and (if such breach is remediable) fails to remedy that breach within a period of thirty (30) days after being notified in writing to do so;
- 8.1.2 the other Party repeatedly breaches any of the terms of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement;
- 8.1.3 the other Party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- 8.1.4 the other Party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other Party with one or more other companies or the solvent reconstruction of that other Party;
- 8.1.5 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or on connection with the winding up of that other Party;
- 8.1.6 an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other Party;
- 8.1.7 the holder of a qualifying floating charge over the assets of that other Party has become entitled to appoint or has appointed an administrative receiver;
- 8.1.8 a person becomes entitled to appoint a receiver over the assets of the other Party or a receiver is appointed over the assets of the other Party;

- 8.1.9 a creditor or encumbrancer of the other Party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within fourteen (14) days;
 - 8.1.10 any event occurs, or proceeding is taken, with respect to the other Party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 8.1.3 to clause 8.1.9 (inclusive);
 - 8.1.11 the other Party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business;
 - 8.1.12 any of the provisions of Regulation 73(1) of the Public Contracts Regulations 2015 apply;
 - 8.1.13 the other Party's funding agreement with the ESFA is terminated;
 - 8.1.14 the circumstances described in **clause 6.7 (Charges and Payments)** arise;
 - 8.1.15 any other event or series of events occurs in relation to the other Party which, in the reasonable opinion of the Party not subject to the event or series of events, renders it impracticable or impossible for the Party subject to the event or series of events to observe and fulfil the terms of this Agreement;
 - 8.1.16 the other Party (the defaulting Party) or any of its respective directors, employees, officers and agents does or fails to do anything which brings or might reasonably be expected to bring into disrepute the other Party (the non-defaulting Party), its officers, employees, clients or suppliers (including, but not limited to committing an act of fraud or dishonesty whether or not connected with this Agreement);
 - 8.1.17 at any time it is unlawful for a Party to perform any of its obligations under this Agreement;
 - 8.1.18 the other Party fails to duly and punctually comply with any proper laws binding it for the purposes of the rights and obligations specified in this Agreement;
 - 8.1.19 the other Party commits an act or carries out its business in a manner which, in the reasonable opinion of the terminating Party, is incompatible with the values and ethics of the terminating Party.
- 8.2 The Training Provider has the right to terminate this Agreement immediately without consequence or liability if the Employer materially breaches its obligations under any one or more of the following clauses:
- 8.2.1 **clause 17.9 (Data Protection and Freedom of Information);**
 - 8.2.2 **clause 19 (CMA);**
 - 8.2.3 **clause 20 (Anti-Corruption);**
 - 8.2.4 **clause 21 (Anti-slavery and Human Trafficking).**

- 8.3 If the Training Provider ceases to be an ESFA approved training provider (so indicated at the date of this agreement by being listed on the Register of Apprenticeship Training Providers) then the provisions of **clause 9.5 (Consequences of Termination)** shall apply.
- 8.4 Either Party may terminate this Agreement for convenience on the provision of six (6) months' written notice to other Party.
- 9. Consequences of Termination**
- 9.1 Other than as set out in this Agreement, neither Party shall have any further obligation to the other Party under this Agreement after its termination.
- 9.2 Any provision of this Agreement which expressly or by implication is intended to come into or continue in force on or after termination of this Agreement, including clause 1 (**Definitions and Interpretation**), clause 4.1.2, clause 4.2.3, clause 6 (**Charges and Payments**), clause 7 (**Dispute Resolution**), clause 9 (**Consequences of Termination**), clause 12 (**Liabilities and Insurance**), clause 15 (**Confidentiality**), clause 16 (**Intellectual Property**), clause 17 (**Data Protection and Freedom of Information**) and clause 23.9 (**Governing Law**) shall remain in full force and effect.
- 9.3 Termination or expiry of this Agreement shall not affect any rights, remedies, obligations or liabilities of the Parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiry.
- 9.4 On termination (for any reason) or expiry of this Agreement:
- 9.4.1 the Employer shall immediately pay to the Training Provider all Charges due at the date of termination or expiry pursuant to the Apprenticeship Programmes;
- 9.4.2 to the extent that the Employer has paid the Charges pursuant to **clause 9.4.1** and the Training Provider recovers funding from the ESFA in respect of those Charges, the Training Provider shall, provided that the Employer does not owe any other sums to the Training Provider, reimburse the Employer those sums paid pursuant to **clause 9.4.1**;
- 9.4.3 each Party shall promptly return to the other Party any equipment, documents, information or materials owned by the other Party (or a third party) and used in connection with the Services; and
- 9.4.4 each Party shall cooperate in good faith to ensure that no Apprentice is materially disadvantaged by the termination of this Agreement.
- 9.5 If the Training Provider ceases to be an ESFA approved training provider then:
- 9.5.1 save where the Employer has identified a new provider to transfer its Apprentices, this agreement shall continue in full force and effect in respect of Apprentices who have started their Apprenticeship prior to the date on which the Training Provider ceased to be an ESFA approved training provider and the Apprenticeship Programme Completion Date for the purposes of **clause 2.1.2** shall be the date on which the last such Apprentice successfully completes the relevant End-Point Assessment; and

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

10. ESFA Change Actions

- 10.1 The Parties shall take all necessary steps to give effect to the ESFA Change Actions if required. For the avoidance of doubt, giving effect to the ESFA Change Action shall not constitute a breach of this Agreement.

11. Force Majeure

- 11.1 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 ninety (90) days or more, the Party not affected may terminate this Agreement by giving thirty (30) days' written notice to the other Party.

12. Liabilities and Insurance

- 12.1 Neither Party excludes or limits liability to the other Party for:
- 12.1.1 fraud or fraudulent misrepresentation;
 - 12.1.2 death or personal injury caused by negligence;
 - 12.1.3 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
 - 12.1.4 any matter for which it would be unlawful for the Parties to exclude liability.
- 12.2 Subject to **clause 12.1**, neither Party shall in any circumstances be liable to the other Party whether in contract, tort (including for negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, for:
- 12.2.1 any loss (whether direct or indirect) of profits, business, business opportunities, revenue, turnover, reputation or goodwill;
 - 12.2.2 loss (whether direct or indirect) of anticipated savings or wasted expenditure (including management time); or
 - 12.2.3 any loss or liability (whether direct or indirect) under or in relation to any other contract.
- 12.3 Subject to **clause 12.1** and except in relation to the indemnity contained in **clause 16.3**, the Parties' total aggregate liability in contract, tort (including negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement or any collateral contract shall be limited to the total Charges payable during the twelve (12) months immediately preceding the date on which the claim arose or, if the claim arose during the first

twelve (12) months of this Agreement being in force, the Charges payable during the first (12) twelve months of this Agreement.

Insurance

- 12.4 Each Party shall at its own cost effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by that Party, arising out of the its performance of the Agreement, including death or personal injury, loss of or damage to property or any other loss.
- 12.5 The terms of any insurance or the amount of cover shall not relieve the insured Party of any liabilities under this Agreement.

13. Safeguarding

- 13.1 The Employer acknowledges that the Training Provider has a statutory duty to safeguard and promote the welfare of individuals under the age of eighteen (18) years old and vulnerable adults over the age of eighteen (18) years old pursuant to the Children Act 2004 and the Safeguarding Vulnerable Groups Act 2006.
- 13.2 The Employer shall and shall ensure that the Employer's employees, contractors and agents:
 - 13.2.1 comply with the requirements of the Children Act 2004 and the Safeguarding Vulnerable Groups Act 2006 to the extent that they apply to the Employer; and
 - 13.2.2 confidentially report to the Training Provider's designated senior person from time to time, any concerns relating to an Apprentice or other learner enrolled with the Training Provider, employee, agent or contractor of the Training Provider.
- 13.3 The Employer shall by signing this Agreement, be deemed to have read the Training Provider's policy and guidance relating to safeguarding and will comply with its contents at all times.

14. Health and Safety

- 14.1 The Parties shall perform their obligations under this Agreement (including those in relation to the Services) in accordance with:
 - 14.1.1 all applicable Law regarding health and safety; and
 - 14.1.2 the health and safety policy of the other Party whilst at the other Party's premises (to the extent it has been made known by one Party to the other Party).
- 14.2 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.

15. Confidentiality

- 15.1 Subject to **clause 15.2**, the Parties shall keep confidential all matters relating to this Agreement and shall use all reasonable endeavours to prevent their employees, contractors, agents and other personnel from making any disclosure to any person of any matters relating it.
- 15.2 **Clause 15.1** shall not apply to any disclosure of information:
- 15.2.1 required by any applicable law, provided that **clause 17 (Data Protection and Freedom of Information)** shall apply to any disclosures required under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004;
 - 15.2.2 that is reasonably required by persons engaged by a Party in the performance of such Party's obligations under this Agreement;
 - 15.2.3 where a Party can demonstrate that such information is already generally available and in the public domain otherwise than as a result of a breach of **clause 15.1**;
 - 15.2.4 of any document which the Parties to this agreement have agreed contains no commercially sensitive information;
 - 15.2.5 which is already lawfully in the possession of the receiving Party, prior to its disclosure by the disclosing Party; and
 - 15.2.6 by the Training Provider to any other department, office or agency of the Government.

16. Intellectual Property

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

17. Data Protection and Freedom of Information

17.1 Data Protection

- 17.1.1 **Shared Personal Data.** This clause sets out the framework for the sharing of personal data between the parties as controllers. Each Party acknowledges that one Party (referred to in this clause as the "**Data Discloser**") will regularly disclose

to the other Party Shared Personal Data collected by the Data Discloser for the Agreed Purposes.

17.1.2 Effect of non-compliance with UK Data Protection Legislation. Each Party shall comply with all the obligations imposed on a controller under the UK Data Protection Legislation, and any material breach of the UK Data Protection Legislation by one Party shall, if not remedied within thirty (30) days of written notice from the other Party, give grounds to the other Party to terminate this Agreement with immediate effect.

17.1.3 Particular obligations relating to data sharing. Each Party shall:

17.1.3.1 ensure that it has all necessary notices and consents in place to enable lawful transfer of the Shared Personal Data to the Permitted Recipients for the Agreed Purposes;

17.1.3.2 give full information to any data subject whose personal data may be processed under this Agreement of the nature such processing. This includes giving notice that, on the termination of this Agreement, personal data relating to them may be retained by or, as the case may be, transferred to one or more of the Permitted Recipients, their successors and assignees;

17.1.3.3 process the Shared Personal Data only for the Agreed Purposes;

17.1.3.4 not disclose or allow access to the Shared Personal Data to anyone other than the Permitted Recipients;

17.1.3.5 ensure that all Permitted Recipients are subject to written contractual obligations concerning the Shared Personal Data (including obligations of confidentiality) which are no less onerous than those imposed by this Agreement;

17.1.3.6 ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the other Party, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data.

17.1.3.7 not transfer any personal data received from the Data Discloser outside the EEA unless the transferor:

17.1.3.7.1 complies with the provisions of Articles 26 of the GDPR (in the event the third Party is a joint controller); and

17.1.3.7.2 ensures that (i) the transfer is to a country approved by the European Commission as providing adequate protection pursuant to Article 45 of the GDPR; or (ii) there are appropriate safeguards in place pursuant to Article 46 GDPR; or (iii) Binding corporate rules are in place or (iv) one of the derogations for specific situations in Article 49 GDPR applies to the transfer.

17.1.4 Mutual assistance. Each Party shall assist the other in complying with all applicable requirements of the UK Data Protection Legislation. In particular, each Party shall:

17.1.4.1 consult with the other Party about any notices given to data subjects in relation to the Shared Personal Data;

- 17.1.4.2 promptly inform the other Party about the receipt of any data subject access request;
 - 17.1.4.3 provide the other Party with reasonable assistance in complying with any data subject access request;
 - 17.1.4.4 not disclose or release any Shared Personal Data in response to a data subject access request without first consulting the other Party wherever possible;
 - 17.1.4.5 assist the other Party, at the cost of the other Party, in responding to any request from a data subject and in ensuring compliance with its obligations under the UK Data Protection Legislation with respect to security, personal data breach notifications, data protection impact assessments and consultations with supervisory authorities or regulators;
 - 17.1.4.6 notify the other Party without undue delay on becoming aware of any breach of the UK Data Protection Legislation;
 - 17.1.4.7 at the written direction of the Data Discloser, delete or return Shared Personal Data and copies thereof to the Data Discloser on termination of this Agreement unless required by law to store the personal data;
 - 17.1.4.8 use compatible technology for the processing of Shared Personal Data to ensure that there is no lack of accuracy resulting from personal data transfers;
 - 17.1.4.9 maintain complete and accurate records and information to demonstrate its compliance with this Agreement; and
 - 17.1.4.10 provide the other Party with contact details of at least one employee as point of contact and responsible manager for all issues arising out of the UK Data Protection Legislation, including the joint training of relevant staff, the procedures to be followed in the event of a data security breach, and the regular review of the parties' compliance with the UK Data Protection Legislation.
- 17.1.5 **Indemnity.** Each Party shall indemnify the other against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other [reasonable] professional costs and expenses) suffered or incurred by the indemnified Party arising out of or in connection with the breach of the UK Data Protection Legislation by the indemnifying Party, its employees or agents, provided that the indemnified Party gives to the indemnifier prompt notice of such claim, full information about the circumstances giving rise to it, reasonable assistance in dealing with the claim and sole authority to manage, defend and/or settle it.

17.2 Freedom of Information

- 17.2.1 The Employer acknowledges that Training Provider is subject to the requirements of the Freedom of Information Act 2000, and the Environmental Information Regulations 2004 (together referred to for the purposes of this Agreement as "FOIA"), and all and any related legislation, guidance and codes of practice from time to time as may be amended, restated or replaced from time to time, and the Employer agrees that it shall cooperate and provide (at its own expense) all

necessary assistance as may reasonably be requested by the Training Provider to enable the Training Provider to comply with its obligations under FOIA.

- 17.2.2 If the Employer is subject to a FOIA request in relation to this Agreement it shall advise the Training Provider by email within three (3) working days of receipt of the FOIA request. Notification shall be given to the following contact:

Address: The Information Disclosure Officer, Office of the Director of Corporate Governance, University of Portsmouth, University House, Winston Churchill Avenue, Portsmouth, PO1 2UP, UK

Email: freedom-of-information@port.ac.uk

Tel: +44 (0)23 9284 3642

18 Equality Legislation

- 18.1 Each Party shall (and shall procure that its employees, contractors, agents and other personnel shall):

18.1.1 perform its obligations under this Agreement (including those in relation to the Services) in accordance with all applicable equality law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);

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

19 CMA

- 19.1 At all times during the term of this Agreement:

19.1.1 the Parties shall in their dealings with the Apprentices make every effort to comply with the Consumer Laws, taking particular account of the CMA Guidance;

19.1.2 neither Party shall engage in any activity, practice or conduct which would constitute an offence under the Consumer Laws (whether such act was committed in the UK or not);

19.1.3 each Party shall on request provide the other Party with all assistance and information as the other Party may reasonably request to enable it to comply with its obligations under the Consumer Laws or to satisfy the CMA or other regulatory body that it has done so; and

19.1.4 each Party shall use reasonable endeavours to ensure that all its employees, contractors and agents who are performing services in connection with this Agreement shall comply with its obligations in **clauses 19.1.1 to 19.1.3**.

- 19.2 Any breach of this **clause 19** by the Employer or by anyone employed by it or acting on its behalf shall entitle the Training Provider to terminate this Agreement forthwith.

20 Anti-Corruption

- 20.1 Each Party undertakes and warrants to the other that it has not offered, given or agreed to give (and that it will not offer, give or agree to give) to any person any gift

or consideration of any kind as an inducement or reward for doing or forbearing to do anything in relation to the obtaining of this Agreement or the performance of its obligations under this Agreement.

20.2 Each Party warrants to the other that it has in place, and undertakes that it will comply with, policies and procedures to avoid the risk of bribery (as set out in the Bribery Act 2010) and fraud within its organisation and in connection with its dealings with other Parties.

20.3 Any breach of this **clause 20** by the Employer or by anyone employed by it or acting on its behalf shall entitle the Training Provider to terminate this Agreement forthwith.

21 Anti-slavery and Human Trafficking

21.1 The Employer shall:

21.1.1 ensure that slavery and human trafficking is not taking place in any part of its business or in any part of its supply chains;

21.1.2 ensure that it and each of its suppliers and subcontractors shall comply with the Training Provider's prevailing Anti-slavery Policy a web link to which is included in **Schedule 2 (Training Provider's Mandatory Policies)** of this Agreement;

21.1.3 respond promptly to all slavery and human trafficking due diligence questionnaires issued to it by the Training Provider from time to time and ensure that its responses to all such questionnaires are complete and accurate; and

21.1.4 notify the Training Provider as soon as it becomes aware of any actual or suspected slavery or human trafficking in any part of its business or in a supply chain which has a connection with this Agreement.

21.1.5 If any breach by the Employer (or by anyone employed by it or acting on its behalf) of any part of this **clause 21** is suspected or known, the Employer shall notify the University immediately and shall respond promptly to the Training Provider's enquiries and co-operate with any investigation.

21.1.6 In complying with this **clause 21**, both parties shall take appropriate account of any guidance or codes of practice issued by the relevant government department concerning the Modern Slavery Act 2015.

21.2 Any breach of this **clause 21** by the Employer or by anyone employed by it or acting on its behalf shall entitle the Training Provider to terminate this Agreement forthwith.

22 Contract Variation

22.1 No variation to this Agreement other than pursuant to **clause 22.3** shall have effect unless agreed in writing and signed by both Parties pursuant to **clause 22.2**.

Change Protocol

22.2 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.

- 22.3 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:
- 22.3.1 the title of the Change;
 - 22.3.2 the originator and the date of the request;
 - 22.3.3 the reason for the Change;
 - 22.3.4 the full details of the Change, including any specification or service standards;
 - 22.3.5 the price, if any, of or associated with the Change;
 - 22.3.6 a timetable for implementation;
 - 22.3.7 the impact, if any, of the Change on other aspects of this agreement, including contractual documentation and resources;
 - 22.3.8 provision for signature of the request by all parties to signal acceptance of the Change; and
 - 22.3.9 any other relevant information reasonably requested by any party.
- 22.4 If approved, each party shall sign the written recommendation. The signing of the written recommendation shall signify acceptance of a Change by the parties.
- 22.5 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.
- 22.6 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 rules, guidance or instructions issued from time to time by the ESFA, the OfS, QAA or Ofsted (a “**Regulator Change**”), the Training Provider shall notify the Employer in writing of the Regulator Change and the Regulator Change shall have effect from such date as may be stated in such notice.
- 22.7 Any additional costs reasonably incurred by the Training Provider arising from the Regulator Change shall be payable by the Employer and shall be deemed to be incorporated into the Charges.

23 General

Assignment

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

Provisions to Remain in Force

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

Entire Agreement

- 23.3 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.

Waiver

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

Counterparts

- 23.5 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.

No Agency

- 23.6 Nothing in this Agreement shall be construed as creating a partnership, joint venture, 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 Party in any way.

No Double Recovery

- 23.7 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.

Further Assurance

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

Governing Law

- 23.9 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.

Third Party Rights

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

SIGNED on behalf of the **TRAINING PROVIDER:**

XXXXXX Redacted under FOIA section 40

.....

Signature

26/05/2022

.....

Date

XXXXXX Redacted under FOIA section 40

.....

Print Name

SIGNED on behalf of the **EMPLOYER:**

XXXXXX Redacted under FOIA section 40

.....

Signature

11.04.2022

.....

Date

XXXXXX Redacted under FOIA section 40

.....

Print Name

Appendix A

Statement of Expectations

SUBCONTRACTOR DETAILS	
Subcontractor Name	Fareport Training Ltd.
Training delivered by Subcontractor	The subcontracting of Level 2 Functional Skills in Maths and English as required.
<p>All Apprenticeship training and/or on-programme assessment is delivered by the University of Portsmouth other than Level 2 English and Mathematics Functional Skills training.</p> <p>In instances where the Apprentice has not, or is not able to evidence that they have obtained at least two GCSE at Grade C/4 (or equivalent) or above including English and Mathematics, they will be required to undertake Level 2 Functional Skills training.</p> <p>Functional Skills Training will be subcontracted to Fareport Training Limited, and delivered either onsite at University of Portsmouth premises or at Fareport Training Limited.</p>	
Training delivered by Subcontractor	The subcontracting of Level 2 Functional Skills in Maths and English as required.
Reason for Subcontracting	<p>The University of Portsmouth subcontracts only the Functional Skills element of degree apprenticeships and has no intention of subcontracting any Apprenticeship training and/or on-programme assessment of the degree at RQF level 6 or 7.</p> <p>As a Higher Education Institute, the University is currently unable to offer functional skills training education and must, therefore, subcontract the Functional Skills training to an experienced third party, Fareport Training Ltd.</p>
Amount of funding claimed	XXXXXX Redacted under FOIA section 43
Amount paid to subcontractor	XXXXXX Redacted under FOIA section 43
Amount of funding retained by University of Portsmouth	XXXXXX Redacted under FOIA section 43
Detail of Funding retained	
Funding retained for direct delivery	No funding is retained for University of Portsmouth's direct delivery of Functional Skills as the University of Portsmouth does not deliver any element of Functional Skills.

Funding retained to manage and monitor delivery subcontractor	XXXXXX Redacted under FOIA section 43
Funding retained for quality assurance and on programme assessment	XXXXXX Redacted under FOIA section 43
Funding retained for support activities provided to the subcontractor	XXXXXX Redacted under FOIA section 43
<p>Activities for charges listed above:</p> <p>Managing Subcontracted Provision</p> <ol style="list-style-type: none"> 1. Monitoring Subcontractor compliance with the ESFA Apprenticeship Funding Rules 2. Resolving all issues and disputes between the employer and the subcontractors as required by the ESFA 3. Monitoring Subcontractor compliance with data protection legislation as required by the ESFA and Employers 4. Managing monthly Individualised Learning Record (ILR) returns to the ESFA 5. Management of funding eligibility checks regarding residency status in accordance with ESFA funding rules for subcontracted provision 6. Management of actions where training or assessment stops or where an Apprentice 7. withdraws from the apprenticeship in accordance with ESFA funding rules for subcontracted provision 8. Management of actions required where there is a break in learning in accordance with ESFA funding rules for subcontracted provision <p>Quality Monitoring Activities</p> <ol style="list-style-type: none"> 9. Monitoring the quality of provision delivered by Subcontractors. This will include quality-assurance checks on the functional skills training and assessment provided by delivery subcontractors, including, as required, visits at short notice and face-to-face interviews with staff and apprentices. <p>The monitoring arrangements must:</p> <ol style="list-style-type: none"> a. include whether the apprentices exist and are eligible; and b. involve direct observation of initial guidance, assessment and delivery of training and/or on-programme assessment. <ol style="list-style-type: none"> 10. Quality assurance, due diligence assessment and performance management for all subcontracted provision 11. Monitoring Learner complaints 12. Monitoring Employer complaints 13. Monitoring the achievement of the Key Performance Indicators (KPIs) for Subcontracted provision including: <ol style="list-style-type: none"> a. Learner progression b. Learner satisfaction c. Employer satisfaction d. Learner success <p>Other Support Activities</p>	

14. Management of all relationships with the contracting authority as required by the ESFA 15. Management of changes of circumstance between the main provider and the employer that affect subcontractors Other Responsibilities 16. Management of actions where an Apprentice changes employer in accordance with ESFA funding rules for subcontracted provision 17. Completing and submitting the compliance subcontractor declaration as required by the ESFA 18. Management of the distribution of income to delivery associated subcontractors 19. Management of any additional payments from the ESFA	
The activities listed above allow the University of Portsmouth to apply the same rigorous quality assurance processes to our subcontractor as we do to our own degree courses with regular progress checks, inspections of teaching and learning and audits. With the University retaining 15% of funding claimed per apprentice to carry out the management and quality assurance of our subcontracted provision.	
Conflicts of interest between Training Provider and Subcontractor	There are no conflicts of interest between the Training Provider and Subcontractor.

Schedule 1

Please see Apprenticeship Programme(s) attached:

For each Apprenticeship, details of the Apprenticeship shall be set out in the attached schedule 1 substantially in the form set out in Schedule 1.0. Such schedules shall be consecutively numbered as Schedule 1.1, Schedule 1.2, Schedule 1.3 and so on, and together will be incorporated and form part of this schedule.

Schedule 1.0

Part A – Apprenticeship Details

Apprentice Name:	XXXXXX Redacted under FOIA section 40
Apprenticeship Standard title:	Senior Leader
End-Point Assessment organisation:	Chartered Management Institute
Recognised awarding body	University of Portsmouth
Job role for which Apprentice is being trained:	Grade 7 Manager
Learning Aims: Full breakdown can be found in the Apprentice's Commitment Statement	Strategic management, leadership and change. Coaching and communications, financial management, leading in uncertainty.
Start date:	29th September 2022
Duration:	24 months
Location:	University of Portsmouth
Number of employment hours (per week):	37
Number of learning hours at the University:	7 per fortnight
Starting Salary per Apprentice at commencement of Apprenticeship: Required as confirmation from the employer that the apprentice is receiving a wage in line with the national minimum wage requirements and that the apprentice rate was not used prior to a valid apprenticeship agreement being in place.	XXXXXX Redacted under FOIA section 40

Schedule 1.1

Apprentice Name:	XXXXXX Redacted under FOIA section 40
Apprenticeship Standard title:	Senior Leader
End-Point Assessment organisation:	Chartered Management Institute
Recognised awarding body	University of Portsmouth
Job role for which Apprentice is being trained:	Grade 7 Manager
Learning Aims: Full breakdown can be found in the Apprentice's Commitment Statement	Strategic management, leadership and change. Coaching and communications, financial management, leading in uncertainty.
Start date:	29th September 2022
Duration:	24 months
Location:	University of Portsmouth
Number of employment hours (per week):	37
Number of learning hours at the University:	7 per fortnight
Starting Salary per Apprentice at commencement of Apprenticeship: Required as confirmation from the employer that the apprentice is receiving a wage in line with the national minimum wage requirements and that the apprentice rate was not used prior to a valid apprenticeship agreement being in place.	XXXXXX Redacted under FOIA section 40

Part B – Payment and Price Details

Charges		
The agreed Charges (excluding VAT) for the training of each Apprentice under this Agreement is as follows:		
Employer Funding Status	X	Levy
		Non - Levy
Cost Allocation	Price per Apprentice (£)	
Training Provider Training Costs	£12,800	
End-Point Assessment Costs	£1,200	
Total	£14,000	

Maximum funding band	£14,000
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Non-Levy co-investment	
Non-Levy 95% government co-investment	N/A
Non-Levy Employer Investment (5%)	N/A

Payment Schedule*					
	Cost of training (levy paying)	Employer share (5% - non-levy paying)	Government share (95%)	Number of Months	Total
Monthly Payment	£533.33	n/a	n/a	21	£11,200
Final Payment	£2,800	n/a	n/a	1	£2,800
				Total	£14,000

*Payment Particulars are for guidance only and will be confirmed once the monthly ILR has been submitted and a true figure has been set.

	Course	Senior Leader
	Price	£ 12800
<u>Element Price</u>	Duration	2 years
Off-the-job training, lectures, seminars and tutorials including Self-directed distance learning (where it forms only part of the learning experience), interactive online learning (virtual classrooms) or blended learning relating to the off-the-job training element of an apprenticeship		£ 9,984
Time spent by employees/managers supporting or mentoring apprentices		£896
Registration, examination and certification costs associated with mandatory qualifications		£256
Regular planned on-programme assessments		£512
Materials (non-capital items) used in the delivery of the apprenticeship		£640
Administration directly linked to training and assessment, including end-point assessment		£ 512

The prices shown above are not exhaustive but rather are an indicative breakdown of price per apprenticeship delivered by the University of Portsmouth. These figures may be subject to change and give a summary.

Sponsorship/Invoicing Address

Details provided will be used to create Employer records that link with the Apprentice records, as well as invoicing any payments the Employer is liable to pay. This may include End-Point Assessment fees, or Employer co-investment fees which is, or becomes payable, in accordance with the Funding Rules.

Please detail below the required information for your Finance Team who will be able to process invoices.

Employer/Sponsor Name	Driver & Vehicle Standards Agency
Invoicing Address	Accounts Payable, Shared Services Arvato, 5 Sandringham Park, Swansea Vale, Swansea SA7 0EA
Invoicing Email Address	ssa.invoice@sharedservicesarvato.co.uk
Purchase Order/Reference Number	TBC
Signature	XXXXXX Redacted under FOIA section 40
Full Name	XXXXXX Redacted under FOIA section 40
Position in Company	Commercial Category Manager
Contact Details	Telephone Number: N/A Email Address: XXXXX Redacted under FOIA section 40

Schedule 2

The Training Provider's Mandatory Policies

Name of Policy	Weblink to Policy
Anti-Slavery Policy	http://policies.docstore.port.ac.uk/policy-230.pdf
Complaints: University of Portsmouth feedback and complaints Policy	https://www.port.ac.uk/about-us/contact-us/complaints
Complaints: ESFA Complaints Policy	https://www.gov.uk/government/publications/complaints-about-post-16-education-and-training-provision-funded-by-esfa/complaints-about-post-16-education-and-training-provision-funded-by-esfa
Complaints: Office of the Independent Adjudicators Complaints Process	https://www.oiahe.org.uk/about-us/our-scheme/our-rules/
Data Protection: ESFA Privacy Notice	https://www.gov.uk/government/publications/esfa-privacy-notice/education-and-skills-funding-agency-privacy-notice-may-2018
Data Protection: University of Portsmouth Data Protection Policy	http://policies.docstore.port.ac.uk/policy-022.pdf
Data Protection: University of Portsmouth Data Protection Statement - Students	http://policies.docstore.port.ac.uk/policy-105.pdf
Dignity and Respect Policy	http://policies.docstore.port.ac.uk/policy-007.pdf
Equality and Diversity Policy Statement	http://policies.docstore.port.ac.uk/policy-027.pdf
Policy for Safeguarding Children and Vulnerable Adults	http://policies.docstore.port.ac.uk/policy-020.pdf
Health and Safety Policy Statement	http://policies.docstore.port.ac.uk/policy-033.pdf
Health and Safety Policy Organisation and Arrangements	http://local-policies.docstore.port.ac.uk/HAS006.pdf