**Cranfield University**

**And**

**[Employer]**

**Apprenticeship Training Services Agreement**

**Contract Particulars**

|  |
| --- |
|  **Employer Details**  |
| **Registered Company Name**  |  |
| **Company Number** |  |
| **ERN** |  |
| **Registered Address** |  |
| **Key Contact Representative** | Name: Job Title: Email:Telephone:  |
|  **Training Provider Details** |
| **Training Provider Name** | Cranfield University |
| **Training Provider UKPRN:** | 10007822 |
| **Registered Address** | College Road, Cranfield, Bedfordshire, MK43 0AL |
| **Key Contact Representative** | Name: Neil Withey Title: Head of ApprenticeshipsEmail: apprenticeships@cranfield.ac.uk Telephone: 01234 754893 |
| **Training Provider VAT No.** | GB 491 3586 22 |
| **Specific Terms** |
| **Mandatory Documents for each Apprentice**  | 1. Training Plan
2. Apprenticeship Agreement
3. Evidence of eligibility

*Employers should note failure to provide the Mandatory Documents by the date specified by the University may result in the apprenticeship start date being postponed.* |
|  **Duration** |
| **Commencement Date** |  |
| **Expiry Date** | Six (6) years from Commencement Date |

This Agreement is entered into on the Commencement Date set out above and is subject to the Apprenticeship Terms contained herein.

**SIGNED by the duly authorised representative of the EMPLOYER:**

|  |  |  |  |
| --- | --- | --- | --- |
| **Name:** |  | **Signature:** |  |
| **Position:** |  | **Date:** |  |

**SIGNED by the duly authorised representative of the TRAINING PROVIDER:**

|  |  |  |  |
| --- | --- | --- | --- |
| **Name:** |  | **Signature:** |  |
| **Position:** |  | **Date:** |  |

 **APPRENTICESHIP Training Services Terms**

**BACKGROUND**

(A) The Employer wishes to make available to their employees the Apprenticeship, and the Training Provider wishes to provide the Apprenticeship Programme on the terms set out in this Agreement.

(B) The Training Provider is in the business of providing all aspects of delivery of the Apprenticeship including support of trainers and assessors, and quality monitoring to ensure successful completion of the Approved Apprenticeship Standard via the provision of the Apprenticeship Programme.

(C) The Employer will be responsible for enabling delivery of the Apprenticeship Programme including, but not limited to, on the job and off the job training, selecting an End-Point Assessment Organisation, confirming the eligibility of Apprentices for apprenticeship funding and for Additional Payments where applicable and will be required to sign Additional Payment forms to enable the Training Provider to claim eligible payments on their behalf. Their responsibilities are set out in further detail in the Training Plan.

NOW THE PARTIES AGREE AS FOLLOWS

 **1. Definitions and Interpretation**

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

**Accountability Statement** means the “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 a copy of which can be found at:

https://www.gov.uk/government/publications/apprenticeship-accountability-statement;

**Additional Payment** means payments made available to the Employer and paid to the Training Provider on the Employer’s behalf by the ESFA, such as the additional payment for 16 to 18 year olds and eligible 19 to 24 year olds;

**Affiliates** means any entity directly or indirectly controlling or controlled by or in common control with the Employer for so long as such control lasts, where “control” is defined as the ownership of at least fifty percent (50%) of the equity or beneficial interests of such entity, or the right to vote for or appoint a majority of the board of directors or other governing body of such entity;

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

**Apprentice Employment Contract** means a “contract of service” as defined in the Funding Rules;

**Apprenticeship** means the training and End-Point Assessment for an employee as part of a job with an accompanying skills development programme in accordance with the Apprenticeships, Skills, Children and Learning Act 2009 (as amended by the Enterprise Act 2016). 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) an approved English apprenticeship agreement; or (b) an apprenticeship agreement within the meaning given in section 32 of the Apprenticeship, Skills, Children and Learning Act 2009 (as amended by the Enterprise Act 2016) and the Apprenticeships (Miscellaneous Provisions) Regulations 2017 as it applies in relation to England by virtue of provision made under section 115(9) of the Deregulation Act 2015 entered into between the Employer and Apprentice;

**Apprenticeship Completion Certificate** means the certificate that the End-Point Assessment Organisation will request from the ESFA on an Apprentice meeting the requirements of the relevant Approved Apprenticeship Standard on successful completion of their Apprenticeship and End-Point Assessment;

**Apprenticeship Programme** means a programme of training and on-programme assessment developed and delivered by the Training Provider and as further detailed in the Training Plan;

**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 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 (as amended by the Enterprise Act 2016). An Apprenticeship Standard must be identified as approved for delivery on the Institute of Apprenticeships and Technical Education website https://www.instituteforapprenticeships.org/

**Break in Learning** means a period of time (of one (1) month or more) 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 Funding Rules);

**Change in Circumstance** means any change of circumstances that may affect the amount of Funding or Additional Payments that can be claimed in relation to an Apprentice, or the Apprentice’s ability to complete their Apprenticeship successfully, including, without limitation, any change in:

(a) the Employer or the Employer’s circumstances (including if the Employer becomes insolvent, an administrator is appointed by order of the court or by other means to manage the affairs, business and property of the Employer or it is unable to pay its debts as they fall due);

(b) the Apprentice’s job role or employment status;

(c) the Apprentice’s circumstances leading to a Break in Learning;

(d) the Apprentice’s status (including where the Apprentice leaves their Apprenticeship early).

**Charges** means the full cost of providing the Training and related services for an Apprenticeship Programme as set out in the relevant Training Plan including the cost of any resits payable pursuant to clause 4.1.12 and any additional costs pursuant to clause 22.2.2 (d) and payable in accordance with clause 5.1;

**Commencement Date** means the date stated as being the commencement date in the Contract Particulars;

**Contract Particulars** means the particulars of this Agreement as set out above;

**Contract Terms** means these contract terms from clause 1 to 22 (inclusive);

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

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

**Data Protection Legislation** means (i) the Data Protection Act 2018 and (ii) the UK General Data Protection Regulation;

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

**Dispute Notice** means a written notice served on one party by the other in accordance with clause 6.1 setting out the nature of a dispute between them;

**Education, Health and Care (EHC)** means a plan for children and young people aged up to 25 who need more support than is available through special educational needs support identifying educational, health and social needs and sets out the additional support to meet those needs.

**Employer Co-Investment** means the amount payable by the Employer towards the Charges when either (a) the Apprenticeship Programme is non-levy funded, or (b) if there are insufficient funds in an Employer’s Digital Account at any point during an Apprenticeship Programme;

**Employer’s Digital Account** meansthe 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 an independent assessment (and any resits of that assessment) of the Apprentice’s knowledge, skills and behaviours carried out by an Apprentice Assessment Organisation at the end of the Training to confirm that the Apprentice has met the requirements of the relevant Approved Apprenticeship Standard;

**End-Point Assessment Organisation (EPAO)** means any organisation on the Apprenticeship Provider and Assessment Register (APAR) which is selected by an Employer and contracted by the Training Provider to carry out the 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 & Technical Education 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 Cut-Off Date:** means the approval of apprentice data no later than the 20th of the month following receipt of email alert from Digital Apprentice Service (or its successor) advising “Apprenticeship service cohort ready for approval”

**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 Apprenticeship Funding and Performance Management Rules for Training Providers and, where applicable, the Apprenticeship Funding: Rules for Employer-Providers, both as revised and amended from time to time and available 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 Degree Apprenticeship** means the apprenticeship has an End Point Assessment which is integrated into the degree so there is no separate assessment;

**Information Disclosure Legislation** means the Freedom of Information Act 2000 and the Environmental Information Regulations 2004;

**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;

**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 and in particular (but not limited to) any competition law provisions that apply to the higher education sector;

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

**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);

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

**Prevent Duty** means the duty imposed on the Training Provider by the Counter Terrorism and Security Act 2015, which requires the Training Provider to act to deal with the present and growing threat of terrorism within the UK, treat security with the utmost importance and recognise the need to tackle terrorism and, where possible, to prevent individuals including students from being drawn into terrorism;

**Project Materials** meansany materials used for the delivery of an Apprenticeship Programme;

**QAA UK Quality Code** means the code published by the QAA which sets out the expectations that all providers of UK higher education are required to meet;

**Quality Assurance Agency for Higher Education (QAA)** means the Quality Assurance Agency for Higher Education, company number 03344784 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** means a change required as a result of rules, guidance or instructions issued from time to time by the ESFA, the OfS, QAA or Ofsted;

**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 Plan** (or such other name as determined by the ESFA) means a document as required by the Funding Rules (and which complies with the provisions of the applicable Funding Rules) which sets out the Training (tailored for each Apprentice) that will be delivered under the Apprenticeship and agreed between the Training Provider, the Employer and the Apprentice;

**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;

**Unfunded Charges** means any Employer Co-Investment payable together with such parts of the Charges that have not been recovered from the ESFA for any reason other than the default of the Training Provider;

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

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 If there is an inconsistency between any of the provisions of this agreement and the Funding Rules, the provisions of the Funding Rules shall prevail.

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

1.7 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.

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

1.9 Any words following the terms including, in particular, for example, include 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.

1.10 Words or phrases defined in the Funding Rules shall have the same meaning in this Agreement.

1.11 A reference to a person includes firms, partnerships and corporations and their successors and permitted assignees or transferees.

1. **Commencement and Duration**

2.1 This Agreement shall commence on the date stated in the Contract Particulars and shall continue until the later of:

2.1.1 the Expiry Date;

2.1.2 the latest Apprenticeship Programme Completion Date to occur provided that the relevant Apprenticeship Programme giving rise to such date has commenced prior to the Expiry Date.

2.2 The Expiry Date may be amended by agreement between the parties in writing.

1. **Training Provider Obligations**
	1. The parties agree that the Training Provider shall have ultimate responsibility for, and full discretion and decision-making powers in respect of, the content, academic standards and quality assurance of the Apprenticeship Programme and the Training Plan. In the event of any disagreement between the parties relating to the content, academic standards and/or quality assurance of the Apprenticeship Programme or any Training Plan, including any disagreement as to the parties’ respective responsibilities and obligations in respect thereto, the Training Provider’s decision (acting reasonably and in good faith) shall be final.

3.2 The Training Provider shall deliver the Apprenticeship Programme:

3.2.1 in accordance with and for the duration of the relevant Apprenticeship Programme and the Training Plan;

3.2.2 using reasonable skill and care;

3.2.3 in compliance with the Funding Rules;

3.2.4 in compliance with the Law and associated codes and guidance from time to time in force;

3.2.5 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).

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

3.3.1 End-Point Assessment Organisations (except where the Apprenticeship relates to an Integrated Standard and the Training Provider is the End-Point Assessment Organisation);
3.3.2.Subcontractors.

3.4 The Training Provider may at any time and in compliance with the Funding Rules engage a Subcontractor to perform any part of the Apprenticeship Programme or related services to be provided by the Training Provider under this Agreement. 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.

3.5 If any Subcontractor is appointed by the Training Provider in accordance with the terms of this Agreement to provide any of the Apprenticeship Programme, the Training Provider warrants that:

 3.5.1 it has the knowledge, skills and experience of contracting with, and managing, such subcontractors;

 3.5.2 it has assessed that Subcontractor as suitable;

 3.5.3 it will not use a Subcontractor for the delivery of the Apprenticeship Programme unless that subcontractor satisfies the criteria for using delivery subcontractors specified in the Funding Rules;

 3.5.4 it will manage, monitor and regularly assess for quality its subcontractors and procure the high-quality delivery of the Apprenticeship Programme in accordance with the Funding Rules; and

 3.5.5 it will not permit any Subcontractor to subcontract the performance of its obligations.

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

3.7 The Training Provider shall:

3.7.1 appoint a Training Provider’s Representative to act on behalf of the Training Provider in all matters relating to the Apprenticeship Programme and promptly notify the Employer of any change of the Training Provider’s Representative from time to time;

3.7.2 enter into a Training Plan with the Employer and the Apprentice in accordance with the Funding Rules;

3.7.3 comply with all obligations placed on it under the Funding Rules insofar as applicable to its obligations under this Agreement or delivery of the Apprenticeship Programme.

3.8 The Training Provider shall in accordance with the Funding Rules:

3.8.1 prepare a Training Plan at the outset of an Apprentice’s programme for each Apprentice;

3.8.2 make payment to the End-Point Assessment Organisation for conducting the End-Point Assessment and keep records of all such payments; and

3.8.3 apply for the Apprenticeship Completion Certificate on completion of the Apprenticeship Programme.

**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 and the Apprentice Employment Contract for the duration of the relevant Apprenticeship Programme which shall be not less than the period set out in the relevant Apprenticeship Programme which shall be not less than the period set out in the relevant Training Plan (subject to earlier termination of this Agreement in accordance with its terms and/or the Apprentice 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:

1. compliance with the Funding Rules;
2. obtaining any payment to which it may be entitled under the Funding Rules; and
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:

1. an Apprentice Employment Contract;
2. Apprenticeship Agreement; and
3. A Training Plan as required by the Funding Rules,

Each of which must be in place for the entire length of the Apprenticeship, kept up-to-date and meeting the requirements of the Funding Rules and a copy made available to the Training Provider;

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 attend and positively contribute to regular progress reviews with the Training Provider and the Apprentice, including providing evidence and feedback on the Apprentice’s progress at work and their success in meeting the milestones of the Apprenticeship Programme and agreeing any changes to the Training Plan required as a result;

4.1.6 allocate a mentor with appropriate skills and experience to support the Apprentice, to facilitate and support learning in the workplace and to help the Apprentice to meet the targets and timelines needed to complete the Apprenticeship by the planned end date;

4.1.7 notify in writing the Training Provider of any Change in Circumstances and work with the Training Provider to re-plan delivery, agree a revised price and update the Mandatory Documentation when the Apprentice resumes learning;

4.1.8 confirm promptly on request by providing signed declarations to the Training Provider:

1. each Apprentice’s eligibility for Apprenticeship funding;
2. any eligibility for 16/18 year old Additional Payments (if applicable);
3. any eligibility for 19-24 year old with Education, Health and Care Plan or have been a Child in Care Additional Payments (if appliable)
4. any eligibility for care leavers bursary Additional Payments (if applicable);
5. the average number of employees employed by the Employer in the one (1) year immediately preceding the first day of an Apprenticeship and (if applicable) the Employer’s eligibility for small employer incentive payment;

(f) 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;

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

1. whether learning support is available to support Apprentices with additional learning needs and will review this regularly and notify the Training Provider of any changes; and
2. compliance with subsidy control law,

4.1.9 ensure the Apprentice meets the ESFA eligibility criteria, and on request confirm, that:

1. the Apprentice is over the age of 16 years old, employed by the Employer in a relevant role to the Apprenticeship and 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;
2. the Apprentice works more than fifty percent (50%) of their time in England (except those Apprentices that meet one of the exceptions such as being a member of the UK Armed Forces based overseas. For more information on the exceptions please see the ESFA website <https://www.gov.uk/government/organisations/education-and-skills-funding-agency>);
3. the Apprentice is paid a lawful wage, which is more than the minimum wage for the time they are in work and in off the job training and that the Funding for the Apprenticeship is not used to pay the Apprentice’s wages;
4. the Apprentice is enabled to complete the Apprenticeship within their working hours and available time has been made for the Apprentice to be able to complete the Apprenticeship Programme including:
5. permitting the minimum number (as calculated by reference to the Funding Rules) of each Apprentice’s employed hours to be used for off-the-job training (including permitting each Apprentice to attend rearranged training);
6. releasing the Apprentice to the Training Provider for undertaking such training and courses with the Training Provider;
7. providing the Apprentice the use of equipment necessary to enable the Apprentice to fulfil training objectives; and
8. cooperating with the Training Provider to arrange for any necessary End-Point Assessment and allowing the Apprentice to attend the same.

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

4.1.11 comply with the provisions of the relevant Funding Rules applicable to each Apprentice;

4.1.12 where not paid for by Funding, provide payment for:

(a) An Apprentice to repeat a module; and

(b) resits or retakes (where applicable) for qualifications or any fees that have been incurred from the End-Point Assessment required by the Approved Apprenticeship Standard or by the Training Provider;

and, in each case, not to ask for contribution from the Apprentice

4.1.13 provide the Apprentice with appropriate support and supervision on the job to carry out their job role;

4.1.14 work with the Training Provider to ensure each Apprentice who is on an Apprenticeship Programme achieves their minimum entitlement to 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. In the event that the planned and actual off the job hours do not align, the Employer will countersign and procure that the Apprentice countersigns, the summary statement produced by the Training Provider and summarising the difference as required by the Funding Rules;

4.1.15 return all Mandatory Documents by the date notified by the Training Provider. Failure to provide the Mandatory Documents by this date may (at the Training Provider’s discretion) result in the start date of the Apprenticeship being postponed; and

4.1.16 ensure that an initial assessment has been undertaken which shows that:

(a) the Apprentice requires significant new knowledge, skills and behaviours to be occupationally competent in the job role;

(b) the required training meets the Funding Rules relating to the minimum duration of the practical period and off-the-job training;

(c) the Training Provider and the Employer are satisfied that the Apprenticeship is the most appropriate training programme for the individual; and

(d) the training programme aligns with an Approved Apprenticeship Standard, at the most appropriate level, and recognition of prior learning has taken place.

4.1.17 allow Apprentices on maternity, adoption or shared parental leave to use their statutory keep in touch (KIT/SPLIT) days to continue with off-the-job training during their period of leave. If these circumstances occur the Employer shall notify the Training Provider promptly and the parties will agree when and how the KIT/SPLIT days shall be used in order to ensure compliance with the Funding Rules.

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 a written agreement with the Training Provider where subcontracting is taking place;

4.2.2 provide to the Training Provider all necessary information and connection 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;

4.2.3 allow the Training Provider, its staff, auditors, contractors or agents, including the Training Provider’s Representative, access to the Apprentice, the Employer’s premises and any relevant records or documents, including health and safety records, to allow the Training Provider to comply with the Training Provider’s obligations under this Agreement. Such access shall be as reasonably agreed between the parties or on reasonable notice from the Training Provider to enable delivery of the Apprenticeship Programme;

4.2.4 participate fully in any Ofsted inspection of the Apprenticeship Programme including allowing Ofsted inspectors access to the Employer’s premises, staff and any relevant records or documents;

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 the Employer wishes to terminate the Apprentice’s employment;

4.2.8 immediately notify the Training Provider if the Apprentices’ employment with the Employer ceases;

4.2.9 if the Apprentice is made redundant:

 (a) immediately notify the Training Provider;

(b) provide a copy of the redundancy notice stating the reason for dismissal as redundancy; and

(c) ensure the Apprentice is made aware that they may still be eligible for apprenticeship funding should they continue with their Apprenticeship, in accordance with the Funding Rules.

4.2.10 appoint an Employer’s Representative to act on behalf of the Employer in all matters relating to the Apprenticeship Programme 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 acknowledges that the Funding Rules require the Training Provider to arrange the End-Point Assessment and the Employer shall not enter into any contract or other arrangement with an End-Point Assessment Organisation for the provision of the same;

4.3.2 the Employer must select an End-Point Assessment Organisation and promptly notify the Training Provider in writing which End-Point Assessment Organisation has been selected by the Employer and Apprentice to enable the Training Provider to arrange the End-Point Assessment;

4.3.3 the Employer shall provide to the Training Provider all relevant information about the Apprentice to enable End-Point Assessment to occur; and

4.3.4 the Employer, in consultation with the Training Provider, must ensure that the Apprentice is prepared for and understands the End-Point Assessment process.

* 1. The Training Provider may assess each Apprentice’s (or proposed Apprentice’s) ability to successfully complete their Apprenticeship, with particular regard to the academic requirements. Where the Training Provider, using its educational expertise, believes that an Apprentice or proposed Apprentice will be unable to successfully complete their Apprenticeship, the Training Provider may either:
		1. suggest an alternative training programme; or
		2. (in the case of a proposed Apprentice) not allow that individual to start the Apprenticeship Programme; or
		3. require the Employer to the withdraw the Apprentice from the Apprenticeship Programme.
	2. The Employer accepts and confirms that, whilst an Apprentice is registered as a student of the Training Provider, that Apprentice will be subject to the Training Provider’s academic and non-academic rules, policies and procedures in force from time to time, copies of which can be found at <https://www.cranfield.ac.uk/about/governance-and-policies/policies-and-regulations/> Any alleged breach of such rules, policies and procedures or any complaints made by the Apprentice will be dealt with by the Training Provider in accordance with such rules, policies and procedures.
	3. If the Employer wishes to sub-contract any of its obligations in relation to the Apprenticeship, including but not limited to sub-contracting to another member of its group, it shall:
		1. notify the Training Provider prior to the start of the relevant Apprenticeship and/or immediately upon becoming aware of such fact and submit a proposal for such sub-contracting to the Training Provider;
		2. not undertake any such sub-contracting without the prior written approval of the Training Provider;
		3. remain responsible for all acts and omissions of its permitted Subcontractors as if they were its own;
		4. procure that its permitted Subcontractors comply with any and all relevant terms of this Agreement, including the requirement to put in place insurances in relation to those elements the Subcontractor is delivering on the terms set out at clause 11.

**5. Charges and Payments**

5.1 The Employer must connect the Training Provider to the Employer’s ESFA levy account by the ESFA Cut-Off Date. Otherwise the Employer shall be liable to pay in full the Charges to the Training Provider to the extent that the Charges have not been recovered by the Training Provider from the ESFA. For the avoidance of doubt the Training Provider’s access to the Employer’s ESFA levy account is for the purpose of administering the relevant Apprenticeship.

5.2 The Training Provider shall send invoices in respect of the Unfunded Charges to the Employer in accordance with the details provided by the Employer in Annex 1 of the Training Plan. The Employer shall pay such invoices within thirty (30) days of receipt or such longer period as may be agreed.

5.3 In the event of any over-payment by the Employer of any Employer Co-Investment and 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 reimburse the Employer a sum equivalent to any such over-payment, such sum to be calculated by the Training Provider by reference to the withdrawal date of the relevant Apprentice from an Apprenticeship Programme.

5.4 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.

5.5 Where for any reason the ESFA requires the Training Provider to return any Funding, 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.

5.6 Where the Employer withdraws an Apprentice from the Apprenticeship Programme prior to the Apprenticeship Programme Completion Date, the Employer shall reimburse the Training Provider for any sums the Training Provider has paid to a Subcontractor, EPAO or other third party which it is unable to recover from the ESFA. The Training Provider shall notify the Employer of any requirement to reimburse such sums and the Employer shall pay such amount to the Training Provider within thirty (30) days of such notice.

5.7 All sums payable by or to the Training Provider or the Employer are exclusive of VAT. In the case of any VAT being payable, the VAT shall be due thirty (30) days after receipt by the receiving party of a valid VAT invoice.

5.8 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%) per annum above the Bank of England base rate from time to time.

5.9 Without prejudice to any other rights of remedy available to it, the Training Provider may suspend delivery of the Training Plan if payments are not received in accordance with clause 5.2. 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 or an individual Training Plan with immediate effect by giving notice to the Employer.

1. **Dispute Resolution**

6.1 In the event of a dispute arising between the parties in relation to this Agreement, either party may serve a Dispute Notice on the other.

6.2 After service of the Dispute Notice, the following procedure shall be followed by the parties (all periods specified in this clause 6.2 shall be extendable by mutual agreement):

6.2.1 within five (5) days, the Training Provider’s Representative and the Employer’s Representative shall meet to attempt to settle the dispute (each party acting in good faith);

6.2.2 if the Training Provider’s Representative and the Employer’s Representative are unable to reach a settlement within twenty-one (21) days from the date of service of the Dispute Notice, the Head of School for the particular Apprentice and the chief executive officer or other senior officer of the Employer shall meet within the following fourteen (14) days to attempt to settle the dispute; and

6.2.3 if no settlement results from the meeting specified in clause 6.2.2, for the following fifty-six (56) days the parties shall attempt to settle the dispute by mediation (in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure) by an independent mediator appointed by CEDR unless otherwise agreed between the parties, with costs to be shared equally between the parties.

6.3 If no settlement is reached under clause 6.2 the dispute shall be determined by the English Courts and the parties submit to the exclusive jurisdiction of such court for such purposes.

6.4 In addition to the process set out in clauses 6.1 to 6.3, Apprentices and Employers can

contact the apprenticeship helpline regarding apprenticeship concerns, complaints and

enquiries:

National Apprenticeship Helpline

helpdesk@manage-apprenticeships.service.gov.uk

tel: 08000 150 600

**7. Termination**

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

7.1.1 the other party commits a material breach of any term of this Agreement (other than failure to pay any amounts due under this Agreement) and (if such breach is remediable) fails to remedy that breach within a period of thirty (30) days after being notified in writing to do so;

7.1.2 the other party repeatedly breaches any of the terms of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement;

7.1.3 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;

7.1.4 the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

7.1.5 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party;

7.1.6 an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party;

7.1.7 the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;

7.1.8 a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;

7.1.9 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within fourteen (14) days;

7.1.10 any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 7.1.3 to clause 7.1.9 (inclusive);

7.1.11 the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business;

7.1.12 the other party’s funding agreement with the ESFA is terminated;

7.1.13 the circumstances described in clause 5.9 arise.

7.2 The Training Provider may at any time cease delivery of an Apprenticeship Programme to an individual Apprentice with immediate effect by giving notice to the Employer if the Apprentice’s registration with the Training Provider is terminated on academic or other grounds.

7.3 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 Apprenticeship Provider and Assessment Register (APAR)) then the provisions of clause 8.5 shall apply.

**8. Consequences of Termination**

8.1 Other than as set out in this Agreement, neither party shall have any further obligation to the other under this Agreement after its termination.

8.2 Any provision of this Agreement which expressly or by implication is intended to come into or continue in force on or after termination of this Agreement shall remain in full force and effect.

8.3 Termination or expiry of this Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiry.

8.4 On termination (for any reasons) or expiry of this Agreement:

8.4.1 the Employer shall immediately pay to the Training Provider all Charges due at the date of termination or expiry pursuant to the Apprenticeship Programmes;

8.4.2 to the extent that the Employer has paid the Charges pursuant to clause 8.4.1 and the Training Provider recovers funding from the ESFA in respect of those same Charges, the Training Provider shall, provided that the Employer does not owe any other sums to the Training Provider, reimburse the Employer those sums paid pursuant to clause 8.4.1;

8.4.3 each party shall promptly return to the other any equipment, documents, information or materials owned by the other party (or a third party) and used in connection with the Apprenticeship Programme; and

8.4.4 each party shall cooperate in good faith to ensure that no Apprentice is materially disadvantaged by the termination of this Agreement.

8.5 If the Training Provider ceases to be an ESFA approved training provider then:

8.5.1 subject always to the provisions of the Funding Rules or any instructions from the ESFA, this Agreement shall continue in full force and effect in respect of Apprentices who have started their Apprenticeship prior to the date on which the Training Provider ceased to be an ESFA approved training provider and the Apprenticeship Programme Completion Date for the purposes of clause 2.1.2 shall be the date on which the last such Apprentice successfully completes the relevant End-Point Assessment; and

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

**9. Force Majeure**

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

1. **Liabilities**

10.1 Neither party excludes or limits liability to the other party for:

10.1.1 fraud or fraudulent misrepresentation;

10.1.2 death or personal injury caused by negligence

10.1.3 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

10.1.4 any matter for which it would be unlawful for the parties to exclude liability.

10.2 Subject to clause 10.1, neither party shall in any circumstances be liable to the other whether in contract, tort (including for negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, for:

10.2.1 any loss (whether direct or indirect) of profits, business, business opportunities, revenue, turnover, reputation or goodwill;

10.2.2 loss (whether direct or indirect) of anticipated savings or wasted expenditure (including management time); or

10.2.3 any loss or liability (whether direct or indirect) under or in relation to any other contract.

10.3 Subject to clause 10.1 and except in relation to the indemnity contained in clause 17, 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 months of this Agreement being in force, the Charges payable during the first twelve (12) months of this Agreement.

10.4 The Employer agrees to indemnify the Training Provider, and to keep the Training Provider indemnified, together with its officers, directors, employees and agents, against all actions, claims, proceedings and all damages, losses, costs and expenses (including any recovery in whole or in part of any Funding and/or Additional Payments and/or any additional funding provided by the ESFA) arising out of or in connection with any breach, negligent performance or failure or delay in performance of this Agreement (including, without limitation any breach of clause 4) by the Employer, its employees, agents or subcontractors.

11. **Insurance**

11.1 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 its performance of the Agreement, including death or personal injury, loss of or damage to property or any other loss.

11.2 The terms of any insurance or the amount of cover shall not relieve the insured party of any liabilities under this Agreement.

11.3 On written request, a party shall promptly provide copies of the insurance policy certificates and details of the cover provided.

**12. Safeguarding**

12.1 The parties acknowledge that the Training Provider has a statutory duty to safeguard and promote the welfare of individuals and vulnerable adults over the age of eighteen (18) years old pursuant to the Children Act 2004 and the Safeguarding Vulnerable Groups Act 2006.

12.2 The Employer shall and shall ensure that the Employer’s employees, contractors and agents:

12.2.1 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

12.2.2 subject to any applicable legal requirements, confidentially report to the Training Provider’s designated senior person from time to time, any concerns relating to an Apprentice enrolled with the Training Provider, employee, agent or contractor of the Training Provider.

12.3 The Employer shall by signing this Agreement, be deemed to have read the Training Provider’s policy and guidance relating to safeguarding found at <https://www.cranfield.ac.uk/study/life-on-campus/wellbeing-and-support/safeguarding> and will comply with its contents at all times.

12.4 The Employer shall respond promptly to the Training Provider’s enquiries regarding safeguarding and shall co-operate with any investigation in respect of safeguarding conducted by either the Training Provider and/or any other relevant authority.

**13. Prevent**

* 1. The Employer acknowledges that the Training Provider is subject to the requirements of the Prevent Duty.
	2. Where the Training Provider has any concerns about an Apprentice, or becomes aware of any other matters which may require it to take action in accordance with the Prevent Duty, it may notify the Employer, and the Employer shall at the request of the Training Provider provide the University with a copy of all relevant information which is available to it in the form the Training Provider requires and shall provide all necessary assistance requested by the Training Provider to report and/or take such action.
	3. The Training Provider shall be responsible for determining in its absolute discretion what action it needs to take and the Employer acknowledges that the Training Provider may be obliged under the Prevent Duty to disclose such information following consultation with the Employer and having taken its views into account.

**14. Health and Safety**

14.1 The parties shall perform their obligations under this Agreement (including those in relation to the Apprenticeship Programme) 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 15.2,15.3 and 15.4 for a period of six (6) years from the date hereof 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 of the other party’s confidential information to any person.

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 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 to any other department, office or agency of the Government.

15.3 The Employer and the Training Provider agree that nothing in this Agreement shall prevent or hinder:

15.3.1 an Apprentice from submitting a final year project for a degree of the Training Provider in full and on time, or from following the Training Provider’s procedures for examination and for admission to undergraduate or postgraduate degree status in respect of the final year project (such procedures to include provisions, for postgraduate degree, to place the final year project within the Training Provider’s library).\_

15.3.2 an Apprentice from making an assessed presentation based upon a final year project, or the examination of the final year project by examiners appointed by the Training Provider.

15.4 In the event that the Employer requires that an Apprentice amend their final year project or presentation for the purposes of protecting any of the Employer’s confidential or proprietary information the Employer shall ensure that such requests for amendment are reasonable and proportionate and that no delay arises in the timely submission of final year projects or presentations to the Training Provider. The Employer may request for the final project (thesis) to be held confidential for a limited period on the grounds of confidentiality. Any request for the thesis to be held confidential shall be referred to the Training Provider’s Senior Assistant Registrar who has the authority to determine if the request shall be granted.

**16. Intellectual Property**

16.1 As between the parties, the Training Provider shall own any and all Intellectual Property Rights in the Apprenticeship Programmes and each Training Plan and, for the avoidance of doubt the Employer hereby assigns to the Training Provider by way of present and future assignment all its right, title and interest in and to such Intellectual Property Rights.

16.2 Each party shall retain ownership of any and all Intellectual Property Rights in any Project Materials created by that party and used for the delivery of an Apprenticeship Programme. Where Project Materials are created jointly by the parties such Intellectual Property Rights shall belong to the Training Provider.

16.3 Each party shall make available to the other free of charge and hereby grants to the other party a non-exclusive, non-transferable, royalty free licence to use their Project Materials for the duration of the relevant Apprenticeship Programme for the purpose of performing their respective obligations under this Agreement.

16.4 The rights granted in this Clause 16 are personal and are not transferable in any manner and neither party shall sub license or create a third party right over the rights granted to it without prior written consent of the other party (such consent not to be unreasonably withheld or delayed) and any attempt to do so without such consent will be ineffective and void.

**17. Data Protection and Freedom of Information**

17.1 Each party acknowledges that the other is subject to the requirements of the Data Protection Legislation.

17.2 The Training Provider and the Employer acknowledge that each party is individually a Data Controller in respect of any Personal Data processed by it and each agrees to comply with its obligations under the Data Protection Legislation.

17.3 In the event that one party wishes to exchange Personal Data with the other party then that party (the Requesting Party) shall make a written request to the other party setting out why it considers such a transfer to be compliant with the Data Protection Legislation. It shall be for the other party to determine whether it is willing to exchange such data in accordance with its obligations under the Data Protection Legislation. The parties will where possible in order to facilitate the exchange of information anonymise or aggregate such information to the degree that it does not identify any individual. The parties may agree to additional terms or conditions upon which such data is to be shared.

17.4 The parties shall, and shall procure that any of their staff and agents involved in the provision of this Agreement and any subcontractor shall, comply with their obligations under Data Protection Legislation and shall enter into appropriate arrangements with third parties.

17.5 Upon the termination or expiry of this Agreement each party shall ensure that all Personal Data held by it shall be up-to-date and accurate. Where it is necessary in order for the efficient transition of services to the other party or to a third party to be achieved then the transferring party shall, having first satisfied itself that such transfer is compliant with all laws, transfer current and required Personal Data to the other party or to the third party in a secure manner and shall take all reasonable steps, at its own cost, to provide the Personal Data in a usable and compatible format.

17.6 Historical personal data shall be retained by the parties in accordance with legal retention requirements. Personal Data which cannot be lawfully retained shall be securely deleted in accordance with Data Protection Legislation and Good Industry Practice.

17.7 For the avoidance of doubt, it is stated here that neither party is a Data Processor on behalf of the other party in furtherance of their obligations under this agreement. In the event it is established at any time during this agreement that Personal Data is to be processed by the one party on behalf of the other, the parties shall:

17.7.1 immediately enter into a data processing agreement on reasonable terms to be determined by the University to ensure full compliance with Data Protection Legislation; and

17.7.2 indemnify and keep the other party indemnified in full for any and all consequences (including a Personal Data breach) arising as a result of that party’s failure to comply with any of its obligations under this clause 17.

17.8 Failure by the Employer to enter into a data processing agreement in accordance with clause 17.7.1 shall be deemed a material/serious breach which shall entitle the Training Provider to immediately terminate the Agreement without consequence or any liability under this Agreement.

17.9 Any clause in this Agreement limiting a party’s liability in respect of any obligations, claims, losses, damages or otherwise under the Data Protection Legislation shall not apply.

17.10 Each party (the indemnifying party) agrees to fully indemnify and keep indemnified and defend at its own expense the other party against all costs, claims, damages or expenses incurred by the other party or for which the other party may become liable due to any failure by the indemnifying party or its employees or agents or subcontractors to comply with their obligations under this clause 17.

**18. Freedom of Information**

18.1 The Employer acknowledges that the Training Provider is subject to the requirements of the Information Disclosure Legislation.

18.2 The Employer shall offer such prompt and provide reasonable assistance to the Training Provider as the Training Provider may request from time to time, to assist it in complying with its information disclosure obligations under the Information Disclosure Legislation.

18.3 Where the Employer receives a request for information under the Information Disclosure Legislation relating to the operation of this Agreement, the Employer shall promptly pass the request to the Training Provider and shall not respond directly to any such request without the Training Provider’s prior written consent.

18.4 The Training Provider shall be responsible for determining in its absolute discretion whether information held by it which relates to the Employer is exempt from disclosure or is to be disclosed in response to a request for information under the Information Disclosure Legislation.

**19. Equality Legislation**

19.1 Each party shall (and shall procure that its employees, contractors, agents and other personnel shall):

19.1.1 perform its obligations under this Agreement (including those in relation to the Apprenticeship Programme) 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);

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

**20. Contract Variation**

20.1 No variation to this Agreement other than pursuant to clause 20.2 shall have effect unless agreed in writing and signed by both parties.

20.2 Change of Circumstance

20.2.1 The Employer shall notify the Training Provider immediately of any Change in Circumstance.

20.2.2 Where there is any Change in Circumstance, the Training Provider and the Employer (as appropriate) shall update and complete any relevant data returns and reports as set out in the Funding Rules. The parties will also consider whether any amendments need to be made to this Agreement, the Mandatory Documents or the evidence pack required under the Funding Rules to reflect such Change in Circumstance.

20.2.3 The parties acknowledge that a Change of Circumstance means that training and/or assessment is no longer delivered in relation to an Apprentice, subject to clause 5.6, no further instalments of Funding or Additional Payments shall be claimed in respect of that Apprentice.

20.2.4 Both parties shall comply with the rules for eligibility and changes in either their or their Apprentice’s circumstances (including any Change in Circumstance) set out in the Funding Rules from time to time.

20.2.5 Following a Change of Circumstance which means that the Apprenticeship Programme is no longer delivered in relation to an Apprentice, the Employer shall within thirty (30) days of receiving a written notice from the Training Provider pay the Training Provider any Unfunded Charges relating to the training or assessment delivered up to and including the date of termination.

20.2.6 The parties may agree to suspend an Apprentice’s Apprenticeship to allow the Apprentice a Break in Learning in accordance with the Funding Rules. The parties acknowledge that no Funding or Additional Payments may be claimed in relation to such Apprentice during their Break in Learning and that the parties will use reasonable endeavours to agree to any necessary amendments to the relevant Training Plan.

20.3 Where in the reasonable opinion of the Training Provider a change to one or more of the Apprenticeship Programmes is required in order to comply with 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. 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.

**21. Prohibited Acts and Modern Slavery**

21.1 Each party warrants and represents to the other that it will comply with and that they have not and will not commit an offence under all applicable laws, regulations, codes and sanctions relating to the Bribery Act 2010, Criminal Finances Act 2017, Fraud Act 2006, including any all regulations relating to money Laundering and anti-corruption (a “Prohibited Act”) including any amendments to law and regulations. Furthermore, the Supplier shall ensure that it has in place adequate procedures to prevent any Prohibited Act.

21.2 The parties will not, directly or indirectly, either in private business dealings or in dealings with the public sector, offer, give or agree to offer or give (either itself or in agreement with others) any payment, gift or other advantage with respect to any matters which are the subject of this Agreement and which:

21.2.1 is intended to, or does, influence or reward any person for acting in breach of an expectation of good faith, impartiality or trust, or which it would otherwise be improper for the recipient to accept;

21.2.2 is made to or for a public official with the intention of influencing them and obtaining or retaining an advantage in the conduct of business; or

21.2.3 a reasonable person would otherwise consider to be unethical, illegal, improper or give rise to a conflict of interest.

21.3 The Employer represents, warrants and undertakes that:

21.3.1 it has not engaged in any Prohibited Act prior to the date of this Agreement; and

21.3.2 to the best of its knowledge and belief, it has not at any time:

 (a) been found by a court in any jurisdiction to have engaged in any Prohibited Act (or similar conduct);

 (b) admitted to having engaged in any Prohibited Act (or similar conduct); or

 (c) been investigated or been suspected in any jurisdiction of having engaged in any Prohibited Act (or similar conduct).

21.4 Employer further agrees:

21.4.1 to provide any information to the Training Provider as the Training Provider may reasonably require by notice in writing in order to monitor the Employer’s compliance with its obligations under this clause 21; and

21.4.2 to notify the Training Provider in writing as soon as practicable if, at any time, it becomes aware of a breach of clauses 21.1 or 21.2 or that any of the representations, warranties and undertakings set out at clause 21.3 are no longer correct.

21.5 Each Party agrees that it shall, and that it shall procure that its personnel shall:

21.5.1 comply with all applicable laws relating to slavery and human trafficking including but not limited to the Modern Slavery Act 2015 (Anti-Slavery Requirements);

21.5.2 not take or knowingly permit any action to be taken that would or might cause or lead the party to be in violation of any Anti-Slavery Requirements; and

21.5.3 at the other Party’s reasonable request and cost, provide any reasonable assistance to enable it to perform any activity required by any regulatory body for the purpose of complying with Anti-Slavery Requirements.

21.6 If the Employer or its staff (or anyone acting on its or their behalf) has done or does any of the Prohibited Acts or has committed or commits any offence with or without the knowledge of the Employer in relation to this or any other agreement:

21.6.1 The Training Provider shall be entitled:

 (a) to terminate this Agreement and recover from the Employer the amount of any loss resulting from the terminations;

 (b) to recover from the Employer the amount or value of any gift, consideration or commission concerned; and

 (c) to recover from the Employer any other loss or expense sustained in consequence of the carrying out of the Prohibited Act.

21.6.2 Any termination under this Clause 21 shall be without prejudice to any right to remedy that has already accrued, or subsequently accrues, to the Training Provider.

**22. General**22.1 **Assignment**

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

22.2 **Affiliates**

22.2.1 The Employer and Training Provider have agreed that the Apprenticeship Programme shall also be made available to the Affiliates in accordance with this Agreement provided that:

(a) the Employer warrants that each Affiliate is eligible to participate in the Employer’s ESFA funding account and to receive the Apprenticeship Programme;

(b) the Employer shall procure that each Affiliate complies with the terms of this Agreement and performs those obligations on the Employer (including but not limited to those obligations at clause 4) when receiving the Apprenticeship Programme; and

(c) without prejudice to clause 10.1, the Employer shall be wholly responsible for performance of the Affiliates under this Agreement and the Affiliates shall have no liability to the Employer.

22.2.2 The Affiliate representatives identified in Schedule 1 shall be authorised to request Apprenticeship Programme on behalf of the relevant Affiliate and shall have authority to do all other things required under this Agreement in respect of the relevant Affiliate. The Employer may notify the Training Provider in writing of any changes to the Affiliate representatives.

22.3 **Entire Agreement**

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

22.4 **Notices**

22.4.1 Any notice given to a party under or in connection with this Agreement shall be in writing and sent by pre-paid first-class recorded or other next day signed for delivery service at its registered office.

22.4.2 For the purposes of clause 22.4.1:

(a) notices to the Employer shall be sent for the attention of the Employer’s Representative; and

(b) notices to the Training Provider shall be sent: For the attention of: Head of Cranfield Masterships and copied to Head of Legal & Insurance.

22.4.3 Any notice shall be deemed to have been received if sent by pre-paid first-class post, at 09.00am on the second Business Day after posting; or if sent by signed for delivery service on signature of a delivery receipt.

22.4.4 Notices provided in relation to Clause 17 must be marked for the attention of the “The Privacy Officer” and a copy of the notice emailed to dataprotection@cranfield.ac.uk

22.4.5 This clause 22.4 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.

22.4.6 Nothing in this clause 22.4 shall prevent the use of email for day-to-day communication or for matters not requiring formal notice.

22.5 **Waiver**

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.

22.6 **No Agency**

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

22.7 **No Double Recovery**

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

22.8 **Further Assurance**

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

22.9 **Severability**

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

22.10 **Contracts (Rights of Third Parties)**

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.

22.11 **Governing Law**

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.

22.12 **Counterparts**

22.12.1 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.

22.12.2 Transmission of an executed counterpart of this Agreement (including transmission of the page of the Agreement containing an execution clause signed by a Party) by email (in PDF, JPEG or other agreed format) shall take effect as delivery of an executed counterpart of this Agreement.

22.12.3 Each party agrees to sign and execute this Agreement by manuscript or electronic signature (whatever form the electronic signature takes) and that both methods of signature are conclusive of the party’s intention to be bound by this Agreement.

**Schedule 1 Affiliates**

None at time of signing.