

**Dated**

**Cranfield University**

**And**

**[Insert Employer Name]**

**Mastership Agreement**

THIS AGREEMENT is made on [insert date]

Employer Details	
<b>Employer</b>	
<b>Company Number</b>	
<b>Employer's Address</b>	
<b>Employer's Representative</b>	Name: Tel: E-mail:
<b>VAT Number</b>	
<b>ERN</b>	
Employer Details	
<b>Training Provider</b>	Cranfield University
<b>Training Provider Number</b>	RC000151
<b>Training Provider's Address</b>	Cranfield, Bedfordshire, MK43 0AL
<b>Training Provider's Representative</b>	Name: Tel: E-mail:
<b>UKPRN</b>	10007822
Employer Details	
<b>Commencement Date</b>	
<b>Expiry Date</b>	Six (6) years from Commencement Date

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

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

.....

**Signature**

.....

**Print Name**

.....

**Title**

.....

**Date**

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

.....

**Signature**

.....

**Print Name**

.....

**Title**

.....

**Date**

## MASTERSHIP TERMS

### BACKGROUND

- (A) The Employer wishes to make available to their employees the Apprenticeship, and the Training Provider wishes to provide the Services 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 Services.
- (C) The Employer will be responsible for enabling delivery of the Services including, but not limited to, on the job and off the job training, selecting an End-Point Assessor, confirming the eligibility of Apprentices for apprenticeship funding and for incentive payments where applicable and will be required to sign incentive claim forms to enable the Training Provider to claim eligible incentive payments on their behalf. Their responsibilities are set out in further detail in the commitment statement.

### 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:

**Affiliates** means any entity directly or indirectly controlling or controlled by or in common control with such entity 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 or Learner** means a person who works under an Apprenticeship Agreement entered into with the Employer

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

**Apprenticeship** means the training and End-Point Assessment for an employee as part of a job with an accompanying skills development programme

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

**Apprenticeship Programme** means a programme of Training set out in the Commitment Statement or agreed pursuant to clause 5

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

**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. By way of

example only, this may be due to illness, pregnancy or other reason which makes them temporarily unable to continue with the Apprenticeship

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

**Charges** means the full cost of the Services provided in accordance with the Apprenticeship Programme(s) as set out the relevant Apprenticeship Programme including the cost of any resits payable pursuant to clause 4.1.9 and any additional costs pursuant to clause 19.2.2 (d) and payable in accordance with clause 6.1

**Commitment Statement** means the separate individual learning plan that sets out how the Training Provider, Employer and Learner will support the achievement of the apprenticeship

**Contract Particulars** means the particulars of this agreement as set out in the Commitment Statement

**Contract Terms** means these contract terms from clause 1 to 20 (inclusive)

**Employer's Digital Account** the part of the ESFA's apprenticeship service which shows the amount of Funding available to the Employer to spend on Training of Apprentices

**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** the independent assessment of the Apprentice's knowledge, skills and behaviours carried out by an Apprentice Assessment Organisation at the end of the Training to confirm that the Apprentice has met the requirements of the relevant Approved Apprenticeship Standard

**End-Point Assessor** means the independent assessor contracted to conduct the End-Point Assessment

**Expiry Date** means the sixth anniversary of this Agreement

**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 Contingency** means the action following any change in Employer, Apprentice or Training Provider circumstances set out in the Funding Rules (on page 33 after paragraph P206 in Version 2 of the Funding Rules)

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

**ESFA Cut-Off Date:** 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"

**Funding** 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** 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/government/publications/apprenticeship-funding-and-performance-management-rules-2017-to-2018>

**Incentive Payment** means an incentive payment made available to employers and paid to training providers on employers' behalf by the ESFA

**Intellectual Property Rights** means any and all intellectual property rights of any nature anywhere in the world whether registered, registerable or otherwise, including patents, utility models, trademarks, registered designs and domain names, applications for any of the

foregoing, trade or business names, goodwill, copyright and rights in the nature of copyright, design rights, rights in databases, moral rights, know-how and any other intellectual property rights which subsist in computer software, computer programs, websites, documents, information, techniques, business methods, drawings, logos, instruction manuals, lists and procedures and particulars of customers, marketing methods and procedures and advertising literature, including the "look and feel" of any websites

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

**Mandatory Policies** means the policies of the Training Provider set out in Schedule 1;

**Services** the provision of training services in respect of the Apprenticeship Programmes, as further detailed in the Commitment Statement

**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

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

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

- 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, 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.
- 1.9 Words or phrases defined in the Funding Rules shall have the same meaning in this agreement.
- 1.10 A reference to a person includes firms, partnerships and corporations and their successors and permitted assignees or transferees.

## **2. 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.

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

- (b) the average number of employees employed by the Employer in the three years immediately preceding the first day of an Apprenticeship and (if applicable) the Employer's eligibility for small employer incentive payment;
  - (c) 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;
  - (d) the address or addresses where the Apprentice shall be carrying out their working hours; and
  - (e) whether learning support is available to support Apprentices with additional learning needs,
- 4.1.7 ensure, and on request confirm, that:
- (a) the Apprentice is employed and the average number of hours per week worked, and that training both on and off the job is included in those hours of employment;
  - (b) the funding for the Apprenticeship is not used to pay the Apprentice's wages or salary;
  - (c) the Apprentice is enabled to complete the Apprenticeship within their working hours and make available time for the Apprentice to be able to complete the Apprenticeship Programme including:
    - (i) permitting 20% of each Apprentice's employed hours to be used for off-the-job training;
    - (ii) releasing the Apprentice to the Training Provider for undertaking such training and courses with the Training Provider;
    - (iii) providing the Apprentice the use of equipment necessary to enable the Apprentice to fulfil training objectives;
    - (iv) cooperating with the Training Provider to arrange for any necessary End-Point Assessment and allowing the Apprentice to attend the same
- 4.1.8 comply with the terms of any agreement between the Employer and the ESFA;
- 4.1.9 provide payment for re-sits for qualifications or End-Point Assessment required by the Approved Apprenticeship Standard where no extra learning takes place before the re-take;
- 4.1.10 comply with the Mandatory Policies.
- 4.2 To secure an efficient working relationship between the Training Provider and the Employer and to protect the interests of the Apprentice, the Employer shall:
- 4.2.1 cooperate in good faith with the Training Provider and any subcontractor and Apprentice Assessment Organisation to enable the successful delivery and completion of each Apprenticeship;
  - 4.2.2 where indicated in the Commitment Statement 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;
  - 4.2.3 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;

- 4.2.4 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;
- 4.2.5 immediately notify the Training Provider if the Apprentice informs the Employer that they no longer wish to continue with the Apprenticeship; and
- 4.2.6 appoint an Employer's Representative and promptly notify the Training Provider of any change of the Employer's Representative from time to time.

## **5. Additional Apprenticeship Programmes**

- 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 Customer 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 (a **Repeat Apprenticeship Programme Request**) 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 the Commitment Statement 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:
  - (a) notify the Employer that it declines to repeat the requested Apprenticeship Programme; or
  - (b) 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 Commitment Statement) 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(b) 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 the Commitment Statement.

## **6. Charges and Payments**

- 6.1 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.
- 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). 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 Incentive Payments received from the ESFA on behalf of the Employer within thirty (30) days of receipt or such other timescale as may be specified in the Funding Rules.
- 6.4 Where for any reason the ESFA requires the Training Provider to return any Incentive Payments or any other payment, the Employer shall pay to the Training Provider an amount equal to the sum required to be returned. The Training Provider shall notify the Employer of any requirement to return payments to the ESFA and the Employer shall pay such amount to the Training Provider within thirty (30) days of such notice.
- 6.5 Any VAT payable 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%) per annum above the Bank of England base rate from time to time.

## 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 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 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 Head of School for the particular Apprentice and the chief executive officer of the Employer 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 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.
- 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](mailto: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 the other party's funding agreement with the ESFA is terminated.
- 8.2 If the Training Provider ceases to be an ESFA approved training provider (so indicated at the date of this agreement by being listed on the Register of Apprenticeship Training Providers) then the provisions of clause 9.5 shall apply.

## **9. Consequences of Termination**

- 9.1 Other than as set out in this agreement, neither party shall have any further obligation to the other under this agreement after its termination.
- 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, clause 4.1.2, clause 7, clause 9, clause 10, clause 12, clause 15, clause 16, clause 17 and clause 20 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 reasons) 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 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 9.4.1;
  - 9.4.3 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 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 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 Contingencies**

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

## **11. 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.

## **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

- 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 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 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 months of this agreement.
- 12.4 Insurance**
- Each party shall at its own cost effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by that party, arising out of the its performance of the agreement, including death or personal injury, loss of or damage to property or any other loss.
- 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 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 Provide

### **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, 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 to any person of any matters relating to 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 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 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 for the duration of the relevant Apprenticeship Programme.
- 16.3 The Training Provider shall grant a royalty free irrevocable non-exclusive license to the Apprentice to all Deliverables developed solely by the Apprentice.

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

- 17.1 The Employer acknowledges that the Training Provider is subject to the requirements of the Data Protection Act 2018, the Freedom of Information Act 2000, the Environmental Information Regulations 2004 all as amended from time to time. The Training Provider acknowledges that the Employer is subject to the requirements of the Data Protection Act 2018 as amended from time to time.
- 17.2 The Employer shall offer such prompt and reasonable assistance to the Training Provider as the Training Provider may request from time to time, to assist it in complying with its information disclosure obligations under the legislation set out at Clause 17.1.
- 17.3 Where the Training Provider or the Employer handle any personal or sensitive personal data (within the meaning of the Data Protection Act 2018 and/or the General Data Protection Regulation (Regulation (EU) 2016/679)), including in relation to the Apprentices, they undertake to comply with their respective obligations under that legislation.

- 17.4 Where the Employer receives a request for information under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004 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. 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. Contract Variation.**

- 19.1 No variation to this agreement other than pursuant to clause 19.2 shall have effect unless agreed in writing and signed by both parties.

### **19.2 Change Protocol**

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

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

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

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

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

- 19.3 Where in the reasonable opinion of the Training Provider a change to one or more of the Apprenticeship Programmes is required in order to comply with ESFA rules, guidance or instructions issued from time to time (an **ESFA Change**), the Training Provider shall notify the Employer in writing of the ESFA Change and the ESFA Change shall have effect from such date as may be stated in such notice. Any additional costs reasonably incurred by the Training

Provider arising from the ESFA Change shall be payable by the Employer and shall be deemed to be incorporated into the Charges.

## **20. General**

### **20.1 Assignment**

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

### **20.2 Affiliates**

20.2.1 The Employer and Training Provider have agreed that the Services 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 Services;
- (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 Services;
- (c) without prejudice to clause 12.1, the Employer shall be wholly responsible for performance of the Affiliates under this agreement and the Affiliates shall have no liability to the Employer;

20.2.2 The Affiliate representatives identified in Schedule 2 shall be authorised to request Services 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.

### **20.3 Entire Agreement**

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

### **20.4 Waiver**

No 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.

### **20.5 Counterparts**

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

### **20.6 No Agency**

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

### **20.7 No Double Recovery**

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



**20.8 Further Assurance**

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

**20.9 Severability**

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

**20.10 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.

**20.11 Third Party Rights**

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

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.

## **Schedule 1 Mandatory Policies**

### Slavery Policy

<https://www.cranfield.ac.uk/~media/files/governance-and-policies/modern-slavery-and-human-trafficking-statement.ashx?la=en>

### Bribery Policy

<https://www.cranfield.ac.uk/~media/files/governance-and-policies/anti-bribery-policy.ashx>

### Ethics Code

[https://www.cranfield.ac.uk/~media/files/corporate\\_documents/ethics-code.ashx?la=en](https://www.cranfield.ac.uk/~media/files/corporate_documents/ethics-code.ashx?la=en)

### Security Policy

<https://www.cranfield.ac.uk/~media/files/governance-and-policies/information-security-policy.ashx>

## **Schedule 2 Affiliates**