

# **Service Level Agreement**

## Relating to Apprenticeship Training for Non-Levy Paying Employers

The Annex A, corresponding schedules and agreement signatures form part of the Service Level Agreement terms and conditions

## Service Level Agreement - Relating to Apprenticeship Training for Non-Levy Paying Employers

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### Parties, Commencement and Duration as Outlined within the Annex A of this Agreement

#### 1. Parties

This Agreement is made as a deed between:

GP Strategies Training Limited  
incorporated and registered in England and Wales with company number: 8003851  
whose registered office is at: 3rd Floor, 1 Ashley Road, Altrincham, Cheshire WA14 2DT  
(the Training Provider); and the party listed within the Annex A of this agreement, each a 'Party' and together the 'Parties'.

#### 2. Commencement and Duration

- 2.1 This Agreement shall commence on the Commencement Date listed within the Annex A of this agreement and shall continue, unless terminated either:
- 2.1.1 by one Party serving on the other not less than 30 days' notice to terminate this Agreement, such notice to expire no earlier than the first anniversary of the commencement of this Agreement or (as the case may be) any subsequent anniversary; or
  - 2.1.2 pursuant to Schedule 3.

### Definitions and Interpretations

#### 3. Interpretation

- 3.1 The definitions and rules of interpretation set out in Schedule 1 shall apply in this Agreement.

### Ordering, Invoicing and Payment

#### 4. Ordering Services

- 4.1 The Employer may order any of the Training Services by making a request ('a Request for Services') to the Training Provider pursuant to this clause 4.
- 4.2 The Training Provider shall provide the Agreed Services from the date specified in the Request for Services that relates to those services.
- 4.3 Each Request for Services shall state the matters listed in the template request for services set out in Schedule 7.
- 4.4 The Training Provider and the Employer shall negotiate in good faith each Request for Services and
- 4.4.1 the Employer shall provide the Training Provider with such information as it may reasonably require to enable it to assess the prior learning of any Apprentice or prospective Apprentice; and
  - 4.4.2 without any obligation on either Party to agree, both Parties shall sign and date the draft Request for Services once it is agreed.
- 4.5 When a Request for Services has been agreed and signed in accordance with clause 4.4 the services specified in that Request for Services shall be Agreed Services and the date of the signed Request for Services shall be the RFS Agreement Date.
- 4.6 Each Request for Services shall form part of this Agreement and shall not form a separate contract.

#### 5. Changes to Services

- 5.1 If the Employer or the Training Provider wishes to change this Agreement or the Agreed Services, it may at any time request such change in accordance with the Change Procedure set out in Schedule 3.
- 5.2 Notwithstanding any other provisions of this Agreement, where the Training Provider reasonably considers that a change to the Agreed Services is required in order to comply with any requirement



## Service Level Agreement - Relating to Apprenticeship Training for Non-Levy Paying Employers

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of the ESFA taking effect after the RFS Agreement Date including any modification of the ESFA Rules the Training Provider shall be entitled by notice in writing to the Employer ('a Mandatory Change Notice') to make such changes as it may reasonably decide are necessary to comply as specified in such Mandatory Change Notice with effect from a time specified in that notice and the Employer shall pay the Training Provider such amount as the Training Provider may reasonably determine to be the additional cost (if any) of providing the Agreed Services as so varied ('the Mandatory Additional Cost Payment').

### **6. Charges, Invoicing and Payment**

- 6.1 The Training Provider shall be entitled to invoice monthly the Employer for 5% of the Qualifying Charges and the whole of any other charges and the Employer shall pay such invoices within 30 days of receipt of such invoice provided however that the Training Provider shall only be entitled to the Completion Payment once the Apprentice has sat his final assessment.
- 6.2 The Employer is responsible for payment of the Charges.
- 6.3 Notwithstanding any other provisions of this Agreement to the extent that Charges are not actually paid by the ESFA out of the Government-Employer Co-investment Funding the Training Provider shall be entitled to invoice the Employer for the Charges in accordance with the Payment Schedule and otherwise at any time for services rendered at any time before the end of the most recently ended month and the Employer shall pay such invoices within 30 days of receipt.
- 6.4 The Charges are stated exclusive of applicable VAT.
- 6.5 The Training Provider shall promptly on request provide a VAT invoice to the Employer in respect of such of the Charges for the Agreed Services as are subject to VAT.
- 6.6 Without prejudice to the obligation on the Employer to pay the Charges the Employer shall provide such assistance to the Training Provider as the Training Provider may reasonably require to obtain any payment to which it may be entitled in respect of the Agreed Services or otherwise pursuant to this agreement under the ESFA Rules.
- 6.7 If and to the extent that the Training Provider receives a payment from Government-Employer Co-investment Funding in respect of services for which the Employer has already paid the Training Provider shall apply that payment first in satisfaction of any other sum which is or may become due owing or incurred by the Employer to the Training Provider on any account and thereafter as to any balance in payment to the Employer.
- 6.8 Without prejudice to any other rights of the Training Provider any invoice that is not paid when due shall bear interest at the rate of 3 per cent above the base rate for the time being of Barclays Bank plc.

## **Training Provider Responsibilities**

### **7. Training Provider General Responsibilities**

- 7.1 The Training Provider shall:
  - 7.1.1 provide the Agreed Services in all material respects in accordance with the applicable Request for Services and Good Industry Practice;
  - 7.1.2 use all reasonable endeavours to meet any performance dates specified in a Request for Services;
  - 7.1.3 specify in the Request for Services a manager ('the Services Manager'), to act on behalf of the Training Provider in all matters relating to the Agreed Services) and use reasonable endeavours to ensure that the same person acts as the Services Manager for the duration of the Agreed Services; and

## Service Level Agreement - Relating to Apprenticeship Training for Non-Levy Paying Employers

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- 7.1.4 observe all health and safety and security requirements that apply at any of the Employer's premises that have been communicated to it under clause 11.1.5, provided that it shall not be liable under this Agreement if, as a result of such observance, it is in breach of any of its obligations under this Agreement.
- 7.2 The Training Provider shall at all times for the duration of this Agreement have and maintain the following policies (as amended from time to time):
  - 7.2.1 Data and Privacy Policy; and
  - 7.2.2 Training Provider Complaints Policy.
- 7.3 If the Agreed Services are Government-Employer Co-investment Funded the provisions of clauses 8, 9 and 10 shall apply.

### **8. Training Provider ESFA Responsibilities**

- 8.1 Subject to clause 7.3 the Training Provider shall in accordance with the ESFA Rules:
  - 8.1.1 prepare and redistribute the Individual Learning Plan and Commitment Statement at the outset of an Apprentice's programme;
  - 8.1.2 extend the actual end-date of the Apprenticeship if the working hours of the Apprentice fall below 30 hours a week;
  - 8.1.3 check the eligibility of the individual Apprentice at the start of their apprenticeship programme;
  - 8.1.4 only use Government-Employer Co-investment Funding for those who are eligible;
  - 8.1.5 retain evidence of each Apprentice's eligibility for as long as reasonably necessary;
  - 8.1.6 carry out a thorough assessment to identify the additional learning support (Additional Funding) the Apprentice needs and if appropriate record in the ILR that an Apprentice has a learning support need;
  - 8.1.7 agree and record the outcomes of the additional learning support assessment, deliver support in line with the identified needs, record all outcomes in the evidence pack, and retain evidence of the assessment;
  - 8.1.8 conduct a thorough Functional Skills assessment based on the national literacy and numeracy standards if an Apprentice requires further training before being able to achieve a Level 2 Standard and the Training Provider is seeking funding for this;
  - 8.1.9 contract with an Apprentice Assessment Organisation of the Employer's choosing, as set out in Schedule 6 and 10 and agree with it the arrangements for end-point assessments, re-takes and payments and for this purpose the Employer shall choose an Apprentice Assessment Organisation reasonably acceptable to the Training Provider within 14 days of the Training Provider requiring it to do so and if the Employer shall fail to do so the Training Provider is hereby authorised in the name and on behalf of the Employer to choose such Apprentice Assessment Organisation as the Training Provider thinks fit provided that no Apprentice Assessment Organisation shall be appointed pursuant to this clause which is connected with the Training Provider or which is not on the Register of Apprentice Assessment Organisations;
  - 8.1.10 make payment to the Apprentice Assessment Organisation for conducting the end-point assessment and keep records of all such payments;
  - 8.1.11 collect employer co-investments at least every three months and report the value received on the ILR; and
  - 8.1.12 apply for the apprenticeship completion certificate within three months of completion of learning if an Apprenticeship Framework is being used.

## Service Level Agreement - Relating to Apprenticeship Training for Non-Levy Paying Employers

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### **9. Subcontracting by the Training Provider**

- 9.1 Subject to clause 7.3 if any subcontractor is used by the Training Provider to provide any of the Agreed Services the Training Provider warrants that:
- 9.1.1 it has the knowledge, skills and experience of contracting with, and managing, delivery subcontractors;
  - 9.1.2 it has not assessed that subcontractor as unsuitable; and
  - 9.1.3 it will directly deliver some of the Apprenticeship training and/or on-programme assessment associated with each Employer's Apprenticeship programme in accordance with the ESFA Rules;
  - 9.1.4 it will not use a subcontractor for the delivery of the Agreed Services unless that subcontractor satisfies the criteria for using delivery subcontractors specified in the ESFA Rules;
  - 9.1.5 it will manage, monitor and regularly assess for quality its delivery subcontractors through visits and face to face interviews to ensure high-quality delivery in accordance with the ESFA Rules;
  - 9.1.6 it will obtain an annual report from an external auditor if the total Apprenticeship contracts with delivery subcontractors exceeds £100,000 in any one financial year; and
  - 9.1.7 it will not permit any subcontractor to subcontract the performance of its obligations.
  - 9.1.8 the contract with the subcontractor will specify the matters required to be specified in that subcontract by the ESFA Rules.

### **10. Training Provider Assurances**

- 10.1 Subject to clause 7.3 the Training Provider warrants that it will not:
- 10.1.1 use Employer or government account funds for an Apprentice's programme where they or another party claim funding from another government department or other agency for the same purpose; or
  - 10.1.2 claim funding for any part of any Apprentice's programme that duplicates training or assessments they have received from any other source.
  - 10.1.3 commence an Apprentice's programme if there is no prospect of the Apprentice completing the programme within the amount of time available;
  - 10.1.4 enrol an Apprentice without confirmation that they are not enrolled on another Apprenticeship;
  - 10.1.5 enrol an Apprentice without ensuring that they meet the eligibility requirements or have permission to work in England;
  - 10.1.6 claim funding for individuals who do not meet the eligibility requirements set out in the ESFA Rules;
  - 10.1.7 claim funding from the ESFA other than for training or assessment in accordance with the ESFA Rules;
  - 10.1.8 request any employer contribution to the cost of an Apprenticeship up to the maximum value of the funding band if the Employer employing fewer than 50 people recruits an eligible apprentice; and
  - 10.1.9 provide end-point assessment to a group of Apprentices it has trained.
- 10.2 Subject to clause 7.3, the Training Provider warrants that off the job training will be directly relevant to the apprentice framework as standard and otherwise will comply with the ESFA Rules.

## **Employer Responsibilities**

### **11. Employer General Responsibilities**

- 11.1 The Employer shall:
- 11.1.1 co-operate with the Training Provider in all matters relating to the Agreed Services;

## Service Level Agreement - Relating to Apprenticeship Training for Non-Levy Paying Employers

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- 11.1.2 specify in the Request for Services a manager ('the Contract Manager') to act on behalf of the Employer in all matters relating to the Agreed Services;
- 11.1.3 provide the Training Provider at no charge with such access to the Employer's premises, data and other facilities as the Training Provider may reasonably require;
- 11.1.4 provide the Training Provider in a timely manner and within no later than 5 Business Days with all such documents, information and materials in any form as the Training Provider may reasonably require;
- 11.1.5 inform the Training Provider of all health and safety and security requirements that apply at the Employer's premises or otherwise for the purposes of this Agreement, such requirements and policies are as set out in Schedule 6;
- 11.1.6 ensure that all the Employer's Equipment is in good working order and suitable for the purposes for which it is used;
- 11.1.7 obtain and maintain all necessary licences and consents and comply with all applicable laws as may be required to enable the Training Provider to provide the Agreed Services, the installation of the Training Provider's Equipment, the use of all Employer Materials and the use of the Employer's Equipment, in all cases before the date on which the Agreed Services are to start;
- 11.1.8 keep, maintain and insure the Training Provider's Equipment in accordance with the Training Provider's instructions from time to time and not dispose of or use the Training Provider's Equipment other than in accordance with the Training Provider's written instructions or authorisation; and
- 11.1.9 make any complaint to the Training Provider only in accordance with the Training Provider's Complaints Policy provided pursuant to clause 7.2.2.

11.2 If the Agreed Services are Government-Employer Co-investment Funded the provisions of clauses 13 and 15 shall apply.

### **12. Employer Apprenticeship Responsibilities**

12.1 The Employer shall:

- 12.1.1 enter into an Apprenticeship Agreement with each Apprentice for:
  - (a) a fixed term of at least 366 days in respect of apprenticeship frameworks and a minimum of 372 days in respect of the apprenticeship standards for at least 30 hours per week; or
  - (b) fewer than 30 hours per week (or an unspecified number of hours) but for an extended duration in accordance with the ESFA Rules;
- 12.1.2 work with the Training Provider and each Apprentice to agree an Apprenticeship Standard or Framework, Commitment Statement and Individual Learning Plan for each Apprentice;
- 12.1.3 pay Apprentices at least the minimum wage required by law;
- 12.1.4 assist the Apprentice with his development as much as possible to the reasonable satisfaction of the Training Provider;
- 12.1.5 permit the Training Provider to apply for Additional Funding for the benefit of Apprentices; and
- 12.1.6 compensate the Training Provider for all costs and expenses reasonably and properly incurred by the Training Provider:
  - (a) if it is prevented by the Employer from attending and inspecting the Employer's premises; or
  - (b) if the Apprentice fails to keep an appointment with the Training Provider owing to any act or omission of the Employer.

### **13. Employer ESFA Responsibilities**

13.1 Subject to clause 11.2 the Employer undertakes that in accordance with the ESFA Rules it shall:

- 13.1.1 promptly provide accurate and up to date information to the reasonable satisfaction of the Training Provider;

## Service Level Agreement - Relating to Apprenticeship Training for Non-Levy Paying Employers

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- 13.1.2 provide the Training Provider with all reasonable support and information it requires in relation to the Apprentice and the Apprenticeship;
- 13.1.3 at all times provide the Training Provider with up to date information on the Apprentice's employment status or breaks in learning;
- 13.1.4 immediately notify the Training Provider of any changes to the Apprentice's employment status;
- 13.1.5 promptly provide the Training Provider with such information as it may reasonably require for it to obtain Government-Employer Co-investment Funding, including but not limited to evidence:
  - (a) of the Apprentice's eligibility to receive funding at the start of the Apprenticeship programme;
  - (b) of the Apprentice's employment by either the Employer or a connected company as defined by HM Revenue and Customs;
  - (c) that the Apprentice is spending at least 20% of their time on off-the-job training directly relevant to the Apprenticeship Framework or Apprenticeship Standard;
  - (d) of the Apprentice's average weekly hours;
  - (e) that the job allows the Apprentice to gain wider employment experience;
  - (f) that the total amount of time spent on an Apprenticeship meets the ESFA's minimum duration funding rule if an Apprentice is changing their Apprenticeship Framework/Standard, transfers between providers, or takes a break in learning; and
  - (g) that the Employer employs an average of 49 or fewer employees if the Employer is relying on funding from the government.
- 13.1.6 involve the Apprentice in active learning or monitored workplace practice throughout the Apprenticeship programme to the reasonable satisfaction of the Training Provider;
- 13.1.7 subject to the Apprenticeship Agreement ensure that the Apprentice works a minimum of 30 hours a week, including any off-the-job training;
- 13.1.8 ensure that the Apprentice works such number of hours per week to undertake sufficient, regular training and on the job activity as the Training Provider may reasonably require;
- 13.1.9 permit the Apprentice to complete the Apprenticeship within their working hours (including for English and maths) and provide such evidence of doing so or having done so as the Training Provider may reasonably require;
- 13.1.10 extend the working hours of the Apprentice or the duration of the Apprenticeship in accordance with the ESFA Rules as the Training Provider may reasonably require if the Training Provider determines that the Apprentice has worked below the minimum number of hours required to complete the Apprenticeship or where a part-time working pattern is needed and in that case provide the Training Provider with such evidence as it may reasonably require to show why this working pattern is needed;
- 13.1.11 disclose any reason why the Apprentice may not have enough time to complete the Apprenticeship;
- 13.1.12 ensure that the Apprentice will spend at least 50% of his working hours in England over the duration of the Apprenticeship;
- 13.1.13 ensure that the Apprentice is not already enrolled on any other Apprenticeship programme;
- 13.1.14 ensure that each Apprentice is eligible to work in England;
- 13.1.15 promptly provide the Training Provider with any information it may reasonably require in relation to previous Apprenticeship training or qualifications that any Apprentice may have received;
- 13.1.16 promptly pay all sums owed to the Training Provider in relation to the Apprenticeship including the full difference between band maximums and agreed prices, or for any mandatory co-investment;

## Service Level Agreement - Relating to Apprenticeship Training for Non-Levy Paying Employers

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- 13.1.17 select an Apprentice Assessment Organisation to deliver end-point assessment from the Register of Apprentice Assessment Organisations; and
- 13.1.18 promptly confirm with the ESFA the spending of funds from the Digital Account.
- 13.2 Unless otherwise agreed the Employer hereby appoints the Training Provider to record the required details of the Apprenticeship with the ESFA.
- 13.3 The Employer warrants to the Training Provider that each Apprenticeship under this Agreement is a genuine apprenticeship within the meaning of the ESFA Rules.
- 14. Employer Additional Apprentice Responsibilities**
  - 14.1 Subject to clause 11.2 the Employer undertakes that in accordance with the ESFA Rules, it shall not:
    - 14.1.1 require Apprentice (including former Apprentices) to make financial contributions towards the cost of the Apprenticeship programme (including their former Apprenticeship programme);
    - 14.1.2 require the Training Provider to seek Additional Funding in relation to Learning Support if in the Training Provider's reasonable opinion the Additional Funding is being used to support the Apprentice with everyday difficulties not directly related to the Apprenticeship; and
    - 14.1.3 withdraw Apprentices and re-start Apprenticeships that originally commenced before 1 May 2017 when the ESFA Rules came into force.
- 15. Employer Training Provider Responsibilities**
  - 15.1 The Employer shall observe and perform any ESFA Apprenticeship Agreement for Employers entered into between the Employer and the ESFA that applies to any Apprenticeship under this Agreement.
    - 15.1.1 Without prejudice to clause 15.1 the Employer shall:
      - (a) promptly and whenever reasonably required by the Training Provider provide such information as the ESFA may require to pay the Charges; and
      - (b) authorise and direct the ESFA to make payments to the Training Provider for the Agreed Services and the assessment by the Apprentice Assessment Organisation; in each case to the extent permissible under the ESFA Rules.
  - 15.2 The Employer shall not be entitled to stop or suspend payments by the ESFA to the Training Provider unless one of the Termination Conditions applies.
  - 15.3 Subject to clause 11.2 the Employer shall indemnify the Training Provider against all loss damages costs claims and expenses suffered or incurred by the Training Provider as a result of:
    - 15.3.1 the Employer failing to disclose any information to the Training Provider that was reasonably required by the Training Provider, including but not limited to:
      - (a) where a Training Provider is unable to claim Additional Funding due to the employer's failure to provide sufficient information within a reasonable period of time;
      - (b) any change of circumstance relating to the Employer, its Digital Account or the Apprentice;
    - 15.3.2 any action which the ESFA may take if the Employer's recruitment practice is detrimental either to the Apprentice or the apprenticeship brand; or
    - 15.3.3 as a result of the ESFA taking action to recover funding from the Training Provider owing to any breach of the ESFA Rules by the Employer or any breach of this Agreement by the Employer which results in a breach of or failure to comply with the ESFA Rules.

## Mutual ESFA Responsibilities

- 16. Positive Obligations**
  - 16.1 If the Agreed Services are Government-Employer Co-investment Funded each of the Training Provider and the Employer undertakes with the other that it shall in accordance with the ESFA rules:



## Service Level Agreement - Relating to Apprenticeship Training for Non-Levy Paying Employers

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- 16.1.1 enter into a written Apprenticeship Agreement and Commitment Statement in relation to each Apprentice at the start of and for the entire length of the Apprenticeship;
- 16.1.2 agree when the Apprentice has obtained sufficient skills, knowledge and behaviours to sit their end-point assessment and for this purpose the Employer shall agree a time proposed by the Training Provider within 14 days of the Training Provider requiring it to do so and if the Employer shall fail to do so the Training Provider is hereby authorised in the name and on behalf of the Employer and the Training Provider to decide that time as the Training Provider thinks fit;
- 16.1.3 take the costs of the end-point assessment and any re-takes into account when agreeing the Charges;
- 16.1.4 include the contact details and website for the Training Provider on the written agreement with the Apprentice and on the Commitment Statement; and
- 16.1.5 if the Apprenticeship is achieved and the Apprentice does not stay with the Employer cooperate with the other to support the Apprentice and seek alternative opportunities.

### **17. Negative Obligations**

- 17.1 If the Agreed Services are Government-Employer Co-investment Funded each of the Training Provider and the Employer undertakes to the other that in accordance with the ESFA Rules it shall not:
  - 17.1.1 use Government-Employer Co-investment Funding for any of the following:
    - (a) enrolment, induction, prior assessment, initial diagnostic testing or similar activity;
    - (b) travel costs for apprentices under any circumstances;
    - (c) Apprentice wages;
    - (d) personal protective clothing and safety equipment required by the Apprentice to carry out their day-to-day work;
    - (e) off-the-job training delivered only by distance learning, not including online and other blended learning activities; or
    - (f) any training or optional modules in excess of those required, educational trips or trips to professional events not specified in the Apprenticeship Standard or needed to achieve the Apprenticeship Framework;
    - (g) registration and examination (including certification) costs associated with a licence to practise;
    - (h) registration and examination (including certification) costs for non-mandatory qualifications (qualifications that are not specifically listed in the Apprenticeship Standard or Framework);
    - (i) end-point assessment costs incurred by the Training Provider but not included in the price agreed between the Employer and any Apprentice Assessment Organisation;
    - (j) English and Maths up to Level 2
    - (k) repeating the same regulated qualification where the Apprentice has previously achieved it unless it is a requirement of the Apprenticeship or for any GCSE.
    - (l) re-sits for mandatory qualifications or the end-point assessment needed for the Apprenticeship where no additional learning is required;
    - (m) accommodation costs (including residential costs associated with non-mandatory qualifications) where the Apprentice is resident away from their home base, because of the requirements of their day-to-day work or because this is convenient for the Employer or Training Provider;
    - (n) capital purchases (and the maintenance of capital purchases), including lease agreements, which would have a lifespan beyond the Apprenticeship being funded;
    - (o) time spent by employees/managers supporting Apprentices, mentoring or time arranging training support except where this is directly linked to the training assessment, including end-point assessment;

## Service Level Agreement - Relating to Apprenticeship Training for Non-Levy Paying Employers

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(p) specific services not related to the delivery and administration of the Apprenticeship; The general terms and conditions set out in Schedule 2 shall apply.

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

## Service Level Agreement - Relating to Apprenticeship Training for Non-Levy Paying Employers

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### Schedule 1

#### Definitions and Interpretations

1.1 The definitions and rules of interpretation set out below shall apply in this Agreement.

**Additional Funding** means either funding for Apprentices in need of Functional Skills or Learning Support;

**Agreed Services** means the Training Services and any other services to be provided by the Training Provider pursuant to clause 4, including unless the context otherwise requires services which are incidental or ancillary to the Training Services and 'the Agreed Services' shall mean all Agreed Services agreed pursuant to every Request for Services under this agreement as varied by any applicable Change Note or Mandatory Change Notice;

**Apprentice** means an individual employed by the Employer under an Apprenticeship Agreement who is an Apprentice under the ESFA Rules and in relation to whom the Training Provider is to provide any of the Agreed Services;

**Apprentice Assessment Organisation** means an approved qualification-awarding organisation for the applicable Apprenticeship;

**Apprenticeship** means the training and employment of an Apprentice in accordance with the ESFA Rules;

**Apprenticeship Agreement** means a written contract of employment between the Apprentice and the Employer including a statement on the skill, trade or occupation in which the Apprentice is being trained;

**Apprenticeship Framework** means a framework approved by the ESFA and published by the Secretary of State and assessed through this Agreement;

**Apprenticeship Standard** means a standard approved by the ESFA and published by the Secretary of State, and assessed through a standardised exam, more particularly described in the ESFA Rules;

**Awarding Organisation** means the approved qualification-awarding organisation for the applicable Apprenticeship;

**Business Day** means a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business;

**Business Hours** means the period from 9.00am to 5.00pm on any Business Day;

**Change Note** means a Change Note pursuant to clause 5 and Schedule 3;

**Charges** means the charges specified in a Request for Services for the Agreed Services together with any Mandatory Additional Cost Payment;

**Commencement Date** means the date of this Agreement;

**Commitment Statement** means the statement agreed between the Parties as set out in Schedule 5;

## Service Level Agreement - Relating to Apprenticeship Training for Non-Levy Paying Employers

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**Control** shall be as defined in section 1124 of the Corporation Tax Act 2010, and the expression change of control shall be construed accordingly;

**Completion Payment** means the payment for the 20% of the Charges for each Apprenticeship that under the ESFA Rules is only paid once an Apprentice sits his final exam;

**Confidential Information** means any information that a Party has or acquires before, on or after the date of this Agreement that is confidential in nature concerning the other Party including, without limitation, its business, affairs, customers, clients, suppliers, plans or strategy or that of any member of the group of companies to which the other Party belongs;

**Data Controller** means the person or organisation who determines the purposes for which and the manner in which any Personal Data is processed;

**Employer's Equipment** means any equipment, including tools, systems, cabling or facilities, provided by the Employer, its agents, subcontractors or consultants which is used directly or indirectly in the supply of the Agreed Services including any such items specified in a Request for Services;

**Employer Materials** means all documents, information, items and materials in any form, whether owned by the Employer or a third party, which are provided by the Employer to the Training Provider in connection with the Agreed Services, including the items provided pursuant to clause 11;

**Force Majeure Event** any circumstance not within a Party's reasonable control including, without limitation:

- (a) acts of God, flood, drought, earthquake or other natural disaster;
- (b) terrorist attack, civil commotion or riots, war, threat of or preparation for war;
- (c) nuclear, chemical or biological contamination;
- (d) any law or any action taken by a government or public authority;
- (e) collapse of buildings, fire, explosion or accident;
- (f) any labour or trade dispute, strikes, industrial action or lockouts (other than in each case by the Party seeking to rely on this clause, or companies in the same group as that Party);
- (g) non-performance by suppliers or subcontractors (other than by companies in the same group as the Party seeking to rely on this clause); and
- (h) interruption or failure of utility service;

**Functional Skills** means Functional Skills for the purposes of the ESFA Rules;

**Good Industry Practice** means standards, practice methods and procedures conforming to applicable legal requirements and that degree of care and skill diligence and prudence which would be reasonably expected of an experienced person engaged in providing services similar in nature to the Training Services in a similar type and size of undertaking and under the same or similar circumstances as anticipated by this Agreement;

**ILR** means the individualised learner record which the Training Provider submits to the ESFA;

**Individual Learning Plan** means in relation to each Apprentice a plan agreed between the Employer, the Training Provider and the Apprentice setting out how the Apprentice will develop the skills required under the Apprenticeship Standard or Apprenticeship Framework;



## Service Level Agreement - Relating to Apprenticeship Training for Non-Levy Paying Employers

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**Intellectual Property Rights (IPRs)** means patents, rights to inventions, copyright and moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

**Learning Support** means support available for Apprentices with learning difficulties or disabilities;

**Mandatory Change Notice** shall have the meaning given in clause 5.2;

**Mandatory Policies** means the Employer's business policies listed in Schedule 6, as amended by notice to the Training Provider from time to time;

**Payment Schedule** means the schedule for payment agreed between the Parties as stated at Schedule 8 or 9;

**Personal Data** means data relating to a living individual who can be identified from that data (or from that data and other information in the Data Controller's possession or likely to come into the Data Controller's possession);

**Request for Services** means a request for services made in accordance with clause 4;

**RFS Agreement Date** means the date which is the RFS Agreement Date pursuant to clause 4.5;

**ESFA** means the Education and Skills Funding Agency;

**ESFA Rules** means the ESFA's funding rules as contained in: Apprenticeship funding and performance-management rules for training providers as amended from time to time.

**Termination Conditions** means the conditions specified in Schedule 2 paragraphs 5.1.1, 5.1.2 and 5.1.3;

**Training Provider's Equipment** means any equipment, including tools, systems, cabling or facilities, provided by the Training Provider to the Employer and used directly or indirectly in the supply of the Agreed Services, including any such items specified in a Request for Services but excluding any such items which are the subject of a separate agreement between the parties under which title passes to the Employer;

**Training Materials** means all documents, information, items and materials in any form, whether owned by the Training Provider or a third party, which are used by the Training Provider in connection with the Agreed Services;

**Training Services** means the services set out in Schedule 7; and

**VAT** means value added tax chargeable under the Value Added Tax Act 1994.

## Service Level Agreement - Relating to Apprenticeship Training for Non-Levy Paying Employers

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- 1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this Agreement.
- 1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 The Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Schedules.
- 1.5 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.7 Unless the context otherwise requires, a reference to one gender shall include a reference to each other gender.
- 1.8 This Agreement shall be binding on, and ensure to the benefit of, the Parties to this Agreement and their respective personal representatives, successors and permitted assigns, and references to any Party shall include that Party's personal representatives, successors and permitted assigns.
- 1.9 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.10 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.11 A reference to writing or written does not include fax and email.
- 1.12 Any obligation on a Party not to do something includes an obligation not to allow that thing to be done.
- 1.13 A reference to this Agreement or to any other agreement or document referred to in this Agreement is a reference of this Agreement or such other agreement or document as varied or novated (in each case, other than in breach of the provisions of this Agreement) from time to time.
- 1.14 References to clauses and Schedules are to the clauses and Schedules of this Agreement and references to paragraphs are to paragraphs of the relevant Schedule.
- 1.15 Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.16 Words or phrases defined in the ESFA Rules shall have the same meaning in this document.
- 1.17 The provisions of this Agreement which are stated to apply if the Agreed Services are Levy Funded shall be construed consistently with the ESFA Rules.

## Schedule 2

### General Terms and Conditions

1. Intellectual Property Rights
  - 1.1 In this paragraph 1 'its Materials' means in relation to the Training Provider the Training Materials and in relation to the Employer the Employer Materials.
  - 1.2 Each Party (or its licensors, as applicable) shall retain ownership of all IPRs in its Materials.
  - 1.3 Each Party hereby grants to the other a non-exclusive, non-transferable, royalty free licence to use its Materials to the extent reasonably necessary for the Training Provider to provide the Agreed Services;
  - 1.4 Each Party:
    - 1.4.1 warrants that the receipt and use in the performance of this Agreement by the other, its agents, subcontractors or consultants of its Materials will not infringe the rights, including any Intellectual Property Rights, of any third party; and
    - 1.4.2 shall keep the other indemnified against all damages, costs, claims and expenses suffered or incurred by it as a result of any actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the receipt or use in the performance of this Agreement of its Materials.
2. Data Protection (including GDPR) and Data Processing
  - 2.1 The Training Provider shall be the Data Controller of all Personal Data obtained by it from each Apprentice or the Employer for the purpose of the Agreed Services.
  - 2.2 Each Party shall process Personal Data only in accordance with the Data Protection Act 1998 and the General Data Protection Regulation requirements and where necessary on the other Party's instructions from time to time and shall not process the Personal Data for any purposes other than those expressly authorised.
  - 2.3 Each Party shall take reasonable steps to ensure the reliability of all its employees who have access to the Personal Data.
  - 2.4 Each Party warrants to the other that it will process the Personal Data in compliance with all applicable laws, enactments, regulations, orders, standards and other similar instruments.
  - 2.5 Each Party warrants that, having regard to the state of technological development and the cost of implementing any measures, it will:
    - 2.5.1 take appropriate technical and organisational measures against the unauthorised or unlawful processing of Personal Data and against the accidental loss or destruction of, or damage to, Personal Data to ensure a level of security appropriate to:
      - (a) the harm that might result from such unauthorised or unlawful processing or accidental loss, destruction or damage; and
      - (b) the nature of the data to be protected including, but not limited to, the security measures specified or referred to in the Schedule 2;
    - 2.5.2 take reasonable steps to ensure compliance with those measures.
3. Confidentiality
  - 3.1 Each Party undertakes that it shall not at any time during this Agreement, and for a period of five years after termination of this Agreement, disclose to any person any Confidential Information of the other Party or of any member of the group of companies to which the other Party belongs, except as permitted by paragraphs 3.2 and 3.3.
  - 3.2 Each Party may disclose the other Party's Confidential Information:

## Service Level Agreement - Relating to Apprenticeship Training for Non-Levy Paying Employers

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- 3.2.1 to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the Party's rights or carrying out its obligations under or in connection with this Agreement provided that such Party shall procure that its employees, officers, representatives or advisers to whom it discloses the other Party's Confidential Information comply with this paragraph 3; and
  - 3.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 3.3 Each Party may disclose the other Party's Confidential Information if, to the extent to which either Party can prove to the other's reasonable satisfaction that the Confidential Information:
  - 3.3.1 is, or has become, generally available to the public other than as a direct or indirect result of the information being disclosed by a Party or its representatives in breach of this Agreement;
  - 3.3.2 was available on a non-confidential basis to a Party prior to disclosure to it by the other Party;
  - 3.3.3 is developed by or for a Party independently of the information disclosed by the other Party; or
  - 3.3.4 the Parties agree in writing that the information is not confidential.
- 4. Limitation of Liability
  - 4.1 Nothing in this Agreement shall limit or exclude either Party's liability for:
    - 4.1.1 death or personal injury caused by its negligence;
    - 4.1.2 fraud or fraudulent misrepresentation; or
    - 4.1.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession) or any other liability which cannot be limited or excluded by applicable law.
  - 4.2 Subject to paragraph 4.1, the Training Provider shall not be liable to the Employer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with this Agreement for:
    - 4.2.1 loss of profits; sales or business; anticipated savings; goodwill;
    - 4.2.2 loss of use or corruption of software, data or information; or
    - 4.2.3 any indirect or consequential loss.
  - 4.3 Subject to paragraph 4.1, the Training Provider's total liability to the Employer, whether in contract, tort (including negligence), for breach of statutory duty, misrepresentation or otherwise, arising under or in connection with the performance or contemplated performance of this Agreement shall be limited to the total Charges paid during the 12 months immediately preceding the date on which the claim arose.
  - 4.4 The terms implied by section 3, 4 and 13 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from this Agreement.
- 5. Termination
  - 5.1 Without affecting any other right or remedy available to it, either Party may terminate this Agreement in its entirety or only in relation to the Agreed Services agreed pursuant to any Request for Services with immediate effect by giving written notice to the other Party if:
    - 5.1.1 the other Party commits a material breach of any term of this Agreement and such breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;
    - 5.1.2 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;



## Service Level Agreement - Relating to Apprenticeship Training for Non-Levy Paying Employers

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- 5.1.3 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 (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- 5.2 Without affecting any other right or remedy available to it, the Training Provider may terminate this Agreement with immediate effect by giving written notice to the Employer if:
- 5.2.1 the Employer fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment; or
- 5.2.2 there is a change of Control of the Employer.
6. Consequences of Termination
- 6.1 On termination or expiry of this Agreement:
- 6.1.1 unless expressly stated otherwise in the termination notice this Agreement shall continue in relation to any uncompleted Agreed Services agreed pursuant to every Request for Services until those services are completed, provided that the Training Provider shall be entitled to cease to perform these Agreed Services on notice in writing;
- 6.1.2 the Employer shall immediately pay to the Training Provider all Charges due in respect of the Agreed Services or otherwise and whether or not the Training Provider is entitled to be paid any of those charges out of the Government-Employer Co-investment Funding;
- 6.1.3 the Employer shall promptly return all of the Training Provider's Equipment and if the Employer fails to do so, the Training Provider may enter the Employer's premises and take possession of the Training Provider's Equipment;
- 6.1.4 until the Training Provider's Equipment has been returned or repossessed, the Employer shall be solely responsible for its safe keeping; and
- 6.1.5 the Training Provider shall on request return any of the Employer Materials not used up in the provision of the Agreed Services.
- 6.2 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.
7. Employer Delay and Force Majeure
- 7.1 If a Party ('the Affected Party') is prevented, hindered or delayed in or from performing any of its obligations under this Agreement by a Force Majeure Event, the Affected Party shall not be in breach of this Agreement or otherwise liable for any such failure or delay in the performance of such obligations. Without prejudice to paragraph 7.3 the time for performance of such obligations shall be extended while the effects of Force Majeure Event prevails.
- 7.2 The corresponding obligations of the other Party shall be suspended, and it's time for performance of such obligations extended, to the same extent as those of the Affected Party.
- 7.3 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than 3 months, the Party not affected by the Force Majeure Event may terminate this Agreement by giving 1 month written notice to the Affected Party and paragraph 6 shall apply.
- 7.4 Notwithstanding the other provisions of this paragraph 7.4 if the Training Provider's performance of its obligations under this Agreement is prevented or delayed by any act or omission of the Employer, its agents, subcontractors, consultants or employees then, without prejudice to any other right or remedy it may have, the Training Provider shall be allowed an extension of time to perform its

## Service Level Agreement - Relating to Apprenticeship Training for Non-Levy Paying Employers

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obligations equal to the delay caused by the Employer or further if reasonably required by the Training Provider.

### 8. Assignment and Other Dealings

8.1 Subject to paragraph 8.2, neither Party may assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under this Agreement without the consent of the other Party.

8.2 The Training Provider may in accordance with the other provisions of this Agreement sub-contract performance of the Agreed Services to any sub-contractor with the consent of the Employer such consent not to be unreasonably withheld and provided for the avoidance of doubt that the Training Provider shall remain responsible for performance of the Agreed Services by that sub-contractor and if the Apprenticeship is Government-Employer Co-investment Funded the Training Provider shall remain responsible for complying with its responsibilities under this agreement.

8.3 If any subcontractor undergoes a change of circumstances that affects its ability to continue to deliver any of the Agreed Services, the Training Provider shall be entitled to make such alternative delivery arrangements for each affected Apprentice as it may reasonably decide.

### 9. Variation

Subject to clause 5, no variation of this agreement shall be effective unless it is in writing and signed by the Parties (or their authorised representatives).

### 10. Waiver

10.1 A waiver of any right or remedy under this Agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default.

10.2 A failure or delay by a Party to exercise any right or remedy provided under this Agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this Agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.

### 11. Severance

If any provision or part-provision of this Agreement is invalid, illegal or unenforceable, the Parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

### 12. Entire Agreement

12.1 This Agreement constitutes the entire Agreement between the Parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

12.2 Each Party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement. Each Party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.

### 13. Partnership and Agency

13.1 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between either of the Parties, constitute either Party the agent of the other, or save as

## Service Level Agreement - Relating to Apprenticeship Training for Non-Levy Paying Employers

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otherwise expressly provided authorise either Party to make or enter into any commitments for or on behalf of the other.

13.2 Each Party confirms it is acting on its own behalf and not for the benefit of any other person.

13.3 For the purpose of obtaining any payment to which the Training Provider may be entitled in respect of the Agreed Services or otherwise pursuant to this Agreement under the ESFA Rules and by way of security the Employer hereby irrevocably appoints the Training Provider to be its attorney in its name and on its behalf to do anything necessary or desirable to obtain such payment

### 14. Third Party Rights

No one other than a Party their successors and permitted assignees, shall have any right to enforce any of its terms.

### 15. Notices

15.1 Any notice given to a Party under or in connection with this Agreement shall be in writing and shall be delivered by hand or by pre-paid first-class recorded or other next Business Day signed for delivery service at its registered office (if a company) or its principal place of business (in any other case); or

15.2 Any notice shall be deemed to have been received: on signature of a delivery receipt;

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

### 16. Counterparts

16.1 This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

16.2 No counterpart shall be effective until each Party has executed and delivered at least one counterpart.

### 17. Disputes

If a dispute arises out of or in connection with this Agreement or the performance, validity or enforceability of it the Parties shall follow the procedure set out in Schedule 4.

### 18. Governing Law and Jurisdiction

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

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

## Service Level Agreement - Relating to Apprenticeship Training for Non-Levy Paying Employers

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### Schedule 3

#### Change Procedure

1. Any discussions which may take place between the Employer and the Training Provider in connection with a possible change shall be without prejudice to the rights of either Party.
2. A request to amend this Agreement or the Agreed Services by either Party shall be made in writing to the other in the form of a note ('a Proposed Change Note').
3. Each Proposed Change Note shall state:
  - 3.1 the name of the Party requesting the change;
  - 3.2 the date of the request;
  - 3.3 the reason for the change;
  - 3.4 full details of the change;
  - 3.5 the price, if any, of the change;
  - 3.6 the likely impact of the change on other aspects of this Agreement including:
    - 3.6.1 the timetable for the provision of the Agreed Services;
    - 3.6.2 the effect on the Charges;
    - 3.6.3 the training to be provided;
    - 3.6.4 the use of sub-contractors;
    - 3.6.5 working arrangements;
    - 3.6.6 other contractual issues; and
  - 3.7 a timetable for implementation of the change.
4. The Training Provider and the Employer shall negotiate each Proposed Change Note in good faith and without any obligation on either Party to agree, both Parties shall sign the Proposed Change Note once it is agreed.
5. A Proposed Change Note when signed by the Employer and the Training Provider shall thereupon become a Change Note and shall constitute an amendment to this Agreement.

### Schedule 4

#### Dispute Resolution Procedure

1. Either Party may give to the other written notice ('a Dispute Notice'), setting out the nature and particulars of the disputed matter ('the Dispute') together with relevant supporting documents.
2. On service of a Dispute Notice, the Contract Manager and the Training Manager (together 'the Managers') shall attempt in good faith to resolve the dispute.
3. If the Managers are unable to resolve the Dispute within 30 days of service of the Dispute Notice, the Dispute shall be referred to the chief executive officer of the Employer and chief executive officer of the Training Provider (together 'the chief executive officers') who shall attempt in good faith to resolve it.
4. If the chief executive officers are unable to resolve the Dispute within 30 days of it being referred to them, the Parties shall attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure.



## Service Level Agreement - Relating to Apprenticeship Training for Non-Levy Paying Employers

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5. Unless otherwise agreed between the Parties, the mediator shall be nominated by CEDR.
- 5.1 to initiate the mediation, a Party shall serve notice in writing ('an ADR notice') to the other Party to the Dispute, requesting a mediation;
- 5.2 a copy of the ADR notice should be sent to CEDR; and
- 5.3 the mediation will start not later than 30 days after the date of the ADR notice.
6. If the Dispute is not resolved within 90 days after service of the ADR notice, or either Party fails to participate or to continue to participate in the mediation before the expiration of the said period of 90 days, or the mediation terminates before the expiration of the said period of 90 days, the Dispute shall be finally resolved by the courts of England and Wales in accordance with clause 17.
7. The commencement of mediation shall not prevent the Parties commencing or continuing court proceedings in relation to the Dispute at any time.

### Schedule 5

#### The Commitment Statement

1. The Commitment Statement shall include in accordance with the ESFA rules:
  - 1.1 the planned content and schedule for eligible training (and must also include end-point assessment if they are undertaking a standard);
  - 1.2 what is expected and offered by the Employer, Training Provider (and any subcontractors) and the Apprentice to achieve the Apprenticeship;
  - 1.3 a summary of:
    - 1.3.1 details of the Apprenticeship being followed, including start and end-dates for the apprenticeship training and (where applicable) end-point assessment and key milestones for mandatory or other qualification achievements;
    - 1.3.2 details on which elements are eligible for funding from the Employer's Digital Account or government-Employer co-investment and necessary to meet any end-point assessment, those which are extra and not eligible for co-investment but will be fully funded by the employer, and those fully funded by the ESFA including English and maths; and
    - 1.3.3 the list of all organisations delivering the training including English and maths;
  - 1.4 roles and responsibilities for the Employer, Training Provider and Apprentice and arrangements for how the three parties will work together; this must include contact details and the expected commitment from each party to ensure the smooth running and day-to-day delivery of the Apprenticeship, including:
    - 1.4.1 Employer: commitment to wages and time off to study in the working day; and
    - 1.4.2 Training Provider: support and guidance available and how to access this.
  - 1.5 the process for resolving any queries or complaints regarding the Apprenticeship, including quality; this must include details of the escalation route within the Training Provider's own organisation and the escalation process to the ESFA through the apprenticeship helpline.