

DATED

1<sup>st</sup> September 2024

**CHARTERED MANAGER DEGREE APPRENTICESHIP TRAINING PROGRAMME**

between

West Northamptonshire Council

and

University of Northampton

CONTRACT PARTICULARS –	
Training Providers 's Name	University of Northampton
UKPRN	1007138
Training Providers 's Address for Notices:	Waterside Campus,  University Drive,  Northampton  NN1 5PH
No of apprenticeship places	4
Commencement Date of contract:	1 <sup>st</sup> September 2024
Expiry Date of contract:	31 August 2028

<b>Contract Total Value:</b>	£88,000
<b>Representatives Details:</b>	<p>The Employer : West Northamptonshire Council</p> <p>Becky Kinnear becky.kinnear@westnorthants.gov.uk</p> <p>Training Provider : University of Northampton</p> <p>Simon.Longhurst@northampton.ac.uk</p>
<b>On-line administrative tasks as per clause 4.2(b)</b>	shall not apply
<b>Additional Apprenticeship Programmes as per clause 5</b>	shall not apply
<b>Bespoke Apprenticeship Programmes</b>	n/a
<b>Notes/Comments</b>	n/a

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THIS AGREEMENT is dated 1<sup>st</sup> September 2024

## **PARTIES**

(1) **West Northamptonshire Council**, 1 Angel Square, Angel Street, Northampton, NN1 1ED

**University of Northampton** incorporated and registered in England and Wales with company number whose registered office is 10007138 is at Waterside Campus, University Drive, Northampton, NN1 5PH

## **BACKGROUND**

- (A) The Employer sought proposals for the provision for 4 Chartered Manager Degree Apprenticeship programmes
- (B) The Training Provider submitted a quote (Schedule 2) for the carrying out of the Services, which the Employer has accepted.
- (C) In reliance upon the skill, knowledge and expertise of the Training Provider, the Employer wishes to appoint the Training Provider to provide these services and the Training Provider is willing and able to provide the services in accordance with the terms and conditions of this agreement.

## **AGREED TERMS**

### **1. DEFINITIONS AND INTERPRETATION**

- 1.1 The definitions and rules of interpretation in this clause apply in this agreement.

**Apprentice** 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 Endpoint Assessment Organisations which is selected by an Employer and contracted by a Training Provider to carry out End-Point Assessment

**Apprenticeship** means the training and (where applicable) 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

**Apprenticeship Programme** means a programme of Training set out in Schedule 1 or agreed pursuant to clause 5.

**Apprenticeship Programme Completion Date** means the date on which the last 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

**Authorised Representatives:** the persons respectively designated as such by the Employer and the Training Provider, the first such persons being set out in Schedule 4.

**Employer Assets:** any materials, plant or equipment owned or held by the Employer and provided by the Employer for use in providing the Services.

**Employer's Premises:** the premises which are to be made available for use by the Training Provider for the provision of the Services on the terms set out in this agreement.

**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 including the cost of any resits pursuant payable to clause 4.1(i) the charges which shall become due and payable by the Employer to the Training Provider in respect of the Services in accordance with the provisions of this agreement, as such charges are set out in Schedule 3.

**Commencement Date:** the date of this agreement.

**Commercially Sensitive Information:** the information listed in Schedule 6 comprising the information of a commercially sensitive nature relating to the Training Provider, its intellectual property rights or its business or which the Training Provider has indicated to the Employer that, if disclosed by the Employer, would cause the Training Provider significant commercial disadvantage or material financial loss.

**Confidential Information:** means any information of either Party, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel and suppliers of the Parties, including Personal Data, intellectual property rights, together with all information derived from the above, any information developed by the Parties in the course of carrying out

this agreement and any other information clearly designated as being confidential (whether or not it is marked as “confidential”) or which ought reasonably to be considered to be confidential.

**Consistent Failure:** means the Training Provider repeatedly breaching 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.

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

**Contract Terms:** means these contract terms from clause 1 to 37 (inclusive)

**DBS:** Disclosure and Barring Service

**Dispute Resolution Procedure:** the procedure set out in clause 7

**EIRs:** the Environmental Information Regulations 2004 (SI 2004/3391) together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

**Employer Co-Investment Payment** means a co-investment payment of 5% of the outstanding balance for that month where the monthly cost of Apprenticeship training cannot be fully met by funds from the Employer’s Digital Account due to insufficient Levy funds being available as per ESFA Funding Rules (clause E114 of the Apprenticeship Funding: rules and guidance for Employers).

**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 any relevant Approved Apprenticeship Standard

**ESFA** means the Secretary of State for Education, acting through the Educations 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 change in employer, apprentice or 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

**Expiry Date:** The date on which this agreement expires.

**FOIA:** the Freedom of Information Act 2000, and any subordinate legislation made under the Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

**Force Majeure:** any cause affecting the performance by a party of its obligations under this agreement arising from acts, events, omissions or non-events beyond its reasonable control, including acts of God, riots, war, acts of terrorism, fire, flood, storm or earthquake and any disaster, but excluding any industrial dispute relating to the Training Provider, the Training Provider's Personnel or any other failure in the Training Provider's supply chain.

**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 and guidance for Employers, both as revised and amended from time to time and available at: <https://www.gov.uk/guidance/apprenticeship-funding-rules>

**Incentive Payment** means an incentive payment made available to employers and paid to training providers on employers' behalf by the ESFA subject to eligibility of the employer and learner.

**Information:** has the meaning given under section 84 of FOIA.

**Initial Term:** the period commencing on the Commencement Date and ending on the (Date)).

**Intellectual Property:** 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 5 or made known to the Employer and formally acknowledged in writing by the Employer from time to time;

**Material Obligation:** means an obligation that is significant in the sense that its breach would have a significant effect on the benefit which the Employer would otherwise derive from:

- (a) a substantial portion of this agreement; or
- (b) any of the obligations set out in clauses 3 and 4,

over the term of this agreement.

**Necessary Consents:** all approvals, certificates, authorisations, permissions, licences, permits, regulations and consents necessary from time to time for the performance of the Service (including without limitation all **Personal Data:** shall have the same meaning as set out in the DPA.

**Prohibited Act:** the following constitute Prohibited Acts:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Employer a financial or other advantage to:
  - (i) induce that person to perform improperly a relevant function or activity; or
  - (ii) reward that person for improper performance of a relevant function or activity;
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement;
- (c) committing any offence:
  - (i) under the Bribery Act 2010;
  - (ii) under the Fraud Act 2006;
  - (iii) at common law concerning fraudulent acts relating to this Agreement or any other contract with the Employer;
  - (iv) defrauding, attempting to defraud or conspiring to defraud the Employer; or
  - (v) section 117 of the Local Government Act 1972.

**Proscribed Act:** the following constitute Proscribed Acts:

- (a) if a person commits
  - (i) an offence of cheating the public revenue; or
  - (ii) an offence under the law of any part of the United Kingdom consisting of being knowingly concerned in, or in taking steps with a view to, the fraudulent evasion of a tax
- (b) committing any offence:
  - (i) under the Criminal Finances Act 2017;
  - (ii) under the Taxes Management Act 1970;
  - (iii) under the Value Added Tax Act 1994;
  - (iv) under the Customs and Excise Management Act 1979;
  - (v) under any of the Finance Acts;
  - (vi) at common law concerning any form of fraudulent conduct which results in depriving the HMRC of money to which it is entitled.

RPL: means recognition of prior learning

**Request for Information:** a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the EIRs.

**Services:** the services to be delivered by or on behalf of the Training Provider under this agreement, as more particularly described in Schedule 1.

**Term:** the period of the Initial Term as may be varied by:

- (a) any extensions to this agreement which are agreed pursuant to clause 2.2; or
- (b) the earlier termination of this agreement in accordance with its terms.

**Termination Date:** the date of expiry or termination of this agreement.

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

**Training Plan:** documents when and how components of the programme will be delivered for each apprentice and must be agreed before any training is delivered.

**Training Provider Party:** the Training Provider's agents and contractors, including each Sub-Contractor.

**Training Provider's Personnel:** all employees, staff, other workers, agents and consultants of the Training Provider and of any Sub-Contractors who are engaged in the provision of the Services from time to time.

**Training Provider's Quote:** the tender submitted by the Training Provider and other associated documentation set out in Schedule 2

**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.

**Working Day:** Monday to Friday, excluding any public holidays in England and Wales.

- 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 and that person's legal and personal representatives, successors and permitted assigns.
- 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 and 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 Words in the singular shall include the plural and vice versa.
- 1.7 A reference to one gender shall include a reference to the other genders.
- 1.8 A reference to a statute or statutory provision of the Funding Rules is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.9 Words or phrases defined in the Funding Rules shall have the same meaning in the agreement.
- 1.10 A reference to writing or written includes e-mail.
- 1.11 Any obligation in this agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.12 A reference to a document is a reference to that document as varied or novated (in each case, other than in breach of the provisions of this agreement) at any time.
- 1.13 References to clauses and schedules are to the clauses and schedules of this agreement; references to paragraphs are to paragraphs of the relevant schedule.

1.14 Where there is any conflict or inconsistency between the provisions of the agreement, such conflict or inconsistency shall be resolved according to the following order of priority:

- (a) the clauses of the agreement;
- (b) Schedule 1 to this agreement;
- (c) the remaining schedules to this agreement other than Schedule 2;
- (d) Schedule 2 to this agreement.

## **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:

- (a) 31/08/2028
- (b) 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 mutual agreement between the parties in writing and executed as a variation accordingly

## **3. TRAINING PROVIDER OBLIGATIONS**

3.1 The Training Provider shall deliver the Services to the Employer:

- (a) in accordance with and for the duration of the relevant Apprenticeship Programme;
- (b) using reasonable skill, care and diligence, and in accordance with the best practice prevailing in the Training Provider's industry, profession or trade;
- (c) in compliance with the Funding Rules; and
- (d) 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 Apprentice Assessment Organisations as specified in the relevant Apprenticeship Programme.

3.3 The Training Provider shall have obtained all the Necessary Consents in order to deliver the Services to the Employer.

3.4 The training Provider will undertake an initial assessment with each learner to determine their eligibility for the apprenticeship programme.

3.5 The Training Provider will undertake a skillscan with each learner to identify and recognise any prior learning and experience. The assessment must quantify the

content which should be omitted from the training plan in the form of volume of off the job training hours and reflect a negotiated price.

3.6 The Training Provider maybe required to undertake diagnostic testing with a learner for either occupational competence or English and maths

3.4 The Training Provider shall complete a training plan in respect of each Apprentice at the start of the relevant Apprenticeship Programme and provide the Employer with a revised training plan for every agreed Break in Learning.

3.5 The Training Provider shall agree any Break in Learning with the Apprentice and managers supporting or mentoring the Apprentice and shall notify the Employer in writing of any Break in Learning within fourteen (14) days of the commencement of any agreed Break in Learning identified

The Training Provider will plan for and implement three way progress meetings(provider/apprentice/manager) to discuss the progress of the apprentice every 12 weeks, in addition to any monthly checks between the apprentice and their tutor/assessor.

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

#### **4. EMPLOYER OBLIGATIONS**

4.1 The Employer shall:

(a) provide support and information with the initial assessment of the apprentice and ensure they are in a role that provides opportunity for them to gain the knowledge,skills and behaviours needed to achieve their apprenticeship.

(b)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 full duration of the relevant Apprenticeship Programme and End Point Assessment(EPA) 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). The apprentice must be on the PAYE scheme declared in apprenticeship service account

(c) 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:

- (i) compliance with the Funding Rules; and
- (ii) obtaining any payment to which it may be entitled under the Funding Rules;

(d)enter into and ensure that each Apprentice enters into:

- (iii) an Apprenticeship Agreement; and
- (iv) an agreed training plan as required by the Funding Rules

Each of which must be in place for the entire length of the Apprenticeship, including the end point assessment and meet the requirements of the Funding Rules and made available to the Training Provider on request;

(e) 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;

(f) notify in writing the Training Provider of any Break in Learning requests within fourteen (14) days of the commencement of any Break in Learning identified;

(g) confirm on request by providing signed declarations to the Training Provider of:

each Apprentice's eligibility for apprenticeship funding;

any eligibility for 16-18 year old Incentive Payments (if applicable);

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;

the address or addresses where the Apprentice shall be carrying out their working hours; and

(v) whether learning support is available to support Apprentices with additional learning needs.

(h) ensure, and on request confirm, that:

(i) where an Apprentice has a contract for less than thirty (30) hours, the Apprenticeship duration will be adjusted to reflect the hours worked;

the funding for the Apprenticeship is not used to pay the Apprentice's wages;

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:

(A) permitting agreed time of each Apprentice's employed hours to be used for development as identified in training plan;

(B) releasing the Apprentice to the Training Provider for undertaking such training and courses with the Training Provider as set out in the Apprentice Proposal/ Training Plan;

- (C) providing the Apprentice the use of equipment necessary to enable the Apprentice to fulfil training objectives;
- (D) co-operating with the Training Provider to arrange for any necessary End-Point Assessment and allowing the Apprentice to attend the same.

- (i) comply with the terms of any agreement between Employer and ESFA;
- (j) provide payment for second resits required for qualifications or End-Point Assessment as required by the Approved Apprenticeship Standard where no extra learning takes place before the re-take;
- (k) comply with the Mandatory Policies.
- (l) provide appropriate support and supervision on the job with the apprentice to enable them to carry out their job role

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:

- (a) co-operate in good faith with the Training Provider and any Sub-contractor and/or Apprentice Assessment Organisation to enable the successful delivery and completion of each Apprenticeship;
- (b) where requested, open up a cohort on the DAS for agreed Apprenticeship ;
- (c) 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;
- (d) notify the Training Provider in writing when it becomes aware or develops a reasonable suspicion that the Apprentice wishes to withdraw from the Apprenticeship;
- (e) notify the Training Provider if the Apprentice informs the Employer that they no longer wish to continue with the Apprenticeship; and
- (f) appoint an Employer's Representative and notify the Training Provider of any change of the Employer's Representative from time to time.

## 5. ADDITIONAL APPRENTICESHIP PROGRAMMES

5.1 Where indicated in the Contract Particulars, this clause 5 shall have effect.

5.2 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.

5.3 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 may result in the Employer requesting:

- (a) the provision of one of the Apprenticeship Programmes set out in Schedule 1 (a **Repeat Apprenticeship Programme Request**) in accordance with clause 5.4;

5.4 **Repeat Apprenticeship Programmes**

- (a) The Employer shall notify the Training Provider in a written Repeat Apprenticeship Programme Request which of the Apprenticeship Programmes set out in Schedule 1 that it wants to be repeated and shall provide the Training Provider with sufficient information (in the opinion of the Training Provider acting reasonably) to allow the Training Provider to prepare an updated Apprenticeship Programme (a **UAP**).
- (b) Within ten (10) Business Days of receipt of the Repeat Apprenticeship Programme Request, the Training Provider shall:
  - (i) notify the Employer that it declines to repeat the requested Apprenticeship Programme; or
  - (ii) provided that the Employer has provided sufficient information pursuant to clause 5.4(a), provide the Employer with a UAP (in the form of the Apprenticeship Programmes set out in Schedule 1) containing all relevant information required by the Funding Rules.
- (c) The parties shall negotiate the contents of the UAP provided pursuant to clause 5.4(b)(i) and once agreed between the parties the Employer and the Training Provider shall each indicate such agreement by executing the UAP under hand.
- (d) A UAP that has been executed by both parties pursuant to clause 5.4(c) shall be deemed to be an Apprenticeship Programme for the purposes of this agreement and shall be incorporated into Schedule 1 accordingly.

5.5 **Bespoke Apprenticeship Programmes**



- (a) Any bespoke requirements as required by the Employer's request for proposal and the Training Provider's Quote shall be set out in Schedule 3.

## **6. CHARGES AND PAYMENTS**

- 6.1 The Training Provider shall be paid the Charges set out in Schedule 2. The Training Provider shall receive the Levy payments from the Employer's Digital Account.
- 6.2 The Employer shall be liable to pay to the Training Provider only an Employer Co-Investment Payment where insufficient funds are available in the DAS account. For the avoidance of doubt the Employer shall not be liable to make any other payment to the Training Provider.
- 6.3 Subject to the Employer providing an invoice and 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 ESFA on behalf of the Employer. The Training Provider shall immediately notify the Employer of receipt of the funds from ESFA and shall pay within thirty (30) days of receipt of funds, 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.

## **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 in writing):
  - (a) within fifteen (15) 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);
  - (b) if the Training Provider's Representative and the Employer's Representative are unable to reach a settlement within twenty-one (21) days from the date of service of the Dispute Notice, the chief executive officers, or the appointed deputy, of each of the parties

shall meet within the following fourteen (14) days to attempt to settle the dispute; and

- (c) if no settlement results from the meeting specified in clause 7.2(b), for the following fifty six (56) days the parties shall attempt to settle the dispute by mediation (in accordance with the CEDR Model Mediation Procedure) by an independent mediator appointed by CEDR unless otherwise agreed between the parties, with costs to be shared equally between the parties.

7.3 If no settlement is reached under clause 7.2 the dispute shall be determined by the English High Court 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:

- (a) 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;
- (b) 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;
- (c) 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;
- (d) 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;

- (e) 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;
- (f) 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;
- (g) 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;
- (h) 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;
- (i) 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;
- (j) 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(c) to clause 8.1(i) (inclusive);
- (k) the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business;
- (l) 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(b), clause 7, clause 9, clause 10, clause 12, clause

13, clause 17, clause 18, clause 19, clause 23, clause 24, clause 25, clause 26, clause 27, clause 28, clause 29, clause 30, clause 31, clause 32, clause 33, clause 34, clause 35, clause 36, and clause 37 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:

- (a) the Employer shall immediately pay to the Training Provider the balance of the amount stated in clause 6.2. The Employer shall not be liable to make payment of any outstanding amounts due under the Levy from the Employer's Digital Account.
- (b) the Training Provider shall recover funding from the ESFA in respect of all Charges due at the date of termination or expiry pursuant to the Apprenticeship Programmes;
- (c) to the extent that the Employer has paid the Charges pursuant to clause 9.4(a) and the Training Provider recovers funding from the ESFA in respect of those Charges, the Training Provider shall, provided that the Employer does not owe any other sums to the Training Provider, reimburse the Employer those sums paid pursuant to clause 9.4(a);
- (d) 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
- (e) 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:

- (a) 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(b) shall be the date on which the last such Apprentice successfully completes the relevant End-Point Assessment; and
- (b) The Training Provider will provide full co-operation to Apprentices and the Employer to ensure that disruption is as minimal as possible and follow the exit strategies and exit plans that the Training Provider has

in place as set out in its Business Continuity Plan a copy of which is at Schedule 5

- (c) 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**

- 10.1 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**

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

## **12. LIABILITIES**

- 12.1 Neither party excludes or limits liability to the other party for:
  - (a) fraud or fraudulent misrepresentation;
  - (b) death or personal injury caused by negligence;
  - (c) a breach of any obligations implied by section 2 of the Supply of Goods and Services Act 1982; or
  - (d) 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:

- (a) any loss (whether direct or indirect) of profits, business, business opportunities, revenue, turnover, reputation or goodwill;
- (b) loss (whether direct or indirect) of anticipated savings or wasted expenditure (including management time); or
- (c) any loss or liability (whether direct or indirect) under or in relation to any other contract.

12.3 Each party shall at all times take all reasonable steps to minimise and mitigate any loss or damage for which the relevant party is entitled to bring a claim against the other party pursuant to this Contract.

12.4 Subject to clause 12.1, the Training Provider's total aggregate liability:

- (a) Is unlimited in respect of:
  - (i) the indemnities given in Clause 18.3 (Intellectual Property);
  - (ii) the indemnity given by the Training Provider in clause 19.4 (Data Protection);
  - (iii) the indemnity given by the Training Provider in clause 23.1;
  - (iv) any breach of clause 24 (Prevention of Bribery);
  - (v) any breach of clause 25 (Prevention of Tax Evasion);
  - (vi) [others]
- (b) in respect of all other claims, losses or damages whether arising 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.

### **13. INSURANCE**

13.1 The Training Provider shall at its own cost effect and maintain with a reputable insurance company a policy or policies of insurance providing as a minimum the following levels of cover:

- (a) public liability insurance with a limit of indemnity of not less than £2,000,000.00 in respect of any one incident and the number of

incidents covered shall be unlimited and should be adequate to cover all risks in the performance of the Services;

- (b) employer's liability insurance with a limit of indemnity of not less than £5,000,000.00 in respect of one incident and the number of incidents covered shall be unlimited;
- (c) professional indemnity insurance with a limit of indemnity of not less than £1,000,000.00 in respect of any one incident and the number of incidents covered shall be unlimited. The Training Provider shall ensure that all professional consultants or Sub-Contractors involved in the provision of the Services hold and maintain appropriate cover;

(the **Required Insurances**). The cover shall be in respect of all risks which may be incurred by the Training Provider, arising out of the Training Provider's performance of the agreement, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Training Provider.

- 13.2 Prior to the Commencement Date, the Training Provider shall give the Employer, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the Required Insurances are in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- 13.3 If, for whatever reason, the Training Provider fails to give effect to and maintain the Required Insurances, the Employer may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Training Provider.
- 13.4 The terms of any insurance or the amount of cover shall not relieve the insured party of any liabilities under this agreement.
- 13.5 The Training Provider shall hold and maintain the Required Insurances for a minimum of six (6) years following the expiration or earlier termination of the agreement.

#### **14. SAFEGUARDING**

- 14.1 The Employer acknowledges that the Training Provider has a statutory duty to safeguard and promote the welfare of individuals under the age of eighteen (18) years old and vulnerable adults over the age of eighteen (18) years old pursuant to the Children Act 2004 and the Safeguarding Vulnerable Groups Act 2006.
- 14.2 The Employer shall and shall ensure that the Employer's employees, contractors and agents:

- (a) 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
- (b) confidentially report to the Training Provider's designated senior person from time to time, any concerns relating to an Apprentice or other learner enrolled with the Training Provider, employee, agent or contractor of the Training Provider.

14.3 The Employer and Training Provider shall by signing this agreement, agree to comply with safer recruitment procedures .

## **15. HEALTH AND SAFETY**

15.1 The parties shall perform their obligations under this agreement (including those in relation to the Services) in accordance with:

- (a) all applicable Law regarding health and safety; and
- (b) 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).

15.2 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.

15.3 The Training Provider shall ensure that its health and safety policy statement (as required by the Health and Safety etc Act 1974) is made available to the Employer on request.

## **16. EMPLOYER'S PREMISES AND ASSETS**

16.1 The Employer may at its sole discretion and subject to clause 15, provide the Training Provider (and its Sub-Contractors) with access to such parts of the Employer's Premises and Assets as the Training Provider reasonably requires for the purposes only of properly providing the Services. This shall be on a non-exclusive licence basis free of charge. For the avoidance of doubt, in the event that the Employer is unable to make it's Premises and Assets available to the Training Provider (and its Sub-Contractors), the Training Provider shall be responsible for sourcing at its own costs, such premises and assets as it requires for the purposes of properly providing the Services.

16.2 The Training Provider shall use the Employer's Premises and Assets solely for the purpose of performing its obligations under this Agreement and shall limit



access to the Employer's Premises and Assets to such Staff as is necessary for that purpose.

- 16.3 The Training Provider shall co-operate (and ensure that its Staff co-operate) with such other persons working concurrently at the Employer's Premises and Assets as the Employer may reasonably request.
- 16.4 In the event of the expiry or termination of the agreement, the Employer shall on reasonable notice provide the Training Provider with such access as the Training Provider reasonably requires to the Employer's Premises to remove any of the Training Provider's equipment. All such equipment shall be promptly removed by the Training Provider.
- 16.5 The Employer shall maintain and repair the Employer Assets, however, where such maintenance or repair arises directly from the act, omission, default or negligence of the Training Provider or its representatives (fair wear and tear excluded) the costs incurred by the Employer in maintaining and repairing the same shall be recoverable from the Training Provider as a debt.
- 16.6 The Training Provider shall notify the Employer immediately on becoming aware of any damage caused by the Training Provider, its agents, employees or Sub-Contractors to any property of the Employer, to any of the Employer's Premises, Assets or to any property of any other recipient of the Services in the course of providing the Services.

## **17. CONFIDENTIALITY**

- 17.1 Subject to Clause 17.2, the parties shall keep confidential all matters relating to this agreement and shall use all reasonable endeavours to prevent their employees, contractors, agents and other personnel from making any disclosure to any person of any matters relating it.
- 17.2 Clause 17.1 shall not apply to any disclosure of information:
  - (a) required by any applicable law, provided that Clause 19 shall apply to any disclosures required under the FOIA or the EIRs;
  - (b) that is reasonably required by persons engaged by a party in the performance of such party's obligations under this agreement;
  - (c) 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 17.1;
  - (d) of any document which the parties to this agreement have agreed contains no commercially sensitive information;

- (e) which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party; and
- (f) by the Training Provider to any other department, office or agency of the Government.

17.3 On termination of this Agreement, at the request of the owner of the Confidential Information, each Party shall return, delete or destroy any copies of the other Party's Confidential Information. No Party shall be required to delete or destroy information from its automatic IT backup systems provided that no other use is made of that information

## **18. INTELLECTUAL PROPERTY**

18.1 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**).

18.2 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.

18.3 Each party shall indemnify the other against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Right in the performance of a party's obligations under this agreement, except to the extent that they have been caused by or contributed to by the indemnified party's acts or omissions.

18.4 Each party shall make available to the Apprentice free of charge and hereby grant to the Apprentice a non-exclusive, non-transferable, royalty-free licence to use the Project Materials for the duration of the relevant Apprenticeship Programme, and thereafter, for personal use only.

## **19. DATA PROTECTION AND FREEDOM OF INFORMATION**

19.1 The The parties shall comply with the Data Protection Provisions set out at Schedule 7

### **19.2 Freedom of Information**

19.3 The Training Provider acknowledges that the Employer is subject to the requirements of the FOIA and the EIRs and shall assist and co-operate with the Employer (at the Training Provider's expense) to enable the Employer to comply with these information disclosure requirements.

- 19.4 The Training Provider shall and shall procure that its Sub-Contractors shall:
- (a) transfer the Request for Information to the Employer as soon as practicable after receipt and in any event within (two) Working Days of receiving a Request for Information.
  - (b) provide the Employer with a copy of all Information in its possession or power in the form that the Employer requires within (five) Working Days (or for such other period as the Employer may specify) of the Employer requesting that Information; and
  - (c) provide all necessary assistance as reasonably requested by the Employer to enable the Employer to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the EIRs.
- 19.5 The Employer shall be responsible for determining at its absolute discretion whether the Commercially Sensitive Information supplied by the Training Provider in the tender process and/or any other information:
- (a) is exempt from disclosure in accordance with the provisions of the FOIA or the EIRs; and/or
  - (b) is to be disclosed in response to a Request for Information.
- 19.6 In no event shall the Training Provider respond directly to a Request for Information unless expressly authorised to do so by the Employer.
- 19.7 The Training Provider acknowledges that the Employer may, acting in accordance with the Secretary of State for Constitutional Affairs' Code of Practice on the discharge of public authorities' functions under Part 1 of FOIA (issued under section 45 of the FOIA, November 2004), be obliged under the FOIA or the EIRs to disclose information:
- (a) without consulting with the Training Provider; or
  - (b) following consultation with the Training Provider and having taken its views into account,
- provided always that where clause 19.17(b) applies the Employer shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Training Provider advanced notice, or failing that, to draw the disclosure to the Training Provider's attention after any such disclosure.
- 19.8 The Training Provider shall ensure that all Information produced in the course of the agreement or relating to the agreement is retained for disclosure and

shall permit the Employer to inspect such records as requested from time to time.

- 19.9 The Training Provider acknowledges that any lists or Schedules provided by it outlining Confidential Information are of indicative value only and that the Employer may nevertheless be obliged to disclose Confidential Information in accordance with clause 19.14.
- 19.10 The Training Provider shall (and shall procure that any of its Training Provider's Personnel involved in the provision of the agreement shall) comply with any notification requirements under the DPA and both Parties shall duly observe all their obligations under the DPA, which arise in connection with the agreement.
- 19.11 The provisions of this clause 19 shall apply during the continuance of the agreement and indefinitely after its expiry or termination.

## **20. EQUALITY LEGISLATION**

- 20.1 Each party shall (and shall procure that its employees, contractors, agents and other personnel shall):
  - (a) perform its obligations under this agreement (including those in relation to the Services) in accordance with:
    - (i) The Equality Act 2010;
    - (ii) The Employer's equality and diversity policy as provided to the Training Provider from time to time; and
    - (iii) Any other requirements and instructions which the Employer reasonably imposes in connection with any equality obligations imposed on the Employer at any time under applicable equality law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);
  - (b) take all necessary steps, and where requested by the Employer, provide details of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation).
  - (c) at all times comply with the provisions of the Human Rights Act 1998 in the performance of this agreement.

**21. CONTRACT VARIATION**

21.1 No variation to this agreement other than pursuant to clause 21.3 shall have effect unless agreed in writing and signed by both parties pursuant to clause 21.2.

**21.2 Change Protocol**

- (a) 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.
- (b) 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:
  - (i) the title of the Change;
  - (ii) the originator and the date of the request;
  - (iii) the reason for the Change;
  - (iv) the full details of the Change, including any specification or service standards;
  - (v) the price, if any, of or associated with the Change;
  - (vi) a timetable for implementation;
  - (vii) the impact, if any, of the Change on other aspects of this agreement, including contractual documentation and resources;
  - (viii) provision for signature of the request by all parties to signal acceptance of the Change; and
  - (ix) any other relevant information reasonably requested by any party.
- (c) If approved, each party shall sign the written recommendation. The signing of the written recommendation shall signify acceptance of a Change by the parties.
- (d) 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.

- 21.3 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.

## **22. MONITORING**

- 22.1 The Employer shall monitor the performance of the Services by the Training Provider (including but not limited to the monitoring activity schedule ,reports and actions set out at Schedule 4).
- 22.2 The Training Provider shall co-operate, and shall procure that its Sub-Contractors co-operate, with the Employer in carrying out the monitoring referred to in clause 22.1 at no additional charge to the Employer.

## **23. INDEMNITIES**

- 23.1 The Training Provider shall indemnify and keep indemnified the Employer against all actions, proceedings, costs, claims, demands, liabilities, losses and expenses whatsoever whether arising in tort (including negligence) default or breach of this agreement, to the extent that any such loss or claim is due to the breach of contract, negligence, wilful default or fraud of itself or of its employees or of any of its Representatives or sub-contractors save to the extent that the same is directly caused by or directly arises from the negligence, breach of this agreement or applicable law by the Employer or its Representatives (excluding any Training Provider's Personnel).

## **24. PREVENTION OF BRIBERY**

- 24.1 The Training Provider represents and warrants that neither it, nor to the best of its knowledge any Training Provider's Personnel, have at any time prior to the Commencement Date:
- (a) Committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
  - (b) Been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.
- 24.2 The Training Provider shall not during the term of this agreement:
- (a) commit a Prohibited Act; and /or

- (b) do or suffer anything to be done which would cause the Employer or any of the Employer's employees, consultants, contractors, sub-contractors or agents to contravene any of the Bribery Act or otherwise incur any liability in relation to the Bribery Act.

24.3 The Training Provider shall during the term of this agreement:

- (a) establish, maintain and enforce, and require that its Sub-contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Bribery Act and prevent the occurrence of a Prohibited Act; and
- (b) keep appropriate records of its compliance with its obligations under clause 24.3(a) and make such records available to the Employer on request.

24.4 The Training Provider shall immediately notify the Employer in writing if it suspects or becomes aware of any breach of the warranties at clause 24 and/or the provisions of clause 24.2

24.5 The Training Provider must respond promptly to the Employer's enquiries, co-operate with any investigation, and allow the Employer to audit books, records and any other relevant documentation in accordance with clause 34. This obligation shall survive termination of this Agreement.

24.6 If the Training Provider is in Default under clause 24.1 and/or 24.2, the Employer may by notice:

- (a) require the Training Provider to remove from performance of this agreement any Training Provider's Personnel whose acts or omissions have caused the Default; or
- (b) terminate this agreement by written notice with immediate effect.

24.7 Any notice served under clause 24.6 must specify:

- (a) the nature of the Prohibited Act;
- (b) the identity of the party whom the Employer believes has committed the Prohibited Act;
- (c) the date on which this agreement will terminate; and
- (d) the action that the Employer has elected to take.

24.8 Notwithstanding clause 7 (Dispute Resolution), any dispute relating to:

- (a) the interpretation of clause 24; or
- (b) the amount or value of any gift, consideration or commission,

shall be determined by the Employer and its decision shall be final and conclusive.

- 24.9 Any termination under clause 24.6 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Employer.

**25. COMPLAINTS WITH LAWS**

- 25.1 The Training Provider represents and warrants that it shall comply with all all statutes, orders regulations or bye laws applicable to the performance of this Agreement and shall indemnify the Employer against any losses, claims, liabilities, expenses, proceedings or otherwise as a result of the Training Provider's non-compliance with the same .

**26. AUDIT**

- 26.1 The Training Provider shall keep and maintain until seven (7) years after the agreement has been completed, or as long a period as may be agreed by the parties, or such other period as may be required by ESFA or OFSTED audit requirements full and accurate records of the agreement including:

- (a) the Services provided under it;
- (b) all expenditure reimbursed by the Employer;
- (c) all payments made by the Employer.

- 26.2 The Training Provider shall on request afford the Employer or the Employer's representatives such access to those records as may be required in connection with the agreement.

**27. ASSIGNMENT**

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

**28. PROVISIONS TO REMAIN IN FORCE**

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



**29. ENTIRE AGREEMENT**

- 29.1 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.

**30. WAIVER**

- 30.1 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.

**31. COUNTERPARTS**

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

**32. NO AGENCY**

- 32.1 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.

**33. NO DOUBLE RECOVERY**

- 33.1 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.

**34. FURTHER ASSURANCE**

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

**35. SEVERABILITY**

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

### **36. NOTICES**

36.1 Any notice (or other communication) given to a party under or in connection with this Contract shall be in writing marked for the attention of the party's Authorised Representative and shall be:

- (a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
- (b) sent by fax to its main fax number; or
- (c) via email

36.2 Any notice (or communication) shall be deemed to have been received:

- (a) if delivered by hand, on signature of a delivery receipt (or at the time the notice is left at the proper address);
- (b) if sent by pre-paid first-class post or other next working day delivery service, at (9.00am) on the (second) Working Day after posting (or at the time recorded by the delivery service);
- (c) if sent by fax, at (9.00am) on the next Working Day after transmission. If sent by email , on the same working day

### **37. GOVERNING LAW AND JURISDICTION**

37.1 This agreement and any dispute or claim arising out of or in connection with it or its subject matter shall be governed by and construed in accordance with the law of England and Wales.

37.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter.

### **38. THIRD PARTY RIGHTS**

38.1 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 has been entered into on the date stated at the beginning of it.

Signed by Alison Golding  
for and on behalf of West  
Northamptonshire Council

Signed by:  
  
.....C7AAB07F7E90406.....  
Assistant Director of HR

Signed by Simon Longhurst  
for and on behalf of University of  
Northampton

  
.....  
Apprenticeship Manager

## **Schedule 1 Apprenticeship Programme**

[Chartered Manager Degree Apprenticeship | UON](#)

## Schedule 2 Training Provider's Quote

<b>Cost Breakdown</b>	<b>Costs</b>
Initial assessment	£215
Off the job training	£15,210
Registration and examination (including certification) costs associated with mandatory qualifications	£2,175
Materials and consumables	£0
Additional learning and the cost to resit an exam more than once linked to a mandatory qualification that employer is expected to pay	£0
end point assessment costs	£4,400
end-point assessment resit costs for second attempt	FOC
Accommodation costs for training delivered through residential modules where the residential training is a mandatory requirement for all apprentices that employer is liable for	N/A
Any additional costs required as part of the programme not covered by the provider	£0
<b>Total</b>	<b>£22,000</b>

**Schedule 3- Bespoke Apprentice Programme details**

N/A

## Schedule 4 Contract management

### 1. AUTHORISED REPRESENTATIVES

**1.1** The Employer's initial Authorised Representative: **Becky Kinnear**  
becky.kinnear@westnorthants.gov.uk

**1.2** The Training Provider's initial Authorised Representative: **Siimon Longhurst**  
Simon.longhurst@northampton.ac.uk

### 2. REPORTS

monitoring activity schedule ,reports and actions		
monitoring activity	Key information	Delivery timeframes
Self Decalaration form	Progress of functional skills and apprenticeship learning against targets	monthly
Contract management meetings	Apprentices on target, DAS payments, concerns,issues, apprentice engagement, places still on contract to fill,A.O.B	Quarterly unless negotiated more frequently
Tripartite meeting sampling	Through observation and sampling of electronic records	As required

## **Schedule 5 Training Provider's Guidance and Policies**

Policies required:

- **Required Insurances ( please refer to clause 12.2)**
- **Apprentices complaints policy - <https://searchtundra.northampton.ac.uk/?tag=57def9fe-ef88-462ba8cc-06e5352fc9f2>**
- **Business Continuity Policy - <https://www.northampton.ac.uk/about-us/governance-andmanagement/management/university-policies-procedures-andregulations/>**
- **Health and Safety Policy - <https://www.northampton.ac.uk/about-us/governance-andmanagement/management/university-policies-procedures-andregulations/>**
- **Equality, Diversity and Inclusion Policy - <https://www.northampton.ac.uk/about-us/governance-andmanagement/management/equality-and-diversity/>**
- **Safeguarding Policy -<https://www.northampton.ac.uk/wp-content/uploads/2021/08/uon-safeguarding-framework.pdf>**



## **Schedule 6 Commercially sensitive information**

See guidance on page 2

**Schedule 7 - Data Protection**

<b>Data Processing Schedule</b>	
<b>39. DESCRIPTION OF SERVICES</b>	
39.1	This service is to administer the recruitment of apprentices onto the apprenticeship programme, which is managed by the employer and with input from the provider. The provider shall deliver the Apprenticeship Programmes as agreed and report back on the progress of apprentices to the employer who will evaluate performance.
<b>40. ROLES OF THE PARTIES</b>	
40.1	<p>For the processing of personal and special category data in relation to the administration of apprenticeships and employment of apprentices under this schedule, the relationship between the parties is</p> <p>The employer is the data controller of the personal data processed in relation to the recruitment of apprentices onto the programme, monitoring the progress of the apprentices on the programme and uploading apprentice information for individual learner returns.</p> <p>The provider shall be a data controller of subsequent personal or special category data that they are lawfully required to process for the delivery of training for Apprenticeships. This is in relation to the assessment of the applicants' suitability to undertake the apprenticeship programme, the monitoring of attendance, progress and academic achievement of apprentices and the collation and submission of individual learner returns.</p>

The Data Controller (employer) is:	West Northamptonshire Council ( WNC)
Processor/Controller (Provider) is:	University of Northampton
The Data Discloser is:	West Northamptonshire Council
The Data Recipient is:	University of Northampton
The data controllers Data Protection Officer's contact details:	WNC DPO Email: <a href="mailto:dataprotection@westnorthants.gov.uk">dataprotection@westnorthants.gov.uk</a>

40.2 All parties to this schedule must appoint and communicate to each other the Specific Points of Contact (SPOC). The SPOC's within each organisation will be the first point of contact for questions about this schedule.

WNC	
Name	Bellinda Cotton
Job Title	Data Protection Officer
Email	<a href="mailto:dataprotection@westnorthants.gov.uk">dataprotection@westnorthants.gov.uk</a>
Training Provider	
Name	Abigail Bligh
Job Title	Apprenticeship Compliance and Administration
Email	Abigail.Bligh@northampton.ac.uk / apprenticeships@northampton.ac.uk

40.3 Data controllers are responsible for ensuring that the processing of personal data takes place in compliance with UK GDPR and the Data Protection Act 2018. Data controllers have the right and obligation to make decisions about the purposes and means of the processing of personal data.

40.4 Unless legally exempt, the provider is obligated to provide the data controller with confirmation and evidence of ICO registration.

40.5 Each party ensures that it has all necessary notices and consents in place to enable lawful transfer of the shared personal data between the parties for the agreed purposes.

#### 41. PURPOSE AND SCOPE

41.1 The agreed purpose of this data sharing is for the recruitment, administration, monitoring and evaluation of the apprenticeship programme(s).

41.2 Each party considers this data sharing initiative necessary to achieve the agreed purpose.

41.3 The aim of the data sharing is to enable Council staff to access and undertake an apprenticeship for their development in relation to their role and responsibilities whilst securing any data shared between the Council and the provider to enable this to happen

41.4 It will serve to benefit society by ensuring continuity of services.

## **42. PURPOSE LIMITATION**

42.1 Personal data will be processed only on the data controller's documented instructions and not be, shared, disclosed, or used in any way except:

- in accordance with this Schedule; or
- as required by law.

42.2 As long as in keeping with this schedule and UK data protection legislation, the data processor may make its own day-to-day operational decisions, unless it is required to do otherwise by law.

42.3 Any data processing is undertaken in accordance with UK GDPR and the Data Protection Act 2018.

Privacy Notice

[Apprenticeships privacy notice | West Northamptonshire Council \(westnorthants.gov.uk\)](#)

42.4 Subsequent instructions can also be given by the data controller throughout the duration of the processing of personal data, but such instructions shall always be documented and kept in writing, including electronically.

42.5 Under Article 28(3)(d) the data processor should not engage another data processor (a sub-processor) without the data controller's prior specific or general written authorisation.

42.6 Where the data processor intends to engage a sub-contractor pursuant to clause 4.6 above and intends for that sub-contractor to process any personal data relating to this agreement, it shall:

- notify the data controller in writing of the intended processing by the sub-contractor;
- obtain prior written consent from the data controller to the processing;
- enter into a written agreement incorporating terms which are substantially similar to those set out in this schedule. Where applicable the data processor is liable to the data controller for a sub-processor's compliance with its data protection obligations.

42.7 The data recipient shall:

- not transfer or otherwise process the personal/special category data outside the UK without obtaining the data controller's prior written consent, which will include the transfer instructions and obligations under Article 45, 46 & 49 UK GDPR.
- not share the shared personal data with any third party without the consent of the data discloser in accordance with the data controllers transfer instructions.

### 43. LAWFUL BASIS

43.1 UK GDPR Article 6 The lawful basis for processing personal data:

- (b) processing is necessary for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract;
- (c) processing is necessary for compliance with a legal obligation to which the parties are subject; and
- (e) processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller.

[The governing legislation is the Apprentices Act 1961].

Education and Skills Funding Agency

43.2 In respect of special categories of personal data, UK GDPR Article 9 ground:

- (b) processing is necessary for the purposes of carrying out the obligations and exercising specific rights of the controller or of the data subject in the field of employment and social security and social protection law in so far as it is authorised by [domestic law] or a collective agreement pursuant [to domestic law] providing for appropriate safeguards for the fundamental rights and the interests of the data subject; and
- (h) processing is necessary for the purposes of preventive or occupational medicine, for the assessment of the working capacity of the employee, medical diagnosis, the provision of health or social care or treatment or the management of health or social care systems and services on the basis of [F5domestic law] or pursuant to

contract with a health professional and subject to the conditions and safeguards referred to in paragraph 3.

- 43.3 For information shared or provided for fraud, law enforcement and prevention and detection of crime purposes, the lawful basis will be legal obligation. Requests will be actioned in accordance with Data Protection Act 2018 Schedule 2, Part 1.
- 43.4 In respect of special categories of personal data, UK GDPR Article 9 ground: 2 (f) processing is necessary for the establishment, exercise or defence of legal claims or whenever courts are acting in their judicial capacity.
- 43.5 In respect of special categories of personal data, Data Protection Act 2018 Schedule 1, Part 2, (10) Preventing or detecting unlawful acts; (11) Protecting the public against dishonesty etc; (12) Regulatory requirements relating to unlawful acts and dishonesty etc; and/or (14) Preventing fraud.

#### **44. DATA USE PROVISIONS AND DATA QUALITY**

- 44.1 The disclosing party is responsible for the quality of the data they are sharing.
- 44.2 Before sharing data, the disclosing party will check that the data being shared is accurate valid, reliable, timely, relevant, complete and up to date to the best of their knowledge. If sensitive data is being shared, which could harm the data subject if it was inaccurate, then particular care must be taken.
- 44.3 The parties shall ensure that the shared personal data remains confidential and that no one, including any member of any party's staff, workers or otherwise, has access to the shared personal data other than those directly involved in, or connected with, the agreed purposes.
- 44.4 The data processor shall at the request of the data controller demonstrate that the concerned persons under the data processor's authority are subject to the abovementioned confidentiality.

#### **45. CATEGORIES OF DATA SUBJECT**

- 45.1 Applicants and offer holders of Chartered Manager Degree apprenticeship programmes. Employers and provider staff contacts.



**46. CATEGORIES OF PERSONAL DATA**



46.1 At the application stage, the data processor will be required to process the following personal data on the data controller's behalf, for:

- CVs of applicants
- Evidence of Qualifications, to include certificates
- Cover Letters of applicants
- Personal Statements of applicants
- Statement of interest of applicants
- Application to Study form of applicants
- Eligibility Checklist and Declaration
- Assessment Feedback
- Interview Feedback
- Examination scripts and results of any additional tests required to be undertaken by applicants as part of the recruitment process
- List of successful applicants

The above may contain all or part of the following datasets:

- Name
- contact details (including residential address, telephone number and email address)
- Country of residence
- Date of birth and age
- National Insurance Number
- passport number
- Educational achievements
- career history
- personal qualities
- Skills
- Competencies & achievements
- Interests & hobbies
- Non-academic achievements
- Professional qualifications
- Languages spoken
- Driving licence status
- Photo

In addition to information collected at application stage the data processor will be required to process the following personal data on the data controller's behalf, for apprenticeship programme delivery relating to:

Apprentices:

- Unique Learner Number
- Previous work experience
- Name of Employer
- Address of Employer
- Name of Degree Apprenticeship Programme
- Programme Start Date
- Designated employer office address
- Funding eligibility
- Next of Kin Emergency Contact Details (to include name, address, telephone number and email address)
- Mitigating Circumstances
- Academic Progression Monitoring (to include attendance and assessment outcomes)

Employer:

- Line Manager Name
- Line Manager Email Address
- Line Manager Contact Phone Number
- Mentor/Practice Educator Name
- Mentor/Practice Educator Email Address
- Mentor/Practice Educator Contact Number
- Apprenticeship Lead Name
- Apprenticeship Lead Email Address
- Apprenticeship Lead Contact Phone Number

Provider:

- Apprenticeship Tutor Name
- Apprenticeship Tutor Email Address
- Apprenticeship Tutor Phone Number
- Academic Tutor Name
- Academic Tutor Email Address
- Academic Tutor Telephone Number
- Programme Manager Name
- Programme Manager Email Address
- Programme Manager Telephone Number
- Academic Lead Name
- Academic Lead Email Address
- Academic Lead Telephone Number

46.2 For fraud, law enforcement and prevention and detection of crime purposes, the parties will specify as part of the request.

#### **47. SPECIAL CATEGORIES OF PERSONAL DATA**

47.1 At application and apprenticeship programme delivery stages, the data processor will be required to process the following special category personal data on the data controller's behalf, for:

- DBS / Safeguarding Check
- Occupational Health Check

The above may contain all or part of the following datasets:

- Nationality
- Ethnicity
- Gender / Legal Sex
- Disability Requirements
- Medical Conditions
- Care Leaver status
- Learning difficulties

47.2 None for monitoring and reporting purposes.

47.3 For fraud, law enforcement and prevention and detection of crime purposes, the parties will specify as part of the request.

#### **48. MONITORING AND REPORTING DATA**

48.1 Monitoring and reporting the progress of functional skills and apprenticeship learning against targets (Self Declaration Forms) are required to be provided by the data processor to the data controller on a monthly basis.

#### **49. SECURITY MEASURES**

49.1 Data controllers and data processors are obliged under Article 32 to put in place appropriate technical and organisational measures to ensure the security of any personal data they process which may include, as appropriate:

- encryption and pseudonymisation;
- the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services;
- the ability to restore access to personal data in the event of an incident; and
- processes for regularly testing and assessing the effectiveness of the measures.

49.2 All shared personal data shall be encrypted and transferred by secure methods approved by both parties.

49.3 It is the responsibility of each party to ensure that its staff members are appropriately trained to handle and process the shared personal data in accordance with the technical and organisational security measures set out in this schedule, together with any other applicable laws and guidance.

49.4 Personal or special category data for law enforcement, prevention and detection of crime or fraud should be sent via secure file transfer portal. In this event the data controller will arrange for the data processor to access the portal. Once the information has been downloaded by the recipient, the discloser will delete the data from the portal.

## **50. DATA TRANSFER AND ACCESS REQUIREMENTS**

50.1 The data processed (detailed under s8 and 9 of this schedule) is to be shared with each party via Secure File Transfer using/uploading to the D Approval System (DAS). Once the information has been downloaded by the recipient the discloser can then remove the data from the system

50.2 Data will be shared as required throughout the duration of the contract.

50.3 Access will be limited to the parties approved personnel.

50.4 Access to personal data can be withdrawn, if access is no longer necessary, and personal data shall consequently not be accessible anymore to those persons.

50.5 The parties may share personal data with permitted recipients where applicable by law or in line with the requirements of s6 of this schedule.

## **51. RETENTION**

51.1 Personal information for the purpose of this processing will be kept by the parties for 7 years following the date of the apprentice's end point assessment, unless otherwise permitted or obligated by statute or common law.

## **52. STORAGE**

52.1 Personal data is securely stored on data controllers and data processors systems.

52.2 Personal data will not be stored outside of the UK or EU, unless where adequacy can be demonstrated.

## **53. DELETION**

53.1 On termination of the provision of personal data processing services, the data processor shall be under obligation

53.2 to delete all personal data processed on behalf of the data controller, unless otherwise permitted or obligated by statute or common law; and certify, in writing or via email to the data controller that it has done so.

53.3 The parties will securely dispose personal data in line with the specified retention period. Disposal for paper copies should be via confidential waste, and permanent deletion from the parties live and back-up systems for electronic data.

53.4 Deletion of personal data should be done in a secure manner, in accordance with the security requirements of Article 32 UK GDPR.

## **54. DATA SUBJECTS' RIGHTS (INDIVIDUAL RIGHTS REQUESTS)**

54.1 The parties each agree to provide such assistance as is reasonably required to enable the other Parties to comply with Individual Rights Requests within the time limits imposed by UK data protection legislation.

54.2 The data processor will take appropriate technical and organisational measures to help the data controller respond to requests from individuals to exercise their rights.

54.3 The data processor shall, insofar as this is possible, assist the data controller in compliance with individual rights under UK GDPR.

54.4 Each party shall:

- promptly inform the other party about the receipt of any Individual Rights Request (within 48 Hours);
- not disclose or release any shared personal data in response to an Individual Rights Request, without first consulting the other party wherever possible.

54.5 Each party is responsible for maintaining a record of individual requests for information, the decisions made and any information that was exchanged. Records must include copies of the request for information, details of the data accessed and shared and, where relevant, notes of any meeting, correspondence or phone calls relating to the request.

## **55. BREACH REPORTING**

55.1 Considering the nature of the processing and the information available, the data processor must assist the data controller in meeting its obligations to:

- keep personal data secure;
- notify personal data breaches to the data controller, immediately/without undue delay of awareness to allow the data controller to comply with the requirement to notify the ICO (where appropriate) within the 72-hour deadline.
- notify personal data breaches to data subjects only if instructed by data controller;
- carry out data protection impact assessments (DPIAs) when required; and;
- consult ICO where a DPIA indicates there is a high risk that cannot be mitigated.

55.2 In the event of a dispute or claim brought by a data subject or the ICO concerning the processing of shared personal data against either or both parties, the parties will inform each other about any such disputes or claims, and will cooperate with a view to settling them amicably in a timely fashion.

55.3 The parties agree to respond to any generally available non-binding mediation procedure initiated by a data subject or by the ICO. If they do participate in the proceedings, the parties may elect to consider participating in any other arbitration, mediation or other dispute resolution proceedings developed for data protection disputes.

55.4 Each party shall abide by a decision of a court in England or Wales or the ICO in relation to a dispute arising under this agreement.

## **56. AUDITS AND INSPECTIONS**

56.1 The data processor shall make available to the data controller all information necessary to demonstrate compliance with the obligations laid down in Article 28 UK GDPR and allow for and contribute to audits, including inspections, conducted by the data controller or another auditor mandated by the data controller.

56.2 The data processor shall be required to provide the supervisory authority, which pursuant to applicable legislation have access to the data controller's and data processor's facilities, or representatives acting on behalf of such supervisory authorities, with access to the data processor's physical facilities on presentation of appropriate identification.

#### **57. ANY OTHER SPECIFIC REQUIREMENTS REGARDING DATA PROTECTION**

57.1 None.

#### **58. INDEMNITY**

58.1 The data processor shall indemnify the data controller against any losses, damages, cost or expenses incurred by the data controller arising from, or in connection with, any breach of the data processors obligations under this schedule.

#### **59. WAIVER**

59.1 No failure or delay by a party to exercise any right or remedy provided under this schedule or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

#### **60. GOVERNING LAW & JURISDICTION**

60.1 Any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this schedule or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

60.2 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 schedule or its subject matter or formation.

#### **61. REVIEW/ VARIATION/ TERMINATION**

61.1 No variation of this schedule shall be effective unless it is in writing and signed by the parties.

61.2 If, during the term of this schedule, UK data protection legislation changes in a way that this schedule, is no longer adequate for the purposes of governing lawful data sharing exercises, the parties shall enter into good faith negotiations to review this schedule to ensure continued lawfulness.

61.3 The schedule will expire in line with the contract.