

# CONDITIONS

## DEFINITIONS AND INTERPRETATION



1.1 The following definitions and rules of interpretation set out below shall apply in these Conditions and form part of the Agreement:

**"Additional Funding"** means either funding for Learners in need of Functional Skills or additional Learner Support.

**"Agreed Purpose"** as set out in clause 24.5.

**"the Agreement"** means the Apprenticeship Training Agreement for non-levy or micro employers to which these Conditions form part by reference.

**"Agreement Details"** means the Agreement Details section at the front of the Agreement.

**"Apprenticeship"** means the training and employment of a Learner in accordance with the ESFA Rules.

**"Apprenticeship Service Account"** means the Client's apprenticeship service account under the ESFA Rules.

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

**"Apprenticeship Vacancies"** means any vacancies which the Client is looking to fill by way of offering Apprenticeships.

**"Awarding Organisation"** anybody authorised from time to time to award the Qualifications.

**"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 9.00 am to 5.00 pm on any Business Day.

**"Candidates"** means learners registered with the Provider on a Provider's qualification, accreditation or quality assured programme (QAP) resulting in certification.

**"Client"** being the Client named in the Agreement or any Group Company as defined in these conditions.

**"Client Group Companies"** the Client and its Parent Undertaking or its Subsidiary or a Subsidiary of its Parent Undertaking. "Parent Undertaking" and "Subsidiary" shall have the meanings attributed to them in Sections 1159 and 1162 of the Companies Act 2006.

**"Client's Equipment"** means any equipment, systems, cabling or facilities provided by the Client and used directly or indirectly in the supply of the Services.

**"Client's Representative"** means the individual nominated by the Client and whose name is in the Agreement and who shall have overall responsibility for monitoring the delivery of the Services under the Agreement. The individual may change from time to time and the Provider should be notified of such change as soon as practicable.

**"Client Sites"** means any of the Client's premises in the United Kingdom.

**"Cohort Year"** means the respective year from 1 August to 31 July in which the Relevant Learners are planned to achieve.

**"Commencement Date"** shall be the Commencement Date set out in the Agreement.

**"Completion Payment"** the payment of 20% of the charges for each Apprenticeship which under the ESFA Rules is only paid once a learner sits their final exam/assessment.

**"Connected"** as defined in sections 1122 and 1123 of the Corporation Taxes Act 2010.

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

**Data Controller, Data Processor, Data Subject and Personal Data, Sensitive Personal Data, Special Category Personal Data, Processing, Right to Object and appropriate technical and organisational measures shall have the meanings given to them under Data Protection Law.**

**"Data Discloser"** means the Party who discloses Personal Data to the other under or in connection with this Agreement.

**"Data Protection Authority (DPA)"** means the relevant data protection authority in the territories where the Parties to the Agreement are established, here the Information Commissioner's Office (ICO).

**"Data Protection Law"** means the UK GDPR as defined in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018 ("DPA 2018"), and any national laws or regulations implementing or constituting a replacement or successor data protection regime to that governed by the UK GDPR (including the Data Protection Act 2018).

**"Data Receiver"** means the Party who receives the Personal Data from the other under or in connection with the Agreement.

**"Data Security Breach"** means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to the Shared Personal Data.

**"Digital Account"** means the Client's digital account held in accordance with ESFA Rules which may from time to time be used by the Client and any of the Client's Group Companies, as defined above.

**"End Point Assessment Organisation"** means an approved organisation on the ESFA's Register of End Point Assessment Organisations for an applicable Apprenticeship Standard.

**"ESFA"** means the Education & Skills Funding Agency.

**"ESFA Rules"** means the ESFA's funding rules as contained in: Apprenticeship funding and performance management rules for main providers August 2021 to July 2023 dated July 2022 as amended from time to time.

**"Fees"** shall be the Fees described in the Agreement.

**"Force Majeure Event"** means any circumstance not within a Party's reasonable control including but not limited to: (i) acts of god, flood, drought, earthquake or other natural disaster; (ii) terrorist attack, civil commotion or riots, war, threat of or preparation for war; (iii) nuclear, chemical or biological contamination; (iv) any law or any action taken by a government or public authority; (v) collapse of buildings, fire, explosion or accident; (vi) any labour or trade dispute, strikes, industrial action or lockouts (other than in each case by the Party seeking to rely on clause 14 of the Agreement, or companies in the same group as the Party); (vii) non-performance by suppliers or sub-contractors other than by companies in the same group as the Party seeking to rely on this clause; and (viii) interruption or failure of utility services.

**"Functional Skills"** means Functional Skills for the purposes of the ESFA.

**"Funding"** means all grants, monies or other funding provided by the Funding Bodies and made available (subject to the Guidelines) to The Provider as agent of the Client to enable the Client to give Learners access to the Training Programme, including funding via the Client's Digital Account.

**"Funding Bodies"** means (i) the ESFA, (ii) Skills Development Scotland, (iii) Education Funding Agency and/or (iv) Welsh Assembly Government and all successor bodies and organisations with which the Provider is accredited as a body able to provide the relevant qualifications, courses and/or training and **"Funding Body"** means any one of them.

**"Guidelines"** means the rules, regulations and guidelines issued by the Funding Bodies from time to time in relation to the Qualifications.

**"ILR"** means the individualised learner record which the Provider submits to the ESFA.

**"Individual Learning Plan"** means in relation to each Learner, a plan agreed between the Client, the Provider and the Learner (Individual Learner Journey) setting out how the Learner will develop the skills required under the Apprenticeship Standard.

**"Initial Period"** means the Initial Period specified in the Agreement.

**"Initial Term"** shall have the meaning given to it in clause 2.2.

**"In-put Material"** means all documents, information and materials provided by the Client relating to the Services, including details of the Learners and attendance and other records.

**"Intellectual Property Rights"** means patents, rights to inventions, copyright and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, 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.

**"Learners"** means those individuals (including full or part time employees and volunteers) who are put forward by the Client to undertake the Training Programme who have been approved as suitable learners by the Provider and who are entitled to the Funding.

**"Learning Support"** support available for Apprentices with learning difficulties or disabilities.

**"OFSTED"** means the Office for Standards in Education, Children's Services and Skills.

**"Parties"** means the Client and the Provider jointly and severally and each may be referred to singularly as **"Party"**.

**"Provider"** the Provider named in the Agreement, or any of the Provider's Group as defined in these conditions.

**"Providers Group"** the Provider and its Parent Undertaking or its Subsidiary or a Subsidiary of its Parent Undertaking. "Parent Undertaking" and "Subsidiary" shall have the meanings attributed to them in Sections 1159 and 1162 of the Companies Act 2006.

**"Provider Materials"** means all documents, products and materials developed by the Provider or its agents, subcontractors, consultants and employees as part of or in relation to the Services in any form, including all training and assessment materials and literature and manuals.

**"Qualifications"** means any qualifications certified by an Awarding Organisation and offered for training by the Provider from time to time, including without limitation, any NVQs, Certificate and Diploma level qualifications, Apprenticeships and Functional Skills qualifications.

**"Relevant Learners"** means Learners who are enrolled on a Training Programme.

**"Requisite Qualities"** means a clean disciplinary record, good time keeping and attendance record, full commitment to development and progression and commitment to complete the Training Programme in the requisite timescales.

**"Run-Off Term"** shall have the meaning given to it in clause 2.3 below.

**"Services"** shall be the Services set out in the Agreement.

**"Shared Personal Data"** means the Personal Data and Sensitive Personal Data/ Special Category Data to be shared between the Parties under clause 4 of the Agreement.

**"Subject Access Request"** has the same meaning as "Right of access to personal data" in section 7 of DPA 2018.

**"Term"** means the Initial Term and any Run-Off Term.

**"Training Event"** means all training, including but not limited to enrolment, taking tests, self-study, Functional Skills, progress meetings etc, undertaken in a classroom, workshops or online.

**"Training Plan"** means in relation to each Learner a plan agreed between the Employer, the Provider and the Learner setting out how the Learner will develop the skills required under the Apprenticeship Standard or such other form as the Provider may specify to comply with the ESFA Rules.

**"Training Programme"** means the programme of training and assessment as set out in Appendix 1 of the Agreement (or as amended by agreement between the Parties in writing from time to time) agreed to be provided by the Learners by the Provider to enable them to achieve the relevant Qualifications which for the avoidance of doubt shall include the Functional Skills of literacy, numeracy and ICT.

**"Transferred Levy Funds"** means levy funding provided by the ESFA which is transferred from one employer to another employer as permitted under the ESFA Rules.

**"Unfunded Fees"** means any fees which are not covered by Funding

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

1.2 Appendices, Clause, Schedule and paragraph headings shall not affect the interpretation of the Agreement.

1.3 **A person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.4 The Schedules (if relevant) form part of the Agreement and shall have effect as if set out in full in the body of the Agreement. Any reference to these Conditions or the Agreement includes the Schedules/Appendices.

1.5 A reference to a **holding company** or a **subsidiary** means a holding company or a subsidiary(as the case may be) as defined in section 1159 of the Companies Act 2006 and a company shall be treated, for the purposes only of a membership requirement contained in sections 1159(1)(b) and (c), as a member of another company even if its shares in that company are registered in the name of (a) another person (or its nominee) by way of security or in connection with the taking of security, or (b) its nominees.

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 The Agreement shall be binding on, and endure to the benefit of, the Parties to the Agreement and their respective personal representatives, successors and permitted assignees, and references to any Party shall include that Party's personal representatives, successors and permitted assignees.

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** includes 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 the Agreement or to any other agreement or document referred to in the Agreement is a reference to the Agreement or such other agreement or document varied or novated (in each case, other than in breach of the provisions of the Agreement) from time to time.

1.14 References to clauses and Schedules are to the clauses and Schedules of the Agreement and reference to paragraphs are to paragraphs of the relevant clauses and Schedules.

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 the Agreement.

## 2 COMMENCEMENT AND DURATION

2.1 During the Term the Provider shall provide the Services to the Client in accordance with these Conditions.

2.2 Subject to clause 2.3, the Agreement shall commence on the Commencement Date and shall continue, unless terminated earlier in accordance with its terms, expiring on or after the Initial Period (the **"Initial Term"**) or until either Party gives to the other not less than 6 months' written notice to terminate.

2.3 No new Learners will be enrolled on a Training Programme by the Provider after expiry of the Initial Term (unless otherwise agreed) but to the extent that Learners are enrolled on a Training Programme prior to the end of the Initial Term, then the Agreement shall continue in full force and effect in respect of such Learners for the duration of their Training Programme (the **"Run-off Term"**).

## 3 Provider's Responsibilities

3.1 deliver the Training Programme to the Learners identified to the Provider (including by way of e-learning and distance learning).

3.2 prepare and distribute the Individual Learning Plan and Training Plan at the outset of each Learner's programme.

3.3 provide the Provider Materials to the Learners to help them achieve the Qualifications.

3.4 where applicable, apply on behalf of the Client for any available Funding from the Funding Bodies and use its reasonable endeavours to secure on behalf of the Client any Additional Funding required for the provision of the Training Programme.

3.5 work collaboratively with the Client to help the Client align its internal practices and procedures to meet with Funding Body requirements and Guidelines as amended from time to time.

3.6 offer to advertise all new Apprenticeship Vacancies on the Recruit an Apprentice Service Website, and both Parties to fulfil their responsibilities in relation to the recruitment of Learners and as set out in the Recruitment Terms of Business, where applicable.

3.7 confirm that each Learner has an Apprenticeship Agreement prior to the start of an Apprenticeship.

3.8 discuss the training needs of the Learner against the Learner's role specification (if applicable) with the Client to enable the Client to explain the appropriate Qualification to the Learner and to enhance delivery of the Training Programme.

3.9 in respect of Apprenticeships, deliver the Training Programme over a minimum period of 372 days for Apprenticeship Standards before the final End Point Assessment can be completed;

3.10 register the Learners with the appropriate Awarding Organisation where a Qualification is being sought.

3.11 monitor, supervise and support the Learners in the course of the provision of the Training Programme including providing an initial induction and assessment and checking Learners' portfolios at appropriate intervals to ensure that they meet the criteria of the relevant Awarding Organisation.

3.13 submit progress reports to the Client at agreed intervals and in a format to be agreed between the Parties acting reasonably.

3.14 arrange and send to the relevant Awarding Organisation all of the course work completed by the Learners that is required for the relevant Qualification and/ or certification to be awarded by the Awarding Organisation.

3.15 where a Learner is identified as having additional learning needs, the Provider will be provided with a diagnostic assessment report to support the requirement and arrange additional monthly visits by the learning support coach.

3.16 complete individual Health and Safety assessments at all Client Sites prior to enrolment of Learners (such assessments to be renewed if appropriate) to ensure that the Learners are safe in their workplace in accordance with the Guidelines; such assessment to include the examination of relevant insurance policies to ensure that there is appropriate cover in place.

3.17 when relevant, contract with an organisation which will carry out the final assessment for the Learner (End Point Assessment Organisation (EPAO)) of the Client's choosing, and agree with it the arrangements for end-point assessments, re-takes and payments and for this purpose the Client shall choose an End Point Assessment Organisation reasonably acceptable to the Provider within 14 days of the Provider requiring it to do so (and if the Client shall fail to do so the Provider is hereby authorised in the name and on behalf of the Client to choose such End Point Assessment Organisation as the Provider thinks fit) make payment to the End Point Assessment Organisation for conducting the end point assessment and keep records of all such payments.

## 4 CLIENT'S OBLIGATIONS

4.1 The Client acknowledges and understands that the Provider will be using Funding (in whole or in part) to provide vocational training to the Learners and will necessitate access to the Learners and Client Sites as and when required so that:

4.1.1 the Provider may access the appropriate Funding;

4.1.2 the Provider may undertake training and verification activities; and

4.1.3 Funding Bodies and OFSTED may verify that Funding is being used appropriately.

4.2 The Client shall:

4.2.1 co-operate with the Provider in all matters relating to the Services including providing any assistance which the Provider may require in connection with any audit by any Funding Body;

4.2.2 ensure that the Provider can meet with Learners for an initial assessment and then at such times locations and frequency as necessary, in the reasonable opinion of the Provider, to enable the Learner to complete the programme in a timely manner and in accordance with the Training Programme;

4.2.3 inform the Provider of all health and safety rules and regulations and any other reasonable security requirements that apply at any of the Client's Sites;

4.2.4 ensure that all the Client's Equipment is in good working order and suitable for the purposes for which it is used in relation to the Services and conforms to all relevant United Kingdom standards or requirements;

4.2.5 obtain and maintain all necessary licences and consents in relation to the Services before the date on which the Services are to start;

4.2.6 comply with all relevant legislation in relation to the Services (including without limitation, any legislation relating to health and safety and data protection (with respect to the In-put Material)) and any requirements of the Funding Bodies (with regards to health and safety or otherwise);

4.2.7 obtain and maintain any relevant insurances (including but not limited to employers' liability insurance, public liability) with a reputable insurer up to a limit of indemnity in accordance with normal industry practice and send the Provider copies of all relevant insurance certificates each time there is a renewal;

4.2.8 promptly pay all sums owed to the Provider in relation to the Apprenticeship including the full difference between band maximums and agreed prices or for any mandatory co-investment;

4.2.9 if required, work in conjunction with the Provider to appoint an End Assessment Organisation to deliver end-point assessment from the Register of End Point Assessment Organisations and the Client hereby appoints the Provider to record the required details of the Apprenticeship with the ESFA;

4.2.10 ensure that they have sufficient trained staff who can access and update their Digital Account to ensure that Learners are promptly and diligently entered onto the Digital Account and to ensure that all processes are carried out in a timely manner to enable the Provider to drawdown Funding as and when it is due;

4.2.11 ensure that they have sufficient trained staff and that they have the time available to provide the mentoring support to the Learners to enable the Learner to progress, in accordance with the Training Programme;

4.2.12 use best endeavours to ensure Learners attend all training and meetings with the Provider including virtual/online courses and face to face workshops;

4.2.13 ensure Learners have the required equipment to undertake the programme which includes access to a suitable laptop, desktop or tablet to allow access to online content and remote delivery of the Programme;

4.2.14 provide, in a timely manner, such In-Put Material and other information as the Provider may require and ensure that it is accurate and in all material respects;

4.2.15 use best endeavours to support the Learner, during their End Point Assessment, ensuring assessment dates are not cancelled and the Learner has the permitted time to produce assignments and projects as required;

4.2.16 promptly confirm with the ESFA any spending of funds from the Digital Account;

4.2.17 fulfil its obligations in relation to recruitment of Learners, as set out in the Recruitment Terms of Business;

4.2.18 ensure Learners have a mentor assigned to them;

4.2.19 use best endeavours to ensure that all mentors and Learners attend and complete all progress reviews (minimum every 12 weeks) and that all progress reviews are completed to the satisfaction of the Provider;

4.2.20 accept full responsibility for a Learner's safety, ensuring all Learners have received all relevant health and safety training and the working environment is safe and at all times Learners are supervised by a suitably qualified/experienced person;

4.3 To allow the Provider to carry out the Services, the Client shall:

4.3.1 nominate Learners in line with the agreed approved profile request;

4.3.2 be responsible for ensuring that Learners have the requisite qualities;

4.3.3 take all reasonable steps to ensure that a Learner completes the Training Programme and does not do anything to prevent commencement or completion of the Training Programme by the Learner;

4.3.4 unless previously disclosed to the Provider with the Provider's written consent, ensure that no other body or organisation provides services the same as or similar to the Services to the Client or its employees during the term of the Agreement;

4.3.5 ensure all Learners enrolled with the Provider under the Agreement are working with the Client for a minimum of 30 hours per week (and ideally more than 30 hours per week) to ensure eligibility for Funding and to the extent that the Learner is working less than 30 hours per week then the period of the Apprenticeship shall be extended accordingly;

4.3.6 as a minimum, pay all Learners a weekly or monthly salary at rates in line with those specified for apprentices by the Department for Business, Innovation and Skills from time to time, rising to the appropriate national minimum wage after 12 months for all Learners who are 19 or over and account for all PAYE, National Insurance contributions and other statutory deductions in respect of such payments to Learners. For the avoidance of doubt, Funding cannot be used in whole or in part to pay Learner salaries. Evidence of such salary must be provided to the Provider upon request;

4.3.7 ensure that processes and procedures are in place for risk assessment, full learner induction, ongoing health and safety training for Learners (including job specific training) and that any PPE is provided (and Learners are trained on its use);

4.3.8 implement any proposals or guidance given by the Provider in relation to the Client's personnel whilst they are on the Provider's premises or at any other venue organised by the Provider;

4.3.9 procure that any Learner complies with all directions issued by the Provider's personnel whilst they are on the Providers premises or at any other venue organised by the Provider;

4.3.10 ensure that the Learner is spending at least 6 hours per week on off the job learning and experience and allow sufficient time for the Learner to undertake English and math's as required (this is in addition to and not to form part of the off the job learning). Off the job training includes but is not limited to all the Client mentoring and self-study time as set out in the Training Programme;

4.3.11 notify the Provider as soon as possible if they become aware that any Learner is already in receipt of funding not sourced through the Provider;

4.3.12 not apply directly for Funding from any Funding Body after the Commencement Date in respect of the Learners;

4.3.13 when Learners are transferring from another training Provider the Client must ensure that there are no shortfalls in their Digital Account. Where there are any shortfalls, the Client agrees to pay the Provider the amount of this shortfall. The Client will then seek to recover such shortfall from the previous Provider;

4.3.14 in any circumstance where the Client may loan the Provider equipment the Client needs to ensure they have insurance to cover for the loss or damage of

such equipment. The Client also gives the Provider permission to use such equipment to support the delivery of training to Learners of other employers.

4.4 In accordance with the ESFA Rules, the Client warrants that it shall indemnify the Provider against any loss, damages, costs, claims and expenses suffered or incurred by the Provider as a result of the Client incorrectly informing the Provider that they have fewer than 50 employees.

4.5 The Client shall not, without the prior written consent of the Provider, at any time during the Term and for a period of 6 months after the termination of the Agreement:

4.5.1 solicit or entice away from or employ or attempt to employ any person who is, or has been, engaged as an employee, consultant or subcontractor of the Provider in the provision of the Services; and/or

4.5.2 represent itself to any third party as Connected with any member of the Provider's Group in any capacity.

## 5 INFORMATION OBLIGATIONS

The Client shall:

5.1 ensure that the Provider is informed in writing of any Learner leaving a Training Programme for any reason as soon as reasonably practicable and in any event within five Business Days of the Learner leaving the Training Programme.

5.2 provide any agreed training and training materials to the Learners to support them in completing the Training Programme and achieve the Qualifications.

5.3 keep detailed, up to date and accurate records of the attendance of Learners and provide the Provider with such records at such intervals as the Provider may from time to time require (in an agreed format).

5.4 provide details of the Client Sites (if not already provided) to the Provider and update the Provider as soon as possible if there are any changes to those sites or additional premises.

5.5 notify the Provider as soon as possible if a decision is made to take disciplinary action against a Learner or if a Learner is involved in an accident or other dangerous occurrence and provide such assistance as is reasonably required by the Provider to investigate such incident.

5.6 allow the Provider reasonable and regular access to and to contribute to all methods of communication employed by the Client including but not limited to, newsletters, intranet, website, team meetings, company publications and training materials.

## 6 ACCESS AND MONITORING OBLIGATIONS

The Client shall:

6.1 allow the Provider and its agents, subcontractors, consultants and employees full access by reasonable appointment and at no charge during Business Hours and on Business Days to each of the Client Sites for the purposes of monitoring, auditing and assessing the work of any or all of the Learners.

6.2 allow any Awarding Organisation, Funding Body, OFSTED or any inspector or auditor duly appointed by any of the foregoing full access during Business Hours and on Business Days to each of the Client Sites for the purposes of monitoring, auditing and assessing the work of any and all of the Learners, apprentice development coaches and Client's Representative and in doing so, the Client shall comply with the reasonable directions (if any) of such organisation or individual.

## 7 FEES, PAYMENT AND PENALTIES

7.1 Fees shall be payable for the Services as set out in Appendix 2 of the Agreement and the Client agrees to sign a Direct Debit mandate which is sent at the same time as the Agreement for completion and signature.

7.2 To the extent that Funding is available for a Learner, that element of the Fees for which such Funding is available shall be satisfied by the Provider claiming such amount from the Client's Digital Account or from the relevant Funding Body on behalf of the Client.

7.3 To the extent that Fees are not actually paid to the Provider directly by the ESFA or from the Digital Account, or if the Services are not Levy Funded, the Provider shall invoice the Client for the Charges monthly for services rendered before the end of the previous month and the Provider shall collect payment by Direct Debit for such invoices 28 days after the invoice date provided however that the Provider shall only be entitled to the Completion Payment once the Learner has sat their final exam/assessment.

7.4 To the extent that there are Unfunded Fees payable in respect of the Learner then these shall be paid by the Client in accordance with the remaining provisions of this clause 5.

7.5 All amounts payable by the Client exclude amounts in respect of value added tax (VAT), which the Client shall additionally be liable to pay to the Provider at the prevailing rate (if applicable), subject to receipt of a valid VAT invoice.

7.6 The Provider shall submit invoices for the Unfunded Fees plus VAT (if applicable) to the Client at the intervals specified in Appendix 2 of the Agreement.

7.7 The Provider shall collect payment by Direct Debit for each invoice due and submitted to the Client by the Provider 28 days after the invoice date. Where the Client does not want to utilise the Direct Debit process to collect, which will have to be agreed in advance, there will be a £25 plus VAT admin fee for each invoice raised. The Client may wish to pay the whole of the co-investment in advance of the Learner commencing the Training Programme.

7.8 In the event any Learner or if relevant, the Learner's line manager or mentor fails to attend a planned Training Event, for any reason, the Client agrees to pay the Provider £195 per learner. If the Provider has to run additional Training Events in addition to those set out in the Training Plan as a result of cancelled Training Events or if the client requests additional Training Events, the Client agrees to pay the Provider £195 per half day per Learner per Training Event.

7.9 If any Learner leaves their Training Programme after 90 days from their start date for any reason (an "Early Leaver") then the Client agrees to pay the Provider



£150 per Early Leaver at the time such Early Leaver leaves the Training Programme.

7.10 If any Learner leaves within 90 days of commencing the Training Programme for any reason the Provider shall be entitled to charge the Client £750 per Learner. It is essential the Client checks and ensures the Learner understands and is committed to the full duration of the Training Programme.

7.11 If the Learner is required to re-take/re-sit the End Point Assessment the Client will be charged the fee payable to the End Point Assessment Organisation and any other costs related to the End Point Assessment re-take/re-sit. This includes End Point Assessment cancellation fees and any other additional charges raised by the End Point assessment Organisation above the normal agreed fees. In respect of Learners utilising the Provider facilities (buildings, classrooms, etc) an additional facility fee of £250 will be charged. If the Learner has to return to the Provider from the End Point Assessment Organisation to undertake an additional Training Event to re-take/re-sit their End Point Assessment, the Client agrees to pay an additional charge of £195 per half day.

7.12 To the extent that 20% or more of the Relevant Learners in any Cohort Year become Early Leavers then the Provider shall be entitled to charge the Client an amount equal to:

7.12.1 25% of the Fees that would have been received by the Provider in respect of those Early Leavers from the relevant Funding Body; and

7.12.2 if the Client has not acted in good faith or acted deliberately, either directly or indirectly to remove Learners from the Training Programme the Client agrees to pay the Provider 40% of the Fees that would have been received by the Provider of those Early Leavers from the relevant Funding Body;

7.12.3 Any Unfunded Fees which would have been payable in respect of those Early Leavers until their planned end date had they completed the Training Programme and gained the Qualifications. This is in recognition of (i) the commitment of the Provider; (ii) the importance of the Learners achieving the Qualifications paid for by government-funded monies and (iii) the impact on the Provider if the Learners do not achieve in line with minimum national standards.

7.13 If the number of Learners that actually commence the Training Programme is 10% less than the number indicated in the Initial Profile, then the Provider shall be entitled to charge the Client an amount equal to 10% of the Fees which would have been received by the Provider from the relevant Funding Body in respect of the Learners who did not start the Training Programme.

7.14 If the Client fails to make any payment due to the Provider under the Agreement by the due date for payment, then, without limiting the Provider's remedies under this agreement:

7.14.1 The Client shall pay interest on the overdue amount at the rate of 4% per annum above Barclays Bank's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Client shall pay the interest together with the overdue amount;

7.14.2 The Provider may suspend all Services until payment has been made in full.

7.15 All amounts due under the Agreement shall be paid by the Client to the Provider in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

7.16 Where a Learner requires overnight accommodation to attend training courses at the Derby academy facilities, the Client is responsible for paying these costs directly with the hotel.

7.16 The Provider is not responsible for providing lunches for Learners. For Learners attending the Derby academy facilities there are third party food vans and local shops available to obtain lunch. The Client will need to decide to what extent they will fund or reimburse their own Apprentices.

## **8 INTELLECTUAL PROPERTY RIGHTS**

8.1 As between the Client and the Provider, all Intellectual Property Rights and all other rights in the Provider Materials shall be owned by the Provider. Any Intellectual Property Rights created during the course of the provision of the Services under the Agreement shall vest in the Provider. The Provider licenses all such rights to the Client free of charge and on a non-exclusive, worldwide basis to such extent as is necessary to enable the Client to make reasonable use of the Provider Materials and the Services during the Term of the Agreement. If the Agreement expires or is terminated, this licence will automatically terminate.

8.2 The Client licences use of the In-put Material to the Provider free of charge and on a non-exclusive worldwide basis to such extent as is necessary to enable the Provider to provide the Services during the Term.

8.3 The Client shall not use any trademarks or logos of the Provider without the Provider's prior written consent.

## **9 COMPLIANCE WITH LAWS AND POLICIES**

In performing their respective obligations under the Agreement, each Party shall comply with all applicable laws, statutes and regulations from time to time in force.

## **10 CONFIDENTIALITY, PUBLICITY AND THE PROVIDER'S PROPERTY**

10.1 The Client undertakes that it shall not at any time, disclose to any person the content of the Agreement or any technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Client by the Provider or the Provider's Group or any of their respective employees, agents, consultants or subcontractors and any other confidential information concerning the Provider's business or its products which the Client may obtain, except as permitted by clause 10.2.1.

10.2 The Client may disclose the Provider's confidential information:

10.2.1 to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the Client's rights or carrying out its obligations under or in connection with the Agreement. The Client shall ensure that its employees, officers, representatives or advisers to whom it discloses the Provider's confidential information comply with this clause 10; and

10.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

10.3 the Client shall not use the Provider's confidential information for any purposes other than to exercise its rights and perform its obligations under or in connection with the Agreement.

10.4 All materials, equipment, drawings, specifications and data supplied by the Provider to the Client shall, at all times:

10.4.1 be and remain the exclusive property of the Provider;

10.4.2 be held by the Client in safe custody at its own risk and maintained and kept in good condition by the Client until returned to the Provider; and

10.4.3 not be disposed of or used other than in accordance with the Provider's written instructions or authorisation.

## **11 LIMITATION OF LIABILITY**

11.1 Nothing in the Agreement shall limit or exclude the Provider's liability for:

11.1.1 death or personal injury caused by its negligence;

11.1.2 fraud or fraudulent misrepresentation; or

11.1.3 any other liability which cannot be limited or excluded by applicable law.

11.2 Subject to clause 11.1, either Party shall not be liable to the other, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Agreement for:

11.2.1 loss of profits;

11.2.2 loss of sales or business;

11.2.3 loss of agreements or contracts;

11.2.4 loss of anticipated savings;

11.2.5 loss of or damage to goodwill;

11.2.6 loss of use or corruption of software, data or information; and

11.2.7 any indirect or consequential loss.

11.3 Subject to clauses 11.1 and 11.2, the Parties total liability to the other, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Agreement shall be limited to three times the Funding and Fees received by the Provider under the Agreement.

11.4 The terms implied by sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Agreement.

11.5 The Provider makes no representation or guarantee to the Client as to the availability of or the amount of Funding which may be obtainable from the Funding Bodies.

## **12 TERMINATION**

12.1 Without affecting any other right or remedy available to it, either Party may terminate the Agreement with immediate effect by giving written notice to the other Party if:

12.1.1 the other Party commits a material breach of any of the terms of the Agreement and such breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of ten days after being notified in writing to do so;

12.1.2 the other Party repeatedly breaches any of the terms of the 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 the Agreement;

12.1.3 the other Party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

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

12.1.5 the other Party's financial position deteriorates to such an extent that in the terminating Party's opinion the other Party's capability to adequately fulfil its obligations under the Agreement has been placed in jeopardy.

12.2 Without affecting any other right or remedy available to it, the Provider may terminate the Agreement with immediate effect by giving written notice to the Client if:

12.2.1 the Client fails to pay any amount due under the Agreement on the due date for payment and remains in default not less than thirty days after being notified in writing to make such payment; or

12.2.2 if there is a change of Control of the Client;

12.2.3 the Provider's contract with the ESFA is terminated and/or the Provider loses its accreditation from the Awarding Bodies to deliver the Training Programme; or

12.2.4 Funding for a Training Programme falls by more than 5%.

## **13 CONSEQUENCES OF TERMINATION**

13.1 On termination or expiry of the Agreement:

13.1.1 the Client shall immediately pay to the Provider all of the Provider's outstanding unpaid invoices and interest and, in respect of the Services supplied but for which no invoice has been submitted, the Provider may submit an invoice, which shall be payable immediately upon receipt;

13.1.2 the Client, within a reasonable time, return all of the items referred to in clause 10.4 and Provider Materials. If the Client fails to do so, the Provider may enter the Client's sites and take possession of them. Until they have been returned or repossessed, the Client shall be solely responsible for their safe keeping; and

13.1.3 the following clauses shall continue in force: clause 8 (Intellectual Property Rights), clause 10 (Confidentiality, Publicity and the Provider's property), clause 29 (Limitation of Liability), clause 25 (Governing Law) and clause 26 (Jurisdiction).

13.2 Termination or expiry of the 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.

#### **14 FORCE MAJEURE**

Neither Party shall be in breach of the Agreement nor liable for delay in performing, or failure to perform any of its obligations under the Agreement if such delay or failure result from a Force Majeure Event.

#### **15 ASSIGNMENT AND OTHER DEALINGS**

15.1 The Agreement is personal to the Client and the Client shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under the Agreement.

15.2 The Provider may at any time assign, mortgage, charge, declare a trust over or deal in any other manner with any or all of its rights under the Agreement, provided that the Provider gives prior written notice of such dealing to the Client.

#### **16 VARIATION**

No variation of the Agreement shall be effective unless it is in writing and signed by the Parties (or their authorised representatives).

#### **17 WAIVER**

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

17.2 A failure or delay by a Party to exercise any right or remedy provided under the 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 the Agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.

#### **18 RIGHTS AND REMEDIES**

The rights and remedies provided under the Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

#### **19 SEVERANCE**

19.1 If any provision or part-provision of the Agreement is or becomes invalid or illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Agreement.

19.2 If any provision or part-provision of the 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.

#### **20 ENTIRE AGREEMENT**

20.1 the 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.

20.2 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 the Agreement. Each Party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Agreement.

#### **21 NO PARTNERSHIP OR AGENCY**

21.1 Nothing in the Agreement is intended to or shall be deemed to establish any partnership between the Parties, constitute any Party the agent of the other Party, or authorise any Party to make or enter into any commitments for or on behalf of the other Party.

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

#### **22 THIRD PARTY RIGHTS**

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

#### **23 NOTICES**

23.1 Any notice or other communication given to a Party under or in connection with the Agreement shall be in writing and shall be:

23.1.1 delivered by hand or by pre-paid first-class recorded or other next Business Day delivery service at its registered office (if a registered company or charity) or its principal place of business (in any other case); or

23.1.2 sent by email to the email address notified by either Party to the other.

23.2 Any notice or communication shall be deemed to have been received:

23.2.1 on signature of a delivery receipt;

23.2.3 If sent by email, at the time of delivery of the email transmission.

23.3 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.

#### **24 COUNTERPARTS**

24.1 the 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.

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

#### **25 GOVERNING LAW**

The 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.

#### **26 JURISDICTION**

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 the Agreement or its subject matter or formation.

#### **27 SHARING PERSONAL INFORMATION**

27.1 The Agreement sets out the framework for the sharing of Personal Data between the Parties as Data Controllers and defines the principles and procedures that the Parties shall adhere to and the responsibilities the Parties owe to each other.

27.2 The Provider is a training Provider, providing a range of services and facilities for Candidates to enable and supplement their professional development.

27.3 The Provider requires access to certain Personal Data Relating to Candidates to ensure that all Candidates are informed of and able to fully participate in the services and opportunities available.

27.4 Employees of the Provider may also access Personal Data when representing the Provider on various duties they carry out for training delivery, assessment or investigative purposes. The Agreement is required to ensure that where Personal Data may be accessed such access will, at all times, comply with the requirements of Data Protection Law.

27.5 The sharing of Personal Data is necessary to support the following Agreed Purposes of both Parties:

27.5.1 to support the efficient and effective registration of all Candidates on the Providers services;

27.5.2 to support the efficient and effective claiming of certificates for all eligible Candidates;

27.5.3 to support online or on-premises assessments of Candidates;

27.5.4 to enable effective access to management and planning of the Providers services and recourses by the Client's authorised personnel;

27.5.5 to support the inclusion of representatives of the Provider on Client visits that may include assessments of, discussions about, or the provision of data or statistics that could potentially include that of identifiable persons (including other Candidates);

27.5.6 to support any investigations or matters pertaining to malpractice or maladministration by the Client;

27.5.7 to comply with any legal obligation.

27.6 The Parties agree that the Agreement formalises a lawful transfer of Personal Data between the Parties and presents no new or additional privacy concerns. The Provider has completed a Data Protection Impact Assessment (DPIA) and maintains a Data Inventory and together they detail the lawful reasons for processing personal information; the Agreement serves to address any residual privacy or information risks and document the actions taken to identify, address and mitigate those risks wherever possible. The Parties shall not process Shared Personal Data in a way that is incompatible with the agreed purposes.

27.7 As Data Controllers both Parties remain responsible for ensuring that all uses of the Shared Personal Data comply with all applicable Data Protection and Privacy laws and regulations.

27.8 Each Party has a valid registration with the Data Protection Authority if required which, by the time that the data sharing is expected to commence, covers the intended data sharing pursuant to the Agreement.

27.9 For the purposes of Agreed Purposes as listed in clause 24.5 The following types of Personal Data may be shared between the Parties during the Term: first name; middle name(s); surname; date of birth; personal email address; work email address; home address; employer details; employer address; product code; product name; unit or module details; registration status; data pertaining to Candidate performance data including progression/assessment details; attainment/gateway/certification details; Sensitive Personal Data/Special Category Data relating to physical and mental health status to facilitate reasonable adjustments under assessment conditions.

27.10 In respect of clause 24.8, the Client will, as far as is reasonably practical, endeavour to keep all user account information up to date and accurate. Both Parties will ensure all users with access to Personal Data will handle this in the strictest confidence and in compliance with the Data Protection Laws and the terms of this Agreement.

27.11 In respect of clause 27.7, the Client will only provide Personal Data of Candidates who have consented to their information being shared with the Provider.

27.12 The Shared Personal Data must not be irrelevant or excessive with regard to the agreed purposes.

27.13 Both Parties shall, in respect of Shared Personal Data, ensure that their privacy notices are clear and provide sufficient information to Data Subjects in order for them to understand what of their Personal Data the Parties are sharing, the circumstances in which it will be shared, the purposes for the data sharing and

either the identity with whom the data is shared or a description of the type of organisation that will receive the Personal Data.

27.14 Both Parties undertake to inform Data Subjects of the purposes for which it will process their Personal Data and provide all of the information that it must provide in accordance with its own applicable laws, to ensure that the Data Subjects understand how their Personal Data will be processed.

27.15 The Client shall ensure that Shared Personal Data is accurate.

24.16 Where either Party becomes aware of inaccuracies in Shared Personal Data, they will notify the other Party within 7 days of first becoming aware.

27.17 Shared Personal Data shall be limited to the Personal Data described in clause 27.9.

27.18 The Parties shall maintain a record of Subject Access Requests, 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.

27.19 The Parties agree that the responsibility for complying with a Subject Access Request falls to the Party receiving the Subject Access Request in respect of the Personal Data held by that Party.

27.20 The Parties agree to provide such reasonable and prompt assistance (within 2 Business Days of such a request for assistance) as is necessary to each other to enable them to comply with Subject Access Requests and to respond to any other queries or complaints from Data Subjects.

27.21 The Provider shall not retain or process Shared Personal Data for longer than is necessary to carry out the Agreed Purposes.

27.22 Notwithstanding clause 27.21, the Parties shall continue to retain Shared Personal Data in accordance with any statutory or professional retention periods applicable in their respective countries and/or industry and in accordance with the data retention periods set out in the Providers Data Retention Policy.

27.23 The Provider may share the Shared Personal Data with a third party without the express written permission of the Client, providing all applicable laws pertaining to data protection are complied with.

27.24 Where data is shared with a third party, the Provider shall not disclose or transfer Shared Personal Data outside the EEA without ensuring that adequate and equivalent protections will be afforded to the Shared Personal Data.

27.25 The Provider shall ensure that any Shared Personal Data (excluding any data that the Provider is required to retain by law or other regulatory reasons) are returned to the Client or destroyed in the following circumstances:

27.25.1 on termination of the Agreement for whatever reason;

27.25.2 on expiry of the Term (unless extended further to the terms of the Agreement);

27.25.3 once processing of the Shared Personal Data is no longer necessary for the purposes it was originally shared for, as set out in clause 27.5.

27.26 The Parties agree to implement appropriate technical and organisational measures to protect the Shared Personal Data in their possession against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure, including but not limited to:

27.26.1 ensuring IT equipment, including portable equipment is kept in lockable areas when unattended;

27.26.2 not leaving portable equipment containing the Personal Data unattended;

27.26.3 ensuring that staff use appropriate secure passwords for logging into systems or databases containing the Personal Data;

27.26.4 ensuring that all IT equipment is protected by antivirus software, firewalls, passwords and suitable encryption devices;

27.26.5 Ensuring that any Sensitive Personal Data is stored and transferred (including where stored or transferred on portable devices or removable media) using industry standard 256-bit AES encryption or suitable equivalent and the information is contained within a password protected document;

27.26.6 limiting access to relevant databases and systems to those of its officers, staff, agents and sub-contractors who need to have access to the Personal Data, and ensuring that passwords are changed and updated regularly to prevent inappropriate access when individuals are no longer engaged by the Party;

27.26.7 conducting regular threat assessment or penetration testing on systems;

27.26.8 ensuring all staff handling Personal Data have been made aware of their responsibilities with regards to handling of Personal Data;

27.26.9 allowing for inspections and assessments to be undertaken by the other Party in respect of the security measures taken or producing evidence of those measures if requested.

27.27 The Parties are under a strict obligation to notify any potential or actual losses of the Shared Personal Data to the other Party as soon as possible and, in any event, within **1 Business Day** of identification of any potential or actual loss to enable the Parties to consider what action is required in order to resolve the issue in accordance with the applicable national data protection laws and guidance.

27.28 The Parties agree to provide such reasonable assistance as may be necessary to each other to facilitate the handling of any Data Security Breach in an expeditious and compliant manner.

27.29 In the event of a dispute or claim brought by a Data Subject or the Data Protection Authority 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 manner.

27.30 The Parties agree to respond to any generally available non-binding mediation procedure initiated by a Data Subject or by the Data Protection Authority. If they do participate in the proceedings, the Parties may elect to do so remotely (such as by telephone or other electronic means). The Parties also agree

to consider participating in any other arbitration, mediation or other dispute resolution proceedings developed for data protection disputes.

27.31 In respect of breaches relating to the Agreement, each Party shall abide by a decision of a competent court of the Client's country of establishment or of any binding decision of the relevant Data Protection Authority.

27.32 Each Party warrants and undertakes that it will:

27.32.1 process the Shared Personal Data in compliance with all applicable laws, enactments, regulations, orders, standards and other similar instruments that apply to its personal data processing operations;

27.32.2 make available upon request to the Data Subjects who are third party beneficiaries a copy of the Agreement unless the Clause contains confidential information;

27.32.3 respond within a reasonable time and as far as reasonably possible to enquiries from the relevant Data Protection Authority in relation to the Shared Personal Data;

27.32.4 respond to Subject Access Requests in accordance with the terms of the Agreement and in accordance with the Data Protection Law;

24.32.5 where applicable, maintain registration with all relevant Data Protection Authorities to process all Shared Personal Data for the Agreed Purpose;

27.32.6 take all appropriate steps to ensure compliance with the security measures set out in clause 27.26.

27.33 The Client warrants and undertakes that it will ensure that the Shared Personal Data shared with the Provider is accurate.

27.34 Each Party shall nominate a single point of contact within their organisation who can be contacted in respect of queries or complaints regarding the Data Protection Law and/or compliance under the terms of this Agreement. The Client contact will be the person who signs the agreement and/or any person confirmed to the Provider in writing in a timely manner. The Provider contact is:

Jo Johnson

Remit Group Limited, 4 Orchard Place, Nottingham, NG8 6PX

Tel: 0115 9759550

E-mail: [GDPR@remit.co.uk](mailto:GDPR@remit.co.uk)

## **28 INDEMNITY**

Either Party shall indemnify and keep indemnified the other against legal costs and other reasonable professional costs or compensation due to any Data Security Breaches, but excluding any indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and expenses suffered or incurred by either Party arising out of or in connection with any claim made against it in relation to any breach by either Party of Data Protection Law or other applicable law or regulations.

## **29 LIMITATION OF LIABILITY**

29.1 Nothing in the Agreement shall limit or exclude either Party's liability for:

29.1.1 fraud or fraudulent misrepresentation;

29.1.2 death or personal injury caused by its negligence;

29.1.3 any other liability which cannot be limited or excluded by applicable law.

29.2 Subject to Clause 26.1 either Party shall not be liable to the other whether in contract, tort (including negligence) for breach of statutory duty or otherwise, arising under or in connection with the Agreement for:

29.2.1 any loss of profits;

29.2.2 loss of sales or business;

29.2.3 loss of agreements or contracts;

29.2.4 loss of anticipated savings;

29.2.5 loss or damage to goodwill;

29.2.6 loss of use or corruption of software, data or information; and

29.2.7 any indirect or consequential loss.

29.3 Subject to clauses 29.1 and 29.2, the Parties total liability to the other, whether in contract, tort (including negligence), for the breach of statutory duty, or otherwise, arising under or in connection with the Agreement shall be limited to three times the Funding and Fees received by the Provider under this Agreement.

29.4 The terms implied by sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Agreement.

29.5 The Provider makes no representation or guarantee to the Client as to the availability of or the amount of funding which may be obtainable from the Funding Bodies.

## **30 THIRD PARTY RIGHTS**

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

## **31 TRANSFER OF LEVY FUNDS**

31.1 If the Client receives Transferred Levy Funds, the Client shall provide the Provider with a completed Subsidy control declaration for the Funding received and if the Provider becomes aware that the Client has exceeded its small amounts of financial assistance exemption the Provider shall be free to report that fact to the ESFA.

31.2 The Client will promptly confirm to the ESFA the spending of Transferred Levy Funds

31.3 The Client undertakes not to use Transferred Levy Funds to pay for Apprenticeships which originally commenced before 1 May 2018.

31.4 If the Client receives Transferred Levy funds:

31.4.1 the Client must follow the ESFA's apprenticeship funding rules for employers (as amended from time to time) for all Apprenticeships Funded by a transfer;

31.4.2 the Client must pay the Provider the employer co-investment if the full cost of the Apprenticeship cannot be met by the Transferred Levy Funds or from the Client's Apprenticeship Services Account; and

31.4.3 the Client warrants that it has arranged the transfer of to Fund the Apprenticeship from the outset.

31.5 if the Client receives Transferred Levy Funds, the Client shall notify the Provider which Apprenticeships are funded by the Transferred Levy Funds before the Apprenticeship Starts.