



Education & Skills  
Funding Agency

## **ESFA Apprenticeship Agreement for Training Providers**

## Terms and Conditions

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ESFA Apprenticeship Agreement for Training Providers, Winter 2022, Version 4.0

Education & Skills Funding Agency

<https://www.gov.uk/government/organisations/education-and-skills-funding-agency>

**THIS AGREEMENT is made on the date the Agreement is digitally signed by the Training Provider through the Manage Your Education and Skills Funding Service having already been signed by the ESFA and is between:**

«OrgName»  
«ProviderAddress»

«CompanyNumber»  
UKPRN: «UKPRN»

AND

THE SECRETARY OF STATE FOR  
EDUCATION ACTING THROUGH  
THE EDUCATION AND SKILLS  
FUNDING AGENCY, AN  
EXECUTIVE AGENCY OF THE  
DEPARTMENT OF EDUCATION  
CHEYLESMORE HOUSE  
QUINTON ROAD  
COVENTRY  
CV1 2WT

Referred to in this Agreement as “the  
Training Provider”

Referred to in this Agreement as “the  
ESFA”

**It is agreed as follows.**

## **1. Definitions**

1.1. In this Agreement the following terms shall have the meaning set out in the table below:

<b>“Academic Year”</b>	means a twelve-month period starting on 1 August and ending on the following 31 July.
<b>“Accountability Framework”</b>	means the framework set out by the ESFA at <a href="https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/105421/apprenticeship-training-provider-accountability-framework-2021-2022.pdf">Apprenticeship training provider accountability framework 2021/2022 - GOV.UK (www.gov.uk)</a> that includes Quality Indicators and Supplementary Indicators to which the Training Provider must adhere as updated and amended from time to time.
<b>“Agreement”</b>	means the Agreement between the above-named Parties consisting of the main body and schedules, the Funding Rules and any other documents (or parts thereof) specified in the Agreement and any variations to the Agreement agreed in writing and signed by both Parties.
<b>“Agreement Date”</b>	means the date on which the Training Provider enters into this Agreement on the ESFA’s Manage Your Education and Skills Funding Service for Training Providers on the <a href="https://www.gov.uk">www.gov.uk</a> website.

<b>“Apprentice”</b>	means an employee who works under an Apprenticeship Agreement.
<b>“Apprenticeship”</b>	means a job for an Apprentice that includes the Training and, where required, an End-Point Assessment.
<b>“Apprenticeship Agreement”</b>	means (a) an approved English apprenticeship as defined by Section A1 of the Apprenticeships, Skills, Children and Learning Act 2009; 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.
<b>“Apprenticeship Details”</b>	means the details of the Apprentice and their Apprenticeship that need to be inputted into the Apprenticeship Service which include but are not limited to the Apprenticeship Standard; the agreed cost of the Training and End-Point Assessment; the Apprentice’s name, date of birth and Unique Learner Number and the Apprenticeship start date.
<b>“Apprenticeships Logo”</b>	means the logo consisting of the word “Apprenticeships” in plain black or white typeface with a semi-circle of orange or blue brush strokes to the left-hand side of the letter A, the Intellectual Property Rights of which are owned by the Crown.
<b>“Apprenticeship Service”</b>	means the digital service provided by the ESFA to manage and pay the Funding for the Training and / or End-Point Assessment approved by Employers through the service and delivered by training providers listed on the Register of Apprenticeship Training Providers and End-Point Assessment Organisations using government funds.
<b>“Apprenticeship Service Account”</b>	means the online facility provided as part of the Apprenticeship Service where the Employer can add Apprenticeship Details and see information about Funding and Apprentices they have previously added to their account.
<b>“Apprenticeship Standard”</b>	means the description of the occupation and outcomes that an Apprentice must achieve to successfully attain the Apprenticeship that are approved and published by the Institute for Apprenticeships and Technical Education.
<b>“Awarding Organisation”</b>	means an organisation that is regulated by Ofqual or is recognised by the Quality Assurance Agency for Higher Education as an access validating agency
<b>“Change of Control”</b>	means (1) any event where any single person or group of persons acting in concert (within the meaning of the City Code on Takeovers and Mergers) acquires any direct or indirect legal and / or beneficial interest in the share capital (as defined in Section

	<p>545 of the Companies Act 2006) of the Training Provider as a result of which that person or group of persons has a direct or indirect interest in more than 25% of the share capital of the Training Provider; and/or</p> <p>(2) A change in the top two tiers of the management team of the Training Provider.</p>
<b>“Combined Authority”</b>	means an authority established under section 103(1) of the Local Democracy, Economic Development and Construction Act 2009 or an authority to which a delegation of the Secretary of State’s functions has been made under section 39A of the Greater London Authority Act 1999
<b>“Confidential Information”</b>	means any information, including Personal Data as defined by the Data Protection Laws, and any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, Know-How, personnel, and suppliers of the Parties including all IPRs, together with all information derived from any of the above, and any other information clearly designated as being confidential or which ought reasonably be considered to be confidential (whether or not it is marked "confidential").
<b>“Connected Employer”</b>	means any entity (being a distinct legal entity from an Employer) which is connected with an Employer within the meaning of Schedule 1 Parts 1 and 2 of the National Insurance Contributions Act 2014, and which, not being a contracting party to an agreement with the ESFA, carries out activities on behalf of an Employer in relation to the Apprenticeship Service or employs an Apprentice whose Training and / or End-Point Assessment is funded through the Employer’s Apprenticeship Service Account.
<b>“Crown Body”</b>	means any department, office or agency of the Crown, including OFSTED, the Care Quality Commission, the Charity Commission, the Office for Students, the Insolvency Service, the Court Service (including but limited to an administrator and a liquidator) any and all Local Authority or Combined Authority bodies.
<b>“Data Protection Laws”</b>	means the Data Protection Act 2018 and Privacy and Electronic Communications (EC Directive) Regulations 2003 and any other data protection laws and regulations applicable in the UK (or in any relevant part thereof), including the General Data Protection Regulation (EU) 2016/679 or similar and any codes of practice, guidelines and recommendations issued by the Information Commissioner’s Office, any replacement body or other relevant supervisory authority, all of which are current at the time of any data processing by the Service Provider (and in the event of any conflict between the Data Protection Laws and Law, Data Protection Laws shall take precedence).

<b>“Department”</b>	means the Secretary of State for Education (acting through the Education and Skills Funding Agency).
<b>“Earnings Adjustment Statement”</b>	means <a href="https://www.gov.uk/guidance/earnings-adjustment-statement">Earnings adjustment statement (EAS) - GOV.UK (www.gov.uk)</a>
<b>“EIR”</b>	means the Environmental Information Regulations 2004, as amended.
<b>“Employer”</b>	means an employer of Apprentices that enters into a contract with a Training Provider to commission Training (a) for its own Apprentices and / or (b) on behalf of a Connected Employer for the Connected Employer’s Apprentices, to be funded through the Employer’s Apprenticeship Service Account.
<b>“Employer-Provider”</b>	means a Training Provider which is also an Employer of Apprentices and delivers Training to its own apprentices under the Agreement.
<b>“End-Point Assessment”</b>	means the independent assessment of the Apprentice's knowledge, skills and behaviours carried out by an End-Point Assessment Organisation, after the Apprentice has passed their gateway assessment, to confirm that they have met the requirements of any relevant Apprenticeship Standard.
<b>“End-Point Assessment Organisation”</b>	means any organisation on the Register of End-Point Assessment Organisations which is selected by an Employer to carry out an End-Point Assessment.
<b>“ESFA”</b>	means the Secretary of State for Education, acting through the Education and Skills Funding Agency, an executive agency of the Department for Education, whose principal address is at Cheylesmore House, Quinton Road, Coventry, CV1 2WT.
<b>“Evidence Pack”</b>	means any information relating to an Apprentice generated by the Training Provider, the Employer, the Apprentice or a third party for the purpose of the delivery of the Apprenticeship as set out in the Funding Rules available at <a href="https://www.gov.uk/guidance/apprenticeship-funding-rules">https://www.gov.uk/guidance/apprenticeship-funding-rules</a>
<b>“Exempt Information”</b>	means any information or class of information (including but not limited to any document, report, contract or other material containing information) relating to this Agreement or otherwise relating to the Training Provider, which potentially falls within an exemption to FOIA or EIR.
<b>“Expiry Date”</b>	means 31 July 2025 or such later date as is notified in writing by the ESFA and agreed by the Training Provider in accordance with Clause 3 (Commencement and Duration).

<b>“FE Commissioner”</b>	means the part of the Department for Education that works with further education (FE) colleges to improve their quality and financial resilience.
<b>“FOIA”</b>	means the Freedom of Information Act 2000 and all regulations made there from time to time or any superseding or amending enactment and regulations, and words and expressions defined in the FOIA shall have the same meaning in Clause 10 (Freedom of Information and Confidentiality).
<b>“Funding”</b>	means the funding paid to the Training Provider by the ESFA on behalf of the Employer towards the cost of Training and End-Point Assessment for Apprenticeships in accordance with this Agreement.
<b>“Funding Limit”</b>	means a limit imposed by the ESFA in accordance with Clause 7 (Funding Limits) as to the Funding available to a Training Provider.
<b>“Funding Rules”</b>	means the documents which set out the detailed requirements with which the Training Provider must comply in respect of each Apprenticeship as may be amended by the ESFA from time to time and available at <a href="https://www.gov.uk/guidance/apprenticeship-funding-rules">https://www.gov.uk/guidance/apprenticeship-funding-rules</a> .
<b>“High Needs Apprentice”</b>	means an Apprentice aged 16 to 18 with high levels of Special Educational Needs and Disability (SEND), supported with top-up funding from the high needs budget, or any young person aged 19 to 25 subject to an Education Health and Care Plan, who requires additional support costing over £6,000.
<b>“ILR” or “Individualised Learner Record”</b>	means the on-going collection of data about Apprentices undertaken by Training Providers in the Further Education (FE) and Skills sector as set out at <a href="https://www.gov.uk/government/organisations/education-and-skills-funding-agency">Individualised Learner Record (ILR) - GOV.UK (www.gov.uk)</a>
<b>“Insolvency Event”</b>	means, in respect of the Training Provider:  (a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or  (b) a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or  (c) a petition is presented for its winding up (which is not dismissed within 14 Working Days) or an application is made for

	<p>the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986; or</p> <p>(d) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or</p> <p>(e) an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or</p> <p>(f) it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or</p> <p>(g) being a "small company" within the meaning of section 382(3) of the Companies Act 2006, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986</p>
<b>"Intellectual Property Rights"</b>	<p>means any patent, registered design, copyright, database right, design right, topography right, trade mark, trade name, application to register any of the aforementioned rights, trade secret, inventions, right in unpatented Know-How, right of confidence and any other intellectual or industrial property right of any nature whatsoever in any part of the world including, without limitation:</p> <ul style="list-style-type: none"> <li>(a) any renewals, revisions and extensions created or provided by the laws of any country;</li> <li>(b) all rights of action and remedies (including but not limited to an injunction, damages and / or an account of profits) in relation to past infringements; and</li> <li>(c) the right to apply for registration of any such rights in any country of the world.</li> </ul>
<b>"Know-How"</b>	<p>means information, data, know-how or experience whether patentable or not and including but not limited to any technical and commercial information relating to research, design, development, manufacture, use or sale.</p>
<b>"Law"</b>	<p>means any Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of royal prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any Regulatory Body of which the Training Provider is bound to comply.</p>
<b>"Minimum Standards"</b>	<p>means the quality standards set by the ESFA up to the academic year 2018-19 to which the Training Provider had to adhere.</p>



<b>“New Provider”</b>	means a Training Provider that has successfully applied to be listed on the RoATP and meets the criteria for a new provider set out in the Apprenticeship Provider Growth Limit policy, as published on GOV.UK and amended from time to time.
<b>“OFSTED”</b>	means the Office for Standards in Education, Children’s Services and Skills.
<b>“Office for Students” or “OfS”</b>	means the non-departmental public body of the DfE that acts as the regulator and competition authority for the Higher Education sector in England.
<b>“Parties”</b>	means the Secretary of State for Education acting through the ESFA and the Training Provider.
<b>“Premises”</b>	means the location where the Training and where relevant the End-Point Assessment is to be delivered, as detailed in the Agreement.
<b>“Prohibited Act”</b>	<p>means:</p> <ul style="list-style-type: none"> <li>(a) offering, giving or agreeing to give to any servant of the Crown any gift or consideration of any kind as an inducement or reward for: <ul style="list-style-type: none"> <li>i. doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Agreement or any other contract with the Crown; or</li> <li>ii. showing or not showing favour or disfavour to any person in relation to this Agreement or any other contract with the Crown;</li> </ul> </li> <li>(b) entering into this Agreement or any other contract with the Crown where a commission has been paid or has been agreed to be paid by the Training Provider or on its behalf, or to its knowledge, to a servant of the Crown unless before the relevant contract is entered into particulars of any such commission and of the terms and conditions of any such contract for the payment thereof have been disclosed in writing to the ESFA;</li> <li>(c) committing any offence: <ul style="list-style-type: none"> <li>i. under the Bribery Act;</li> <li>ii. under legislation creating offences in respect of fraudulent acts; or</li> </ul> </li> </ul>

	<p>iii. at common law in respect of fraudulent acts in relation to this Agreement or any other contract with the Crown; or</p> <p>(d) defrauding or attempting to defraud or conspiring to defraud the Crown.</p>
<b>“Register of Apprenticeship Training Providers”</b>	means the register maintained by the ESFA of organisations authorised to receive Funding from the ESFA to deliver Apprenticeships as updated from time to time.
<b>“Register of End-Point Assessment Organisations”</b>	means the online register of End-Point Assessment Organisations from which the Employer may select an organisation to carry out the End-Point Assessment of Apprentices.
<b>“Regulatory Body”</b>	means those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate or investigate the matters dealt with in this Agreement or any other affairs of the Training Provider or the ESFA, including, without limitation OFSTED, the European Commission and the European Court of Auditors.
<b>“Spend Controls”</b>	means the controls applied to manage the availability of Funding through the Apprenticeship Service as set out in the Funding Rules.
<b>“Subcontractor”</b>	means a person or organisation engaged by the Training Provider to deliver on its behalf the Training or some of the Training under this Agreement.
<b>“Subsidy Control”</b>	means the UK Government’s rules on the provision of subsidies.
<b>“Technical Funding Guide”</b>	means the Education and Skills Funding Agency’s Apprenticeship Technical Funding Guide as revised and amended from time to time and available at <a href="https://www.gov.uk/government/publications/apprenticeship-technical-funding-guide">https://www.gov.uk/government/publications/apprenticeship-technical-funding-guide</a> .
<b>“Term”</b>	means the duration of this Agreement in accordance with Clause 3 (Commencement and Duration)
<b>“Termination Date”</b>	means any date on which this Agreement terminates in accordance with Clause 24 (Termination).
<b>“Training”</b>	means the delivery of training and on-programme assessment by the Training Provider to one or more Apprentices.
<b>“Training Provider”</b>	means an organisation listed on the Register of Apprenticeship Training Providers that has entered into this Agreement with the

	ESFA and which delivers Apprenticeships to one or more Apprentices (which may include Employer-Providers).
<b>"Training Provider Related Party"</b>	means any employee, officer, consultant, agent or any other person whatsoever acting for or on behalf of the Training Provider or otherwise under the Training Provider's control and direction (including but not limited to Subcontractors).
<b>"Working Day"</b>	means Mondays to Fridays (inclusive) in each week, excluding bank and other public holidays in England.

- 1.2. Unless the context otherwise requires, words in the singular shall include the plural, and in the plural shall include the singular.
- 1.3. Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.4. A reference to a statute or statutory provision is a reference to it as amended, replaced, extended or re-enacted from time to time.
- 1.5. A reference to a person or body includes a reference to its successor.
- 1.6. 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.

## **2. Purpose and Use of Funding**

- 2.1. This Agreement sets out the terms and conditions on which the ESFA will provide Funding to the Training Provider through the Apprenticeship Service for the Training and where relevant, for End-Point Assessment.
- 2.2. The Funding Rules form part of this Agreement as if the Funding Rules were set out expressly in it.
- 2.3. Both Parties undertake to act in accordance with the Funding Rules.
- 2.4. The Training Provider acknowledges that the ESFA cannot guarantee that any Funding will be made available under this Agreement.
- 2.5. If the ESFA makes Funding available to the Training Provider under this Agreement, the Training Provider acknowledges that at the ESFA's discretion such Funding may be subject to Spend Controls and Funding Limits.
- 2.6. The Training Provider agrees that any Funding paid to it in accordance with this Agreement is solely to support the Training and End-Point Assessment of Apprentices in accordance with this Agreement and the Funding Rules.
- 2.7. The ESFA will monitor the performance of the Training Provider in accordance with the Accountability Framework as set out at Schedule 2 of this Agreement.

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- 2.8. Where the Training Provider is participating in a pilot project related to Training delivered under this Agreement and the specification sets out a requirement that is enhanced and / or different from a requirement set out in this Agreement, the Training Provider will comply with the enhanced and / or different requirement set out in the specification for the pilot. This may include but is not limited to enhanced monitoring, regular feedback to the ESFA or any other body, or more frequent or detailed ILRs.

### **3. Commencement and Duration**

- 3.1. This Agreement shall apply from the Agreement Date and shall continue in force until the Expiry Date unless it is extended in accordance with Clause 3.2 or terminated earlier in accordance with Clause 24 (Termination).
- 3.2. This Agreement may be extended on three occasions by the ESFA giving written notice to the Training Provider that it is extending the Term, of the period of the extension (which shall be in the absolute discretion of the ESFA) and of the revised Expiry Date. The definition of Expiry Date shall be deemed to have been updated once the Training Provider has agreed to the variation in accordance with Clause 30 (Variation).
- 3.3. The Training Provider hereby agrees to be legally bound by this Agreement.

### **4. Training Provision**

- 4.1. The Training Provider shall deliver the Training and, where relevant, its role in relation to End-Point Assessment in accordance with the Funding Rules and the Accountability Framework which are incorporated into this Agreement as if they were set out in this Agreement.
- 4.2. The Training Provider shall at all times comply with all relevant Law in the performance of its obligations under this Agreement, including (but not limited to) any legislation relating to employment, health and safety, equality and discrimination, human rights, immigration, taxation and prevention of terrorism.

### **5. Requirements**

- 5.1. The Training Provider must:
- 5.1.1. ensure that any information it enters on the Apprenticeship Service including information entered on the Employer's behalf is accurate;
  - 5.1.2. comply at all times with the Funding Rules;
  - 5.1.3. act in accordance with any requests made by the ESFA under the Accountability Framework;
  - 5.1.4. register and maintain its registration with both the Register of Apprenticeship Training Providers and the UK Register of Learning Providers;
  - 5.1.5. adhere to the Conditions of Acceptance for the Register of Apprenticeship Training Providers at all times;

- 5.1.6. have documented and implemented procedures for identifying and dealing with conflicts of interest in relation to the Training;
- 5.1.7. comply with any requirements of the FE Commissioner (if the Training Provider is subject to the FE Commissioner's jurisdiction);
- 5.1.8. have documented and implemented procedures and processes to deal with the prevention of fraud and / or administrative malfunction;
- 5.1.9. enter into a contract for services with each Employer in respect of the relevant Training to be delivered to one or more of the Employer's Apprentices unless the Training Provider is an Employer-Provider. The Training Provider will ensure that the contract for services is fully consistent with the provisions of this Agreement and the Funding Rules;
- 5.1.10. proactively ensure all data and information (including financial information) submitted to the ESFA is true, accurate and submitted promptly;
- 5.1.11. ensure that it has the appropriate registrations with the Information Commissioner's Office for controlling and / or processing data and that it maintains them for the Term of this Agreement;
- 5.1.12. notify the ESFA of any events or circumstances arising in connection with the delivery of its obligations under this Agreement which could give rise to any legal liability, have an adverse effect on the reputation of the ESFA or call into question the Training Provider's suitability to deliver Training to Apprentices, including (but not limited to):
  - 5.1.12.1. any events or circumstances leading to the death or serious injury of any Apprentice;
  - 5.1.12.2. the commission of any serious criminal offence by a senior individual in the Training Provider's organisation or any individual involved in the delivery of Training;
- 5.1.13. adhere to the Computer Misuse Act 1990;
- 5.1.14. not commit a Prohibited Act; and
- 5.1.15. notify the ESFA in writing within 5 Working Days if it or a Training Provider Related Party is subject to remedial and / or enforcement action by an Awarding Organisation.

## **6. Funding and Payment**

- 6.1. The Training Provider undertakes to the ESFA that it will ensure that the Training Provider's contract for services with the Employer will contain provisions governing the submission of accurate information by both the Training Provider and the Employer that is required for the ESFA to make payments of Funding to the Training Provider as referred to in this Clause 6. For the avoidance of doubt an Employer-Provider is not required to enter into a contract for services.

- 6.2. The availability of Funding is subject to budget availability, Spend Controls and any Funding Limits that are in force from time to time in accordance with Clause 7 (Funding Limits).
- 6.3. The Employer and Training Provider must agree the Apprenticeship Details before the Apprenticeship begins and this information must be recorded on the Apprenticeship Service.
- 6.4. In order for the ESFA to pay the Training Provider, the Employer must keep the Apprenticeship Details up to date on the Apprenticeship Service. The Training Provider can, on behalf of the Employer, complete some actions from their Training Provider accounts, as stated in the [Training Provider permissions – Apprenticeship Service Support \(education.gov.uk\)](https://www.gov.uk/government/guidance/training-provider-permissions-apprenticeship-service-support), but this must be approved by the Employer and must not be completed from the Employer's own account. The Employer must use the Apprenticeship Service to approve the Apprenticeship Details.
- 6.5. The ESFA will check the ILR data submitted by the Training Provider in accordance with Clause 20 (Submission of Apprentice Data through the ILR) against the information on the Apprenticeship Service. If the Apprenticeship Details do not match, or the Employer has not approved the Apprenticeship Details on the Apprenticeship Service, the ESFA will not make or will suspend payment of Funding, as appropriate, until the discrepancy in the data has been reconciled.
- 6.6. The Training Provider accepts that payment of Funding is made based on the data submitted on the ILR and the details entered into the Employer's Apprenticeship Service Account. The ESFA is not responsible for nor will the ESFA remedy any shortfall in the payment of Funding by the ESFA that arises as a result of the Employer's management of its Apprenticeship Service Account.
- 6.7. In accordance with the Technical Funding Guide, the ESFA will calculate on a monthly basis the payment of Funding due that month to the Training Provider.
- 6.8. The ESFA acting reasonably reserves the right to change or discontinue all or any part of the Apprenticeship Service at any time. Subject to giving reasonable notice, this includes the right to cease funding for any new Apprenticeships from the date specified in the notice. The ESFA will not be liable to make payments of Funding in respect of any Apprentices with a start date on or after the date specified in the notice.
- 6.9. The payment of Funding by the ESFA shall be without prejudice to any claims or rights, which the ESFA may have against the Training Provider and shall not be taken as an acknowledgement that the Training Provider has fulfilled its obligations under this Agreement. Prior to any such payment of Funding, the ESFA shall be entitled to make deductions or deferrals in respect of any disputes or claims whatsoever with or against the Training Provider, arising from this Agreement or any other agreement between the Training Provider and the ESFA.
- 6.10. Where the ESFA identifies errors which it deems to be material in the data that the Training Provider is required to provide under the Agreement to support the payment of Funding, the ESFA reserves the right at its absolute discretion to require the Training Provider at the Training Provider's cost to carry out a 100% audit of all or part of the Training by a deadline specified by the ESFA and / or to recover from the Training

Provider Funding equivalent to an amount based on the error rate identified and the total value of the Funding paid to the Training Provider under this Agreement.

- 6.11. Without prejudice to any other provisions in this Agreement, such amounts may be recovered by making adjustments to data submitted by the Training Provider under the Agreement, or by raising an invoice for payment by the Training Provider, or by making deductions from future payments due to the Training Provider under the Agreement. Failure to settle such amounts by the Training Provider will constitute a material breach of this Agreement. The decision of the ESFA as to the amount of recovery under this Clause is final.
- 6.12. All payments by the ESFA will be made via BACS.

## **7. Funding Limits**

- 7.1. Where the Training Provider is a New Provider, the Training Provider will comply with any Provider Growth Limit that the ESFA applies to it.
- 7.2. The ESFA reserves the right to impose a Funding Limit on the Training Provider at any given time during the Term if one or more of the following circumstances apply:
  - 7.2.1. the ESFA has concerns about the Training Provider's ability to deliver Training to any Apprentices in excess of the number of Apprentices to whom the Training Provider is delivering the Training at the date the ESFA makes its determination; and / or
  - 7.2.2. the ESFA believes, based on the Training Provider's accounts or any other financial or performance information it has at its disposal, that the acceptance of new Apprentices by the Training Provider would give rise to an unacceptable level of operational risk.
- 7.3. If the ESFA imposes a Funding Limit, it shall notify the Training Provider in writing, giving its reasons for imposing such a limit. After receiving such notification, the Training Provider shall be prohibited from accepting any new Apprentices until such time as the ESFA informs the Training Provider in writing that the limit no longer applies.

## **8. Assignment and Subcontracting**

- 8.1. The Training Provider may not, without the prior written consent of the ESFA, assign, transfer, or in any other way make over to any third party the benefit and / or the burden of this Agreement.
- 8.2. If the Training Provider subcontracts any part of the delivery of the Training, it must comply with the provisions set out in Schedule 3 (subcontracting).
- 8.3. If the Training Provider subcontracts any part of the delivery of the Training, the Training Provider shall retain primary responsibility for any obligation or duty attributable to it under this Agreement and / or the contract for services with the Employer.

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8.4. The Training Provider is responsible for all the acts and omissions of its Subcontractors connected to or arising out of the delivery of the Training which it subcontracts.

8.5. The Training to be delivered with Funding provided under this Agreement may only be subcontracted to one level.

## **9. Change in Name, Change in Control and Prohibition on disposing of the Agreement**

9.1. The Training Provider shall not without the prior written consent of the ESFA assign, novate or otherwise dispose of this Agreement and/or any or all of its rights, obligations or liabilities under this Agreement including to other legal entities within the same group as the Training Provider.

9.2. The Training Provider will inform the ESFA in writing if there is a change in its name at least one month prior to the change taking effect unless to do so would put the Training Provider in breach of the Law. If that is the case the Training Provider will inform the ESFA of the change in name within 10 Working Days of it becoming lawful to do so.

9.3. The Training Provider will inform the ESFA as soon as reasonably practicable and, in any event 12 weeks before, any Change of Control of the Training Provider takes effect unless to do so would put the Training Provider in breach of the Law. If that is the case the Training Provider will inform the ESFA of the Change of Control within 10 Working Days of it becoming lawful to do so.

9.4. The ESFA reserves the right to take whatever action it deems necessary, including but not limited to terminating the Agreement in accordance with Clause 24.2 (Termination) if it considers in its absolute discretion that any, or any proposed, assignment, novation, disposal or other dealing, including any Change of Control and / or of name of the Training Provider, may or would:

9.4.1. put public funds at risk,

9.4.2. put at risk the delivery of Training to Apprentices, and / or

9.4.3. the ESFA has any other material concerns about the proposed assignment, novation, disposal or other dealing.

9.5. In deciding what action to take in accordance with Clause 9.4 the ESFA will consider the criteria set out in the Funding Higher-Risk Organisations and Subcontractors Policy (or any updated or revised versions) which is published on the ESFA's website [ESFA policy on funding higher risk organisations and subcontractors - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/policies/education-and-skills-funding-agency)

## **10. Freedom of Information and Confidentiality**

10.1. Freedom of Information

10.1.1. The Training Provider acknowledges that the ESFA is subject to the requirements of the Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations 2004 (EIRs).

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10.1.2. The Training Provider will:

10.1.2.1. provide all necessary assistance and cooperation as reasonably requested by the ESFA to enable the ESFA to comply with its obligations under the FOIA and EIRs;

10.1.2.2. transfer to the ESFA all requests for information relating to this Agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;

10.1.2.3. within 5 Working Days (or such other period as the ESFA may specify) of the ESFA's request for information, provide the ESFA with a copy of all information belonging to the ESFA that is in the Training Provider's possession or control and is relevant to the request; and

10.1.2.4. not respond directly to a request for information unless authorised in writing to do so by the ESFA.

10.1.3. The Training Provider acknowledges that the ESFA may be required under the FOIA and EIRs to disclose information without consulting or obtaining consent from the Training Provider. The ESFA shall take reasonable steps to notify the Training Provider of a request for information to the extent that it is permissible and reasonably practical for it to do so. Nonetheless and regardless of any other provision in this Agreement, the ESFA shall be responsible for determining in its absolute discretion whether any information is Exempt Information.

10.2. Confidentiality

The Training Provider hereby warrants that:

10.2.1. any person employed or engaged by it (in connection with this Agreement in the course of such employment or engagement) shall treat all Confidential Information belonging to the ESFA as confidential, safeguard it accordingly and only use such Confidential Information for the purposes of this Agreement; and

10.2.2. any person employed or engaged by it (in connection with this Agreement in the course of such employment or engagement) shall not disclose any Confidential Information to any third party without prior written consent of the ESFA, except where disclosure is otherwise expressly permitted by the provisions of this Agreement.

10.3. The Training Provider shall take all necessary precautions to ensure that all Confidential Information obtained from the ESFA is treated as confidential and not disclosed (without prior approval from the ESFA) or used other than for the purposes of this Agreement by any of its Training Provider Related Parties.

10.4. The provisions of Clauses 10.2 and 10.3 shall not apply to any information:

- 10.4.1. which is or becomes public knowledge (other than by breach of Clauses 10.2 and 10.3);
  - 10.4.2. which was in the possession of the receiving party, without restriction as to its disclosure, before the date of receipt from the disclosing party;
  - 10.4.3. which must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the party making the disclosure, including any requirements for disclosure under the Freedom of Information Act or the Environmental Information Regulations.
- 10.5. Nothing in this Clause 10 shall be deemed or construed to prevent the ESFA from disclosing any Confidential Information obtained from the Training Provider:
- 10.5.1. to any other Crown Body;
  - 10.5.2. to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
  - 10.5.3. to any professional adviser, consultant, contractor or other person engaged by the ESFA directly in connection with this Agreement, provided that such information is treated as confidential by the third party receiving the information;
  - 10.5.4. on a confidential basis to any proposed successor body to the ESFA in connection with any assignment disposal of its rights, obligations or liabilities under this Agreement.
- 10.6. In order to ensure that no unauthorised person gains access to any Confidential Information or any data obtained in the course of the Training, the Training Provider undertakes to maintain adequate security arrangements that meet the requirements of professional standards and best practice.
- 10.7. The Training Provider must immediately notify in writing the ESFA of any breach of security in relation to Confidential Information and all data obtained in the course of the Training and must keep a record of such breaches. The Training Provider must use its best endeavours to recover such Confidential Information or data however it may be recorded. The Training Provider must co-operate with the ESFA in any investigation that the ESFA considers necessary to undertake as a result of any breach of security in relation to Confidential Information or data.
- 10.8. The Training Provider shall, at its own expense, alter any security systems at any time during the Term at the ESFA's request if the ESFA reasonably believes the Training Provider has failed to comply with Clause 10.6.
- 10.9. The ESFA reserves the right to publish details of this Agreement and the payments made under it to comply with the Government's transparency requirements.
- 10.10. The provisions of this Clause 10 will apply for the Term and after the Agreement has been terminated or has expired.

## **11. Equality of Opportunity**

- 11.1. The Training Provider will, in delivering the Training, have regard to its duties under the Equality Act 2010. The Training Provider must take all reasonable steps to ensure the observance of these provisions by all servants, employees or agents of the Training Provider and all Subcontractors engaged to deliver the Training.

## **12. Apprentice Health, Safety & Welfare**

- 12.1. The Training Provider shall make arrangements for ensuring that the Training is provided with a view to safeguarding and promoting the welfare of children and High Needs Apprentices aged 19 to 25 (as if they were children) receiving education or training at the Training Provider's Premises or under the auspices of the Training Provider in an environment outside the direct control of the Training Provider. This must include the adoption of safer recruitment procedures. In doing so, the Training Provider shall have regard to any guidance published, from time to time, by the Secretary of State for Education which sets out the expectations in relation to safeguarding practice including as if it applied to High Needs Apprentices aged 19 to 25 as if they were children. References to 'must' in any such guidance shall be treated as contractual requirements for the purposes of this Agreement, save for any references to legal requirements arising from the Safeguarding Vulnerable Groups Act 2006 in respect of referrals to the Disclosure and Barring Service.
- 12.2. The Training Provider must carry out appropriate Disclosure and Barring Service checks on all applicants for employment where such applicants would if successful in their application, be employed to work in regulated activity relating to children or vulnerable adults (as defined by the Safeguarding Vulnerable Groups Act 2006) and the Training Provider must act responsibly and reasonably in relation to the outcome of any Disclosure and Barring Service check.
- 12.3. In working with other organisations / bodies, the Training Provider shall make arrangements to co-ordinate and co-operate effectively for reasons of Apprentice health, safety and welfare.
- 12.4. The Training Provider and its Subcontractors as relevant must be able to demonstrate through checks undertaken that they have robust record-keeping procedures in respect of health, safety and safeguarding.
- 12.5. In delivering the Training and where relevant End-Point Assessments, the Training Provider must ensure it actively promotes the fundamental British values of democracy, the rule of law, individual liberty, and mutual respect and tolerance of those with different faiths and beliefs and promote principles that support equality of opportunity for all.
- 12.6. The Training Provider shall not employ or engage, or continue to employ or engage, any person who is subject to a prohibition order made under section 141B of the Education Act 2002, or an interim prohibition order made under regulation 14 of the Teachers' Disciplinary (England) Regulations 2012, to carry out teaching work (as defined in regulation 3 of the Teachers' Disciplinary (England) Regulations 2012) in respect of any Apprentices under the age of 19 and High Needs Apprentices aged 19

to 25 (as if those Apprentices were pupils for the purposes of the definition of teaching work in regulation 3 of the Teachers' Disciplinary (England) Regulations 2012).

- 12.7. Before employing or engaging a person to carry out teaching work in respect of any Apprentices under the age of 19 and High Needs Apprentices aged 19 to 25 (as if those Apprentices were pupils for the purposes of the definition of teaching work in regulation 3 of the Teachers' Disciplinary (England) Regulations 2012), the Training Provider shall take reasonable steps to ascertain whether that person is subject to a prohibition order made under section 141B of the Education Act 2002, or an interim prohibition order made under regulation 14 of the Teachers' Disciplinary (England) Regulations 2012.
- 12.8. Where the Training Provider or a Subcontractor refers a safeguarding concern or an allegation of abuse to local authority children's social care / adult social care and / or the police, the Training Provider must, within 24 hours, inform the ESFA by contacting the Helpdesk (08000 150600 or [helpdesk@manage-apprenticeships.service.gov.uk](mailto:helpdesk@manage-apprenticeships.service.gov.uk)). Such notification must include the name of the Training Provider, a high-level summary of the nature of the incident (without sharing personal information about victims or alleged perpetrators) and confirmation of whether it is, or is scheduled to be, investigated by the Local Authority and / or the police.
- 12.9. Where it applies
  - 12.9.1. The Training Provider must comply with the Modern Slavery Act 2015 and must have in place for the Term policies and procedures to ensure full compliance.
  - 12.9.2. The Training Provider must ensure that all subcontracts that it enters into include an obligation for the Subcontractor to comply with the Modern Slavery Act 2015 with special emphasis on express anti-slavery and anti-human trafficking provisions.
  - 12.9.3. The Training Provider shall implement due diligence procedures to ensure that there is no slavery or human trafficking in any part of its supply chain.

### **13. Liability**

- 13.1. The Training Provider shall indemnify and keep indemnified the ESFA, their servants, employees, and agents against all loss, damage or liability (whether civil or criminal), claims, demands, costs and expenses incurred by or made against the ESFA, their servants, employees, or agents in respect of any loss or damage (including loss or damage to data) or personal injury (including death) which arises out of or in the course of or caused by the negligent act or omission or willful default of the Training Provider itself or of a Training Provider Related Party except to the extent (if any) that it was also caused or contributed to by the negligent act or omission or willful default of the ESFA or their servants or agents.
- 13.2. The ESFA reserves the right to require the Training Provider to secure the provision of an appropriate guarantee (in the form as specified by the ESFA) in respect of the Training Provider's liabilities under this Agreement.

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## **14. Insurance**

- 14.1. The Training Provider shall maintain at its own cost a policy or policies of insurance to cover the liability of the Training Provider in respect of any act or default for which it may become liable to indemnify the ESFA under this Agreement subject to a minimum of £10 million in respect of each and every claim with the exception of professional indemnity liability which shall be subject to a minimum of £5 million in respect of each and every claim. The ESFA reserves the right to require the Training Provider to insure against any act or default which arises as a result of fraud or other criminal activity by the Training Provider and / or a Training Provider Related Party. The Training Provider should provide copies of any insurance certificates to the ESFA including professional indemnity, employers' liability and public liability insurance following a written request from the ESFA.

## **15. Monitoring and Financial Health**

- 15.1. The ESFA acting reasonably is entitled to undertake or commission an audit and / or investigation in relation to this Agreement or any issue connected with it including in connection with the Accountability Framework. The Training Provider shall assist and cooperate with the ESFA in relation to audit or investigation and shall grant the ESFA or its authorised representatives or auditors access to its Premises at any reasonable time, with or without notice, to examine, remove and / or copy any relevant documents and records (including electronic records) and to interview the Training Provider's employees, agents and / or Subcontractors carrying out activities in connection with this Agreement or any Apprentice receiving Training funded under this Agreement.
- 15.2. The ESFA reserves the right, at any reasonable time, and as it may deem necessary to require the Training Provider at its own cost to comply with one or more of the following:
- 15.2.1. provide evidence of financial resources and the level of turnover sufficient to enable it to continue to perform the Agreement; and / or
  - 15.2.2. provide such assurance as the ESFA may require that the delivery of the Training and where relevant End-Point Assessment paid for with the Funding comply with the requirements of the Agreement; and / or
  - 15.2.3. provide a copy of the Training Provider's latest audited accounts and submit further copies of the audited accounts as they become available; and / or
  - 15.2.4. if requested by the ESFA, provide additional financial information in a format specified by the ESFA which might include but is not limited to management accounts, statements of financial performance against delivery, financial forecasts and cash flows; and / or
  - 15.2.5. submit for auditing by an independent auditor chosen by the ESFA, any claim for payment and / or supporting management information; and / or
  - 15.2.6. provide any additional evidence to support payments of Funding made under this Agreement, as the ESFA shall reasonably require; and / or

- 15.2.7. obtain a report by an independent accountant or auditor of the ESFA's choice on:
  - 15.2.7.1. the financial systems and controls operated by the Training Provider or its Subcontractors;
  - 15.2.7.2. the accuracy and regularity of claims for Funding made or received under the Agreement.
  - 15.2.7.3. the evidence held by the Training Provider or its Subcontractors to support the use of the Funding for the delivery of the Training and where relevant the End-Point Assessment in accordance with the terms of this Agreement.
- 15.3. In relation to a requirement by the ESFA for the Training Provider to obtain a report by an independent accountant or auditor in accordance with Clause 15.2.7, the Training Provider must agree with the ESFA the scope of the work in advance of it commencing and this may include the ESFA discussing the terms of reference directly with the independent accountant or auditor where necessary. The report and the work required in order to produce the report shall be carried out to the satisfaction of the ESFA, and the ESFA must be able to place reliance on it. The Training Provider shall provide a copy of any draft report at all stages of reporting and the final report to the ESFA as soon as they are available. The ESFA may require the Training Provider to publish the final report.
- 15.4. If the ESFA considers that the outcome of any financial health and / or control assessment in relation to the Training Provider is declining and / or inadequate, the ESFA may, in its absolute discretion take one or more of the following actions:
  - 15.4.1. undertake or procure an audit of the Training Provider's financial health and control at the Training Provider's cost;
  - 15.4.2. require the Training Provider to comply with additional conditions before being paid further Funding;
  - 15.4.3. suspend the payment of Funding for current Apprenticeships for a specified period;
  - 15.4.4. not consider any applications or pay any Funding for new Apprenticeships for a specified period; or
  - 15.4.5. where the Training Provider fails to comply with requirements imposed under Clause 15.4.1 and / or 15.4.2, the ESFA may terminate the Agreement in accordance with Clause 24.1.2 (Termination).
- 15.5. The Training Provider shall notify the ESFA in writing immediately upon the occurrence of one or more of the following events:
  - 15.5.1. an Insolvency Event; and / or
  - 15.5.2. where the Training Provider is an individual and a petition is presented for the Training Provider's bankruptcy or a criminal bankruptcy order is made



against the Training Provider, or it makes any composition or arrangements with or for the benefit of creditors, or makes any conveyance or assignment for the benefit of creditors, or if an administrator is appointed to manage their affairs; and / or

- 15.5.3. where the Training Provider is not an individual but is a firm or a number of persons acting together in any capacity, if any of the events referred to in Clause 15.5.1 occurs in respect of any partner in the firm or any of those persons or a petition is presented for the Training Provider to be wound up as an unregistered company; and / or
- 15.5.4. where the Training Provider is a company, if the company passes a resolution for winding-up or the court makes an administration order or a winding-up order, or the company makes a composition or management arrangement with its creditors, or an administrator, receiver or manager is appointed by the company, a creditor or by the court, or possession is taken of any of its property under the terms of a floating charge.

### **OFSTED Monitoring Visits**

- 15.6. Where the ESFA is made aware that OFSTED has assessed the Training Provider as having made “insufficient progress” after a monitoring visit, the ESFA may, in its absolute discretion take one or more of the following actions:
  - 15.6.1. suspend the payment of Funding for current Apprenticeships for a specified period;
  - 15.6.2. not consider any applications or pay any Funding for new Apprenticeships for a specified period;
  - 15.6.3. require the Training Provider to inform all of its existing Employers, Subcontractors and Employer-Providers, as relevant, about the outcome of the OFSTED visit;
  - 15.6.4. require the Training Provider to enter into a subcontracting arrangement with another training provider or Employer-Provider in order to ensure that there is minimal disruption to the Training delivered to the Training Provider’s current Apprentices;
  - 15.6.5. terminate this Agreement in accordance with Clause 24.1.4 (Termination) where Apprentices may be at immediate risk on the grounds of safeguarding issues and / or the quality of leadership and / or training provision is such that one or more Apprentice has no reasonable prospect of achieving his or her training objective;
  - 15.6.6. terminate this Agreement in accordance with Clause 24.1.13 (Termination) if the Training Provider has two consecutive monitoring visits each resulting in one or more “insufficient progress” judgements in relation to one or more themes; and / or

- 15.6.7. remove the Training Provider from the Register of Apprenticeship Training Providers if the Training Provider has two (2) consecutive Ofsted Monitoring Visits each resulting in one or more “insufficient progress” judgements in relation to one or more themes.
- 15.7. Where the ESFA is made aware that OFSTED has assessed a Subcontractor to the Training Provider as having made “insufficient progress” during OFSTED’s training provider monitoring visits, the Training Provider shall suspend the delivery of Training under the Subcontract and shall not subcontract any further Training to the Subcontractor until permitted to do so by the ESFA.

### **OFSTED Inspection**

- 15.8. When the Training Provider receives notification from OFSTED that the Training is to be inspected, the Training Provider shall on request provide the ESFA with details of its quality improvement activity, and any other relevant information at the same time as it submits it to OFSTED in accordance with the timescale specified by OFSTED. The Training Provider must notify the ESFA in writing of the date of the meeting at which OFSTED will give feedback on the inspection and allow the ESFA’s nominated representative to attend the meeting. The Training Provider must confirm to the ESFA in writing the outcome of the inspection within 5 working days of receiving the feedback from OFSTED.
- 15.9. OFSTED may, at any time during the Term, undertake an inspection of the Training Provider. The ESFA will consider the outcome of any such inspection as follows:

### **Inadequate in Part**

- 15.9.1. Where OFSTED has assessed the Training to be inadequate in part, the ESFA may, at its absolute discretion take one or more of the following actions:
- 15.9.1.1. require the Training Provider to accept and comply with additional contractual obligations relating to the improvement of the Training assessed as inadequate;
  - 15.9.1.2. not consider any applications or pay any Funding for new Apprenticeships in each occupation that has been assessed as inadequate for a specified period;
  - 15.9.1.3. give consideration to the Training which has been assessed as inadequate when considering access to Funding in relation to any subsequent agreements and / or contracts between the Parties;
  - 15.9.1.4. reduce and / or recover from the Training Provider Funding paid by the ESFA in respect of that part of the Training that has been assessed as inadequate; and / or
  - 15.9.1.5. terminate in accordance with Clause 24.1.14 (Termination).



## **Inadequate Overall**

- 15.9.2. Where OFSTED has assessed the Training as inadequate overall, the ESFA may, at its absolute discretion take one or more of the following actions:
  - 15.9.2.1. require the Training Provider to accept and comply with additional conditions relating to the improvement of the overall Training;
  - 15.9.2.2. suspend the payment of Funding to the Training Provider in relation to current Apprenticeships for a specified period;
  - 15.9.2.3. not consider any applications or pay any Funding for new Apprenticeships for a specified period;
  - 15.9.2.4. give consideration to the assessment of inadequate when considering access to Funding in any subsequent agreements and / or contracts between the Parties;
  - 15.9.2.5. reduce and / or recover the Funding paid to the Training Provider; and / or
  - 15.9.2.6. terminate this Agreement in accordance with Clause 24.1.15 (Termination).
- 15.9.3. The failure of the Training Provider, as assessed by the ESFA, to comply with any requirements of Clause 15.9.2.1 within such time as the ESFA may deem reasonable may lead to the ESFA taking such actions as it deems appropriate which may include, but is not limited to, terminating this Agreement in accordance with Clause 24.1.5 (Termination).
- 15.9.4. The ESFA will take action based on OFSTED's provisional and confirmed outcomes as set out in Clauses 15.9.1 and 15.9.2 above. Where the ESFA is made aware that the Training Provider has made a complaint about the outcome of the OFSTED assessment, the ESFA will continue to consider what action it needs to take under this Agreement but will be mindful of the implications arising from the outcome of a complaint. The ESFA will review any decisions made at such time when the outcome of any complaint is made known.

## **16. Liability to Settle Demands for Repayment of Funding**

- 16.1. The Training Provider shall make any payments due to the ESFA without any deduction or set-off.
- 16.2. Where the ESFA requires the Training Provider to repay any amount of Funding, the Training Provider shall repay the amount concerned within 20 Working Days of receiving the demand for repayment. The liability to meet such a demand shall be enforceable as a contractual debt.
- 16.3. Where the ESFA has notified the Training Provider that it is going to reclaim an amount of Funding, it may recover the amount concerned by withholding or setting off the

amount from any sum due from the ESFA to the Training Provider under this Agreement or under any contract or agreement that the Training Provider has with the ESFA.

- 16.4. The ESFA may require interest to be paid on any amount of Funding repayable by the Training Provider at 2% above the Bank of England base interest rate that applies at the time.

## **17. Prohibited Activities**

- 17.1. The Training Provider shall not offer or give, or agree to give, to any member, employee or representative of the ESFA any gift or consideration of any kind as an inducement or reward for doing or refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of this Agreement or any other agreement with the ESFA or for showing or refraining from showing favour or disfavour to any person in relation to this Agreement or any other such agreement.
- 17.2. Any offence by the Training Provider or its employees or by anyone acting on its behalf under the Bribery Act 2010 in relation to this Agreement or any other agreement with the ESFA or Her Majesty's Government shall entitle the ESFA to terminate this Agreement and to recover from the Training Provider the amount of any loss resulting from such termination and / or to recover from the Training Provider the amount of value of any gift, consideration or commission.
- 17.3. The Training Provider shall not enter into any Agreement with any political or religious organisation using any Funding provided by the ESFA under this Agreement if one of the objectives of that Agreement is to promote a particular political or religious point of view.
- 17.4. The Training Provider shall not hold itself out as acting on behalf of the ESFA without the ESFA's permission.

## **18. Data Protection, Protection of Personal Data and Cyber Essentials**

- 18.1. The Parties will comply with all applicable requirements of the Data Protection Laws and Schedule 1 (Data Protection).
- 18.2. Where the Training Provider will handle information at OFFICIAL on behalf of the ESFA, it must comply with the requirements under Cabinet Office Procurement Policy Note 09/14 – Use of Cyber Essentials Scheme certification or any subsequent updated document.
- 18.3. Where Clause 18.2 applies, the Training Provider must use reasonable endeavours to meet the requirements of Cyber Essentials from 1 August 2021. In circumstances where the Training Provider has yet to gain Cyber Essentials certification, the ESFA reserves the right to require the Training Provider to achieve the relevant Cyber Essentials certification on giving one year's notice in writing.
- 18.4. The Training Provider must be certified that it meets the relevant requirements as set out in Clause 18.3 on an annual basis. The scope of the certification must be relevant

to the Training funded under this Agreement and the relevant certificate should be made available to the ESFA on request.

## **19. Intellectual Property Rights**

- 19.1. The ESFA and the Training Provider agree that all rights, title and interest in or to any information, data, reports, documents, procedures, forecasts, technology, Know-How and any other Intellectual Property Rights whatsoever owned by either the ESFA or the Training Provider before the Agreement Date or developed by either Party during the Term of this Agreement, shall remain the property of that Party.
- 19.2. Subject to Clause 19.3 below, the Training Provider may not use any Intellectual Property Rights belonging to the ESFA or the Crown without prior written consent from the ESFA.
- 19.3. The Training Provider may use the Apprenticeships Logo for the purposes of advertising and marketing its Apprenticeships without obtaining prior consent from the ESFA.
- 19.4. Where the ESFA has allowed the Training Provider to use any of its Intellectual Property Rights in connection with this Agreement, the Training Provider shall immediately cease to use such Intellectual Property Rights upon request or upon expiry or termination of this Agreement.
- 19.5. In the event of Clause 19.4 applying, the Training Provider must at the election of the ESFA either return or destroy such Intellectual Property Rights as requested by the ESFA and, where relevant, shall put arrangements in place to ensure that any Subcontractors also comply with the provisions of this Clause 19.

## **20. Submission of Apprentice Data through the ILR**

- 20.1. The Training Provider must submit promptly to the ESFA an accurate ILR in relation to each individual Apprentice in accordance with this Agreement and the Individualised Learning Record (ILR) technical documents, guidance and requirements as amended and updated from time to time.
- 20.2. The Training Provider can view the Individualised Learning Record (ILR) technical documents, guidance and requirements by visiting the website <https://guidance.submitlearnerdatabeta.fasst.org.uk/>.
- 20.3. The Training Provider must notify the ESFA through the ILR of any new Apprenticeships within 2 months of the Apprentice starting their Training.
- 20.4. The Training Provider must notify the ESFA through the ILR of all withdrawals from Training and completions and achievements by Apprentices within 3 months of the last day of the relevant Apprenticeship.
- 20.5. ILR data collected by the Training Provider must be transmitted to the ESFA through the ESFA's Submit Learner Data service <https://submitlearnerdatabeta.fasst.org.uk/>.

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- 20.6. Where required by the Funding Rules, the Training Provider must use the Earnings Adjustment Statement (“EAS”) to claim Funding that cannot be recorded through the ILR. The request for Funding must be submitted in accordance with the guidance at <https://guidance.submitlearnerdatabeta.fasst.org.uk/>. The Training Provider must check the accuracy of the EAS via the Submit Learner Data service and the Training Provider must correct any errors immediately. All EAS submissions must be supported by evidence.
- 20.7. The ESFA will publish monitoring reports via [View your education data](#). The Training Provider must access the monitoring reports every month and amend any errors for the next submission of the ILR by taking the actions specified in the report user guide. Failure to amend the data as required will constitute a breach of this Agreement and in addition the provisions of Clause 6.10 (Funding and Payment) will apply.
- 20.8. Where the ESFA has grounds to be concerned about the data submitted by the Training Provider on an ILR, including but not limited to the completeness or accuracy of the data provided by the Training Provider under this Agreement or any other agreement between the Training Provider and the ESFA, the ESFA may take one or more of the following actions:
- 20.8.1. require the Training Provider, at its own cost, to carry out such work as the ESFA deems necessary to improve the quality of data;
  - 20.8.2. require the Training Provider at its own cost to carry out an audit in accordance with Clause 6.10 (Funding and Payment);
  - 20.8.3. where data submitted by the Training Provider on an ILR is missing, incomplete or incorrect in the final ILR submission of the Academic Year, the ESFA will recover the Funding that corresponds with the incorrect data;
  - 20.8.4. require the Training Provider to supply data at such intervals and for such a period as is specified by the ESFA;
  - 20.8.5. suspend the payment of Funding for a specified period in accordance with Clause 23.1.5 (Withholding, Suspension and Repayment of Funding);
  - 20.8.6. terminate the Agreement in accordance with Clause 24.1.6 (Termination); and / or
  - 20.8.7. take any other action under the Accountability Framework.
- 20.9. If served with notice of a breach of the submission requirements as referred to in this Clause 20, the Training Provider must correct the data or supply the ESFA with evidence in support of its ILR submission within the period specified in the notice. This evidence can include digital copies of documents such as Apprentice files, commitment statements or employer declarations. The Training Provider should note that annotated spreadsheets or notes are not acceptable to the ESFA as evidence.
- 20.10. Where the Training Provider is delivering Training to one or more Apprentices claiming state benefits, it must provide data to the Secretary of State with responsibility for unemployment or their nominated representative in accordance with the requirements notified to the Training Provider.

- 20.11. The Training Provider must provide information about the apprenticeships they offer which are funded by the ESFA at Publish to the course directory (nationalcareers.service.gov.uk).
- 20.12. The Training Provider must submit data about any member of its workforce delivering GCSE English and Maths in the format and to the timescales as required by the ESFA.

## **21. Fraud and Irregularity**

21.1. The Training Provider will notify in writing the ESFA immediately where it becomes aware of any instance of suspected fraud or financial irregularity in the delivery of the Training and / or End-Point Assessment including, but not limited to, cases of:

- 21.1.1. the submission to the ESFA of inaccurate, incomplete, misleading or falsified information for the purpose of a claim for Funding;
- 21.1.2. fraud involving Employers and / or Subcontractors;
- 21.1.3. fraud involving End-Point Assessment Organisations;
- 21.1.4. fraud involving Awarding Organisations;
- 21.1.5. computer fraud;
- 21.1.6. collusion with members of the staff of an End-Point Assessment Organisation and / or Employer; and
- 21.1.7. collusion with members of the staff of the ESFA or employees of the Department;

provided that nothing in this Clause 21 shall require the Training Provider to do anything, which may cause it to infringe any law.

21.2. Where the ESFA has reasonable cause to suspect that fraud or irregularity has occurred in relation to the delivery of Training and / or one or more End-Point Assessments for which the Funding is provided under this Agreement and / or the payment of Funding made under this Agreement or any other agreement with the ESFA:

- 21.2.1. the ESFA shall have the right of access to the Training Provider's Premises at any reasonable time with or without notice to examine and remove or copy all relevant documents and records including electronic records and to interview the Training Provider and / or one or more Training Provider Related Party; and / or
- 21.2.2. may require the Training Provider at its own cost to take any of the actions set out in Clause 15 (Monitoring and Financial Health); and / or
- 21.2.3. may take any of the actions set out in Clause 15 (Monitoring and Financial Health) and the Training Provider shall reimburse the ESFA for its reasonable costs in doing so.

## **22. Additional Conditions**

- 22.1. The ESFA reserves the right to require the Training Provider to agree to additional terms and conditions in relation to this Agreement where it considers it is necessary to do so to secure the use of the Funding for the delivery of Training by the Training Provider to the required standard and / or to ensure that the Funding provided by the ESFA is being used effectively and efficiently and / or to ensure that the Training Provider complies with requests made by the ESFA under the Accountability Framework.

## **23. Withholding, Suspension and Repayment of Funding**

- 23.1. Without prejudice to the ESFA's other rights and remedies, the ESFA may at its discretion withhold or suspend payment of Funding if one or more of the following applies:
- 23.1.1. the Training Provider materially breaches any of the terms or conditions of this Agreement. For the avoidance of the doubt this includes but is not limited to the requirements set out in Clause 5 (Requirements);
  - 23.1.2. the ESFA, acting reasonably, has concerns about the standard of Training that the Training Provider is delivering or has delivered including in respect of one or more standard or framework;
  - 23.1.3. an Awarding Organisation is taking remedial and / or enforcement action against the Training Provider;
  - 23.1.4. the ESFA has reasonable grounds to suspect fraud, financial irregularity, dishonesty, negligence or practice by any of the Training Provider and / or one or more Training Provider Related Party;
  - 23.1.5. the ESFA has concerns about the completeness, accuracy or promptness of the data submitted by the Training Provider on the ILR in relation to this Agreement or, subject to Clause 23.2 any other agreement;
  - 23.1.6. any employee of the Training Provider or any other Training Provider Related Party has acted or failed to act in a way which, in the reasonable opinion of the ESFA, brings or is likely to bring the ESFA's name, brand or reputation or the Apprenticeships brand into disrepute;
  - 23.1.7. the Training Provider was not entitled to Funding under the Funding Rules in relation to one or more Apprenticeship;
  - 23.1.8. there occurs, in respect of the Training Provider, any Insolvency Event or Change of Control which, in the reasonable opinion of the ESFA, may affect the Training Provider's ability to comply with its obligations under this Agreement;
  - 23.1.9. the Training Provider fails to comply with any of the provisions set out in this Agreement (including the provisions in the Funding Rules and / or any requirements under the Accountability Framework) and fails to rectify any



such failure within 30 days of receiving written notice from the ESFA (or such other timescale specified in the notice) detailing the failure and requiring it to rectify the failure; and / or

- 23.1.10. a right to withhold, suspend and / or require repayment of the Funding is set out in other provisions in this Agreement.
- 23.2. If under Clause 23.1.5 some or all of the ESFA's concerns about the completeness, accuracy or promptness of data relate to data submitted under an agreement other than this Agreement, then such concerns are relevant to the extent that they undermine the ESFA's confidence in the Training Provider's ability to comply with its obligations to submit complete or accurate or prompt data in relation to this Agreement.
- 23.3. The right to suspend Funding in accordance with Clause 23.1 includes the right to:
  - 23.3.1. suspend the payment of Funding to the Training Provider in relation to current Apprenticeships for a specified period; and / or
  - 23.3.2. not consider any applications or pay any Funding for new Apprenticeships for a specified period.
- 23.4. Where the ESFA suspends Funding in accordance with the terms of this Agreement, it shall notify the Training Provider in writing of the suspension and its duration as well as the intervals at which the suspension will be reviewed to see whether the suspension should be withdrawn or extended.
- 23.5. The ESFA reserves the right to recover from the Training Provider any Funding paid to a Training Provider where the payment of Funding or any arrangement between the Employer and the Training Provider breaches the Funding Rules or the entitlement to Funding was based on wrong, inaccurate or misleading information.

## **24. Termination**

- 24.1. The ESFA may terminate the Agreement without liability to the Training Provider by giving to the Training Provider, or where relevant its representatives, written notice, having effect immediately or after such notice period as the ESFA may determine on one or more of the following grounds:
  - 24.1.1. where the Training Provider has failed two audits undertaken by or on behalf of the ESFA in accordance with Clause 15.4 (Monitoring and Financial Health);
  - 24.1.2. the Training Provider fails to comply with requirements imposed under Clause 15.4.1 and / or 15.4.2 (Monitoring and Financial Health);
  - 24.1.3. where any of the events set out in Clause 15.5 (Monitoring and Financial Health) occur;
  - 24.1.4. where Clause 15.6.5 (Monitoring and Financial Health) applies;

- 24.1.5. the Training Provider fails to comply with requirements imposed under Clause 15.9.2.1 (Monitoring and Financial Health);
  - 24.1.6. where any of the circumstances set out in Clause 23.1 (Withholding, Suspension and Repayment of Funding) occur which amount to a material breach of this Agreement;
  - 24.1.7. where the Training Provider is an individual, and he dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Health Act 1983;
  - 24.1.8. where the Training Provider and / or a Training Provider Related Party ceases to be on the Register of Apprenticeship Training Providers or the UK Register of Learning Providers;
  - 24.1.9. the Training Provider or any of its employees or any other Training Provider Related Party has committed a Prohibited Act;
  - 24.1.10. on the occurrence of the statutory provisos contained in Regulation 73(1)(a) to (c) of the Public Contracts Regulation 2015 notwithstanding that this Agreement is not a public services contract as defined in the Public Contracts Regulations 2015;
  - 24.1.11. the outcome of any financial health and / or control assessment is inadequate;
  - 24.1.12. the ESFA has terminated one or more other agreement with the Training Provider on grounds which have significantly undermined its confidence in the Training Provider's capability to deliver Training to the required standard, and / or to safeguard Apprentices' health, safety and welfare and / or the Training Provider's use of and / or management of the Funding to such an extent that the Training Provider is deemed to have committed a repudiatory breach of this Agreement;
  - 24.1.13. the Training Provider has had two consecutive OFSTED monitoring visits resulting in one or more "insufficient progress" judgements;
  - 24.1.14. an OFSTED inspection results in part of the Training being assessed as inadequate;
  - 24.1.15. an OFSTED inspection results in the Training being assessed as overall inadequate;
  - 24.1.16. the ESFA assesses that the Training is, in whole or part, below the Minimum Standards and / or any performance expectations set out in the Accountability Framework; and / or
  - 24.1.17. the Training Provider commits a material breach of Data Protection Laws and / or Schedule 1 to this Agreement.
- 24.2. If the ESFA considers in its absolute discretion that on receipt of a notice pursuant to Clause 9 (Change in Name and Change in Ownership) that the proposed change in



name and / or ownership would prejudice the Training Provider's ability to deliver the Training, the ESFA shall be entitled to terminate this Agreement on notice in writing.

- 24.3. Where the ESFA terminates the Agreement under any of Clauses 24.1 to 24.2 it shall do so by serving a written notice on the Training Provider specifying the Termination Date.
- 24.4. Without prejudice to the other rights of termination as set out under this Agreement, the Parties shall be entitled to terminate this Agreement in full or part by giving to the other Party not less than 30 days' written notice to that effect.
- 24.5. Termination under this Clause 24 shall not prejudice or affect any right of action or remedy, which shall have accrued or shall thereupon accrue to the Parties under this Agreement.

## **25. Effect of Termination**

- 25.1. Where the Training Provider goes into administration or liquidation, the ESFA must be deemed to be a creditor of the Training Provider. The Training Provider must take steps to ensure that the ESFA is provided with details of the administrator or liquidator and receives notification of any creditors' meetings. The ESFA will confirm whether in fact it is a creditor within 8 weeks of being notified that the Training Provider is in administration or liquidation.
- 25.2. The Training Provider must upon notice of termination of the Agreement make available to the ESFA all Apprentice files (including but not limited to e-portfolios), correspondence, documents, specification papers and other property belonging to the ESFA, which may be in its possession or under its control.
- 25.3. Termination of this Agreement under Clause 21 (Fraud and Irregularity) or Clause 24 (Termination) shall result in the Training Provider being removed from the Register of Apprenticeship Training Providers maintained by the ESFA.
- 25.4. The ESFA will not provide Funding to the Training Provider for any new Apprentices or Apprenticeships that are started on or after the date the notice of termination is served in accordance with Clause 36 (Notice). The ESFA will not be liable to provide Funding in respect of any Apprentices or Apprenticeships started by the Training Provider or a Subcontractor in breach of this provision.

## **26. Transfer of Responsibility on Expiry or Termination**

- 26.1. On giving notice of termination for any reason or 30 days before the Expiry Date, the Training Provider will use all reasonable endeavours to do its utmost to minimise disruption caused to Apprentices including liaising proactively with those Employers with which the Training Provider has a contract of services as well as with the ESFA.
- 26.2. The Training Provider shall, at no cost to the ESFA, promptly provide such assistance and comply with such timetable as the ESFA may reasonably require for the purpose of ensuring an orderly transfer of responsibility for provision of the Apprenticeship upon the expiry or other termination of this Agreement. The Training Provider shall use all

reasonable endeavours to ensure that its employees and its Subcontractors are under a similar obligation. The ESFA shall be entitled to require the provision of such assistance both prior to and after the expiry or other termination of this Agreement.

- 26.3. Such assistance may include, (without limitation) delivery of documents and data in the possession or control of the Training Provider or its Subcontractors, which relate to performance, monitoring, management and reporting of Apprenticeships, including the documents and data referred to in the Evidence Pack.
- 26.4. The Training Provider undertakes that it shall not knowingly do or omit to do anything which may adversely affect the ability of the ESFA and / or an Employer to ensure an orderly transfer of responsibility of the delivery of the Training and / or the End-Point Assessment.

## **27. Force Majeure**

- 27.1. Neither Party shall be liable for any delay or failure to meet its obligations under this Agreement due to any cause outside its reasonable control, including (without limitation), inclement weather, Acts of God, war, riot, malicious acts of damage, civil commotion, strike, lockout, industrial dispute, refusal of licence, power failure or fire. If performance of the service is substantially prevented for a continuous period of 6 months by virtue of any of the aforesaid events, then either Party may terminate this Agreement by written notice to the other.

## **28. Public Reputations of the Parties / Press Releases**

- 28.1. Both Parties recognise their respective public reputations and legal responsibilities. Each Party shall use all reasonable endeavours not to harm or compromise these.
- 28.2. The text of any press release or other communication to be published by or in the media by the Training Provider concerning this Agreement shall require the prior approval (not to be unreasonably withheld or delayed) of the ESFA.
- 28.3. In addition to any other rights or obligations in this Agreement, the ESFA may request information (and specify the format) from the Training Provider in order to exercise its responsibilities and / or to fulfil requirements to provide information to the Secretary of State, to account to Parliament and to meet European funding requirements (where applicable). On occasion, the ESFA will require the Training Provider to provide information urgently.

## **29. Retention of Documents**

- 29.1. The Training Provider and its Subcontractors shall retain for 6 years from the end of the financial year in which the last payment of Funding is made the documents that comprise the Evidence Pack including but not limited to the original invoices, management information returns and all other documents necessary to verify the Training and where relevant, End-Point Assessment, for which the Funding has been provided under this Agreement.

- 29.2. Where any payments of Funding made under this Agreement have been used as match-funding as notified in writing by the ESFA for an ESF project the Training Provider will be required to retain all documents necessary to verify the Training delivered by itself or by its Subcontractors. Documents to support claims must be retained for a minimum of ten years after the European Commission has made its final payment.
- 29.3. The ESFA shall notify the Training Provider in writing of the document destroy date. Without prejudice to any of the other rights under the Agreement to recover Funding, the ESFA will be entitled to recover from the Training Provider any sums which it is required to repay to the European Social Fund as a result of the Training Provider's failure to comply with this Clause 29.
- 29.4. The provisions of this Clause 29 shall apply during the continuance of this Agreement and after its termination howsoever arising.

### **30. Variation**

- 30.1. This Agreement shall not be varied or amended unless such variation or amendment has been issued in writing and signed by both Parties.

### **31. No Partnership or Agency**

- 31.1. This Agreement shall not create any partnership or joint venture between the ESFA and the Training Provider, nor any relationship of principal and agent, nor authorise any Party to make or enter into any commitments for or on behalf of the other Party.

### **32. Joint and Several Liability and Tax Status of the Training Provider**

- 32.1. Where the Training Provider is not a company nor an incorporated entity with a distinct legal personality of its own, the individuals who enter into and sign this Agreement on behalf of the Training Provider shall be jointly and severally liable for the Training Provider's obligations and liabilities arising under this Agreement.
- 32.2. The Training Provider (if an individual) represents that it is regarded by both HMRC and the Department for Work and Pensions as self-employed and accordingly shall indemnify the ESFA against tax, national insurance contributions or similar imposed for which the ESFA may be liable in respect of the Training Provider by reason of this Agreement.

### **33. VAT Act 1994**

- 33.1. Under the provision of Item 5A to Group 6 of Schedule 9 of the VAT Act 1994, the supply of education or vocational training funded by the ESFA and the supply by the person providing that education or vocational training such as the Training Provider, of any goods or services essential to that provision, is considered to be an exempt supply for VAT purposes.

#### **34. Waiver**

- 34.1. No failure or delay on the part of either Party to this Agreement to exercise any right or remedy under this Agreement shall operate or be construed as a waiver of that right or remedy.
- 34.2. No single or partial exercise of any right or remedy under this Agreement shall operate or be construed as a waiver of the full right or remedy.
- 34.3. The rights and remedies provided in this Agreement are cumulative and are not exclusive of any rights or remedies provided by Law.

#### **35. Third Party Rights**

- 35.1. No contractual provision in this Agreement is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a Party to this Agreement.

#### **36. Notice**

- 36.1. Any notice or other document to be given under this Agreement shall be in writing and personally delivered, e-mailed, sent through the ESFA's electronic portal or sent by first class post to the address of the relevant party, as referred to above or in the case of an email address or correspondence address, as notified by the relevant party in writing. The notice or communication will be considered delivered as follows:
  - 36.1.1. if personally delivered, when handed over to the addressee;
  - 36.1.2. if sent by email or through the ESFA's electronic portal, on the day the email is sent if sent on a Working Day and before 5.00 pm, otherwise the email will be considered delivered at 9.00 am on the next Working Day;
  - 36.1.3. if sent by first class post, on the second Working Day after the day on which it is posted.

#### **37. Governing / Jurisdiction**

- 37.1. This Agreement shall be governed by and construed in accordance with English Law.

#### **38. Complaints in Relation to this Agreement**

- 38.1. Any complaint arising in relation to this Agreement shall be resolved in accordance with ESFA's official complaints procedure which can be accessed at <https://www.gov.uk/government/organisations/education-and-skills-funding-agency/about/complaints-procedure>.

### **39. The Training Provider's Feedback and Complaints Procedure**

- 39.1. The Training Provider shall have a policy and process in place, which is acceptable to the ESFA and available to the ESFA on request to gather and act upon Apprentice feedback to improve the experience of Apprentices while they are on their programmes, and to support more general improvements. The Training Provider must ensure that Apprentices are aware of the process and the Training Provider shall use Apprentice feedback to ensure training programmes meet Apprentices' needs. The Training Provider must arrange for and operate a plan to deliver continuous improvement in relation to the training, and should include aggregated Apprentice feedback to inform that plan.
- 39.2. The Training Provider shall have procedures in place, which are acceptable to the ESFA, to act upon complaints from Apprentices and / or their representatives and Employers and the wider community. The Training Provider must ensure that Apprentices and Employers are made aware of its procedure for dealing with complaints and that the procedure is clear and accessible to Employers and / or Apprentices who wish to complain.
- 39.3. The Training Provider shall be responsible for resolving complaints in accordance with its own procedures and any guidance issued by the ESFA.
- 39.4. Where a complaint has not been resolved to the satisfaction of the complainant the Training Provider must advise the complainant of his or her right to complain to the ESFA and co-operate with any investigation carried out by the ESFA and act on any recommendations made by the ESFA following the investigation.
- 39.5. The Training Provider will ensure that it has in place and complies with an effective whistleblowing procedure, approved by the body responsible for the management of the Training Provider, whereby staff may raise in confidence concerns about possible malpractice without fear of victimisation, subsequent discrimination or disadvantage. The procedure must be published on the Training Provider's public-facing website. The Training Provider will regularly review the procedure, including securing approval from the body responsible for the management of the Training Provider of any amended procedure.

### **40. Subsidy Control**

- 40.1. The Training Provider should satisfy itself as to whether the rules on Subsidy Control apply to the Funding provided to it under this Agreement.
- 40.2. Where the rules on Subsidy Control apply, the ESFA will supply to the Training Provider details of the records that the Training Provider will need to collect and retain.
- 40.3. The Training Provider agrees to take all reasonable steps to assist the ESFA to respond to any investigation instigated by the UK Government and / or any independent body established by it into the Funding and / or the Training and / or End-Point Assessment.
- 40.4. The Training Provider acknowledges that a finding of Subsidy Control non-compliance in respect of the Funding and / or the Training and / or End-Point Assessment by a

Court of competent jurisdiction may lead to the Training Provider being ordered to repay the Funding with interest.

#### 41. Continuing Obligations

41.1. Save as otherwise expressly provided in this Agreement:-

41.1.1. the termination or expiry of this Agreement will be without prejudice to any accrued rights and obligations under this Agreement as at the Expiry Date or the Termination Date; and

41.1.2. the termination or expiry of this Agreement will not affect the continuing rights or obligations of the ESFA and the Training Provider under the Clauses in the table at Clause 41.1.4 and / or under any other provision of this Agreement which is expressed to survive expiry or termination or which is required to survive the Expiry Date or the Termination Date in order to give effect to such expiry or termination or the consequences of such expiry or termination.

41.1.3. The continuing rights of obligations as referred to in Clause 41.1.2 will continue for six (6) years after the Expiry Date or Termination Date.

41.1.4. The table referred to in Clause 41.1.2 is as follows:

Clause	Description
6	Funding and Payment
10	Freedom of Information and Confidentiality
13	Liability
14	Insurance
15	Monitoring and Financial Health
16	Liability to Settle Demands for Repayment of Funding
18	Data Protection, Protection of Personal Data and Cyber Essentials
21	Fraud and Irregularity
24	Termination
25	Effect of Termination
26	Transfer of Responsibility on Expiry or Termination
28	Public Reputations of the Parties / Press Releases

Clause	Description
38	Complaints in Relation to this Agreement

## **42. Headings**

42.1. The headings to conditions shall not affect their interpretation.

## **43. Entire Agreement / Amendments**

43.1. The Agreement shall comprise the following:

Clause 1 to this Clause 43  
Funding Rules  
Schedule 1 Data Protection  
Schedule 2 Accountability Framework for Training Providers  
Schedule 3 Subcontracting

## Schedule 1 Data Protection

In this Schedule 1, the following words and expressions shall be defined as follows:

<b>“Controller”, “Processor,” “Data Subject”, “Personal Data”, “Personal Data Breach”, “Data Protection Officer”</b>	take the meaning given in the UK GDPR
<b>“Data Loss Event”</b>	any event that results, or may result, in unauthorised access to Personal Data held by the Processor under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach.
<b>“DPA 2018”</b>	Data Protection Act 2018
<b>“Data Protection Impact Assessment”</b>	an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.
<b>“Data Protection Legislation”</b>	(i) the UK GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy;
<b>“Data Subject Request”</b>	a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.
<b>“UK GDPR”</b>	has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.
<b>“Joint Controllers”</b>	Where two or more Controllers jointly determine the purposes and means of processing
<b>“Law”</b>	means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or



	requirements with which the Processor is bound to comply;
<b>“LED”</b>	Law Enforcement Directive (Directive (EU) 2016/680)
<b>“Processor Personnel”</b>	employees, agents, consultants and contractors of the Processor and/or of any Sub-Processor engaged in the performance of its obligations under this Agreement.
<b>“Protective Measures”</b>	appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it including those set out in the Agreement.
<b>“Sub-processor”</b>	any third Party appointed to process Personal Data on behalf of the Processor related to this Agreement

1. The Parties acknowledge that for the purposes of the Data Protection Legislation, the Department for Education, on behalf of the secretary of state for Education, is the Controller and the Training Provider is the Processor only for the processing set out in Schedule 1a. Any other processing of Personal Data undertaken by the Training Provider will be as a data Controller and not on behalf of the Department for Education. Paragraphs 2 to 14 below apply only in relation to the processing of Personal Data on behalf of the ESFA as set out in Schedule 1a, and the only processing that the Processor is authorised to do on behalf of the ESFA is listed in Schedule 1a by the ESFA and may not be determined by the Processor.
2. The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.
3. The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Controller, include:
  - a. a systematic description of the envisaged processing operations and the purpose of the processing;
  - b. an assessment of the necessity and proportionality of the processing operations in relation to the Services;
  - c. an assessment of the risks to the rights and freedoms of Data Subjects; and
  - d. the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

4. The Processor shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:
  - a. process that Personal Data only in accordance with Schedule 1a , unless the Processor is required to do otherwise by Law. If it is so required the Processor shall promptly notify the Controller before processing the Personal Data unless prohibited by Law;
  - b. ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures), having taken account of the:
    - i. nature of the data to be protected;
    - ii. harm that might result from a Data Loss Event;
    - iii. state of technological development; and
    - iv. cost of implementing any measures;
  - c. ensure that :
    - i. the Processor Personnel do not process Personal Data except in accordance with this Agreement (and in particular Schedule 1a);
    - ii. it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
      1. are aware of and comply with the Processor's duties under this paragraph;
      2. are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;
      3. are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Controller or as otherwise permitted by this Agreement; and
      4. have undergone adequate training in the use, care, protection and handling of Personal Data; and
  - d. not transfer Personal Data outside of the EU unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
    - i. the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Controller;
    - ii. the Data Subject has enforceable rights and effective legal remedies;

- iii. the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and
    - iv. the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data;
    - v. at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Agreement unless the Processor is required by Law to retain the Personal Data.
5. Subject to paragraph 6, the Processor shall notify the Controller immediately if it:
- a. receives a Data Subject Request (or purported Data Subject Request);
  - b. receives a request to rectify, block or erase any Personal Data;
  - c. receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
  - d. receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
  - e. receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
  - f. becomes aware of a Data Loss Event.
6. The Processor's obligation to notify under paragraph 5 shall include the provision of further information to the Controller in phases, as details become available.
7. Taking into account the nature of the processing, the Processor shall provide the Controller with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under paragraph 5 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:
- a. the Controller with full details and copies of the complaint, communication or request;
  - b. such assistance as is reasonably requested by the Controller to enable the Controller to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
  - c. the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
  - d. assistance as requested by the Controller following any Data Loss Event;

- e. assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.
8. The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this paragraph. This requirement does not apply where the Processor employs fewer than 250 staff, unless:
- a. the Controller determines that the processing is not occasional;
  - b. the Controller determines the processing includes special categories of data as referred to in Article 9(1) of the UK GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the UK GDPR; and
  - c. the Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
9. The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.
10. Each Party shall designate its own data protection officer if required by the Data Protection Legislation.
11. Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Processor must:
- a. notify the Controller in writing of the intended Sub-processor and processing;
  - b. obtain the written consent of the Controller;
  - c. enter into a written agreement with the Sub-processor which give effect to the terms set out in this Schedule 1 such that they apply to the Sub-processor; and
  - d. provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.
12. The Processor shall remain fully liable for all acts or omissions of any Sub-processor.
13. The Controller may, at any time on not less than 30 Working Days' notice, revise this Schedule 1 by replacing it with any applicable controller to processor standard paragraphs or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).
14. The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Controller may on not less than 30 Working Days' notice to the Processor amend this Agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

## Schedule 1a - Processing, Personal Data and Data Subjects

Description	Details
<b>Subject matter of the Processing</b>	<p>The subject matter is the Personal Data of Apprentices on education or training programmes administered by the ESFA that are subject to this Agreement as defined in the ESFA privacy notice and ILR specification and its appendices.</p> <p><a href="https://www.gov.uk">Personal information charter - Department for Education - GOV.UK (www.gov.uk)</a></p> <p><a href="https://www.gov.uk">ESFA: privacy notice - GOV.UK (www.gov.uk)</a></p> <p><a href="https://submit-learner-data.service.gov.uk">ILR Specification: ILR Privacy Notice 2021 to 2022 version 1 May 2021 (submit-learner-data.service.gov.uk)</a></p>
<b>Duration of the Processing</b>	<p>The duration of the Processing covers the period from the Agreement Date to the Expiry Date.</p>
<b>Nature and purposes of the Processing</b>	<p>The nature and purposes of the processing is defined in the ESFA privacy notice.</p> <p><a href="https://submit-learner-data.service.gov.uk">ILR Specification: ILR Privacy Notice 2021 to 2022 version 1 May 2021 (submit-learner-data.service.gov.uk)</a></p> <p>The processing of data in this Agreement refers to the submission of ILR data to the ESFA only and the processing of data that is inputted into the Apprenticeship Service. The processing does not include the processing of Personal Data collected from the Apprentices by the Training Provider for the purposes of enrolling Apprentices onto programmes or delivering education or training, e.g. e-portfolios.</p> <p>The Training Provider will be required to submit the data to the ESFA as set out in Clause 20 (Submission of Apprentice Data through the ILR) of this Agreement.</p>
<b>Type of Personal Data</b>	<p>The Personal Data to be processed is defined in the ILR specification.</p> <p><a href="https://submit-learner-data.service.gov.uk">Specification of the Individualised Learner Record for 2021 to 2022 (submit-learner-data.service.gov.uk)</a></p>
<b>Categories of data subject</b>	<p>The data subjects are Apprentices on education or training programmes administered by the ESFA that are subject to this Agreement.</p>
<b>Retention and destruction of</b>	<p>For the purposes of the Department for Education as a data controller of the data, the Training Provider is required to retain the data for the</p>

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Description	Details
<p><b>the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data</b></p>	<p>funding and audit purposes set out in this Agreement for 6 years from the end of the financial year in which the last payment is made under this Agreement.</p> <p>For the purposes of the Department for Work &amp; Pensions as a data controller, where Apprentice data is used as match on the 2014-20 ESF programme, the data must be retained securely until 31<sup>st</sup> December 2030.</p> <p>The Training Provider (and any other data controller) is responsible for determining any further need to process the data, including its retention, prior to secure destruction.</p> <p>The Training Provider shall comply with Clause 25 (Effect of Termination) which sets out provisions that will apply to Apprentice files after this Agreement has been terminated or has expired.</p>

## **Schedule 2 Accountability Framework for Training Providers**

### **1. Introduction**

- 1.1. The ESFA has published the Accountability Framework at [Apprenticeship training provider accountability framework 2021/2022 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/105211/apprenticeship-training-provider-accountability-framework-2021-2022.pdf).
- 1.2. The Accountability Framework consists of Quality Indicators and Supplementary Indicators.

### **2. Quality Indicators**

- 2.1. The Quality Indicators are informed through Ofsted Inspections and the ESFA intervention regime as set out in Clauses 15.6 to 15.9.4 of this Agreement and include (but are not limited to) the following:
  - 2.1.1. the Training Provider's own achievement rates and, where relevant, compared with other suppliers delivering similar standards or in similar sectors;
  - 2.1.2. the Training Provider's own retention rates and withdrawals and, where relevant, compared with other suppliers delivering similar standards or in similar sectors;
  - 2.1.3. Employer ratings of the Training Provider; and
  - 2.1.4. Apprentice ratings of the Training Provider.

### **3. Supplementary Indicators**

- 3.1. The ESFA will also take into account, amongst others, the following Supplementary Indicators:
  - 3.1.1. off-the-job training data (planned and actual hours);
  - 3.1.2. the number of Apprentices that are beyond the planned end date of their Apprenticeship;
  - 3.1.3. unusual changes in the Training Provider's delivery pattern of Apprenticeships;
  - 3.1.4. the extent to which breaks in learning occur in the Apprenticeships delivered by the Training Providers; and
  - 3.1.5. the timeliness with which Apprentices are registered with an End Point Assessment Organisation (EPAO).

### **4. Apprentice Data Timeliness and Compliance**

- 4.1. The Training Provider must comply with Clause 20 of this Agreement in relation to the prompt submission of Apprentice Data to the ESFA.

### **5. Interventions**

- 5.1. Where the ESFA is of the view based on consideration of the Quality Indicators and

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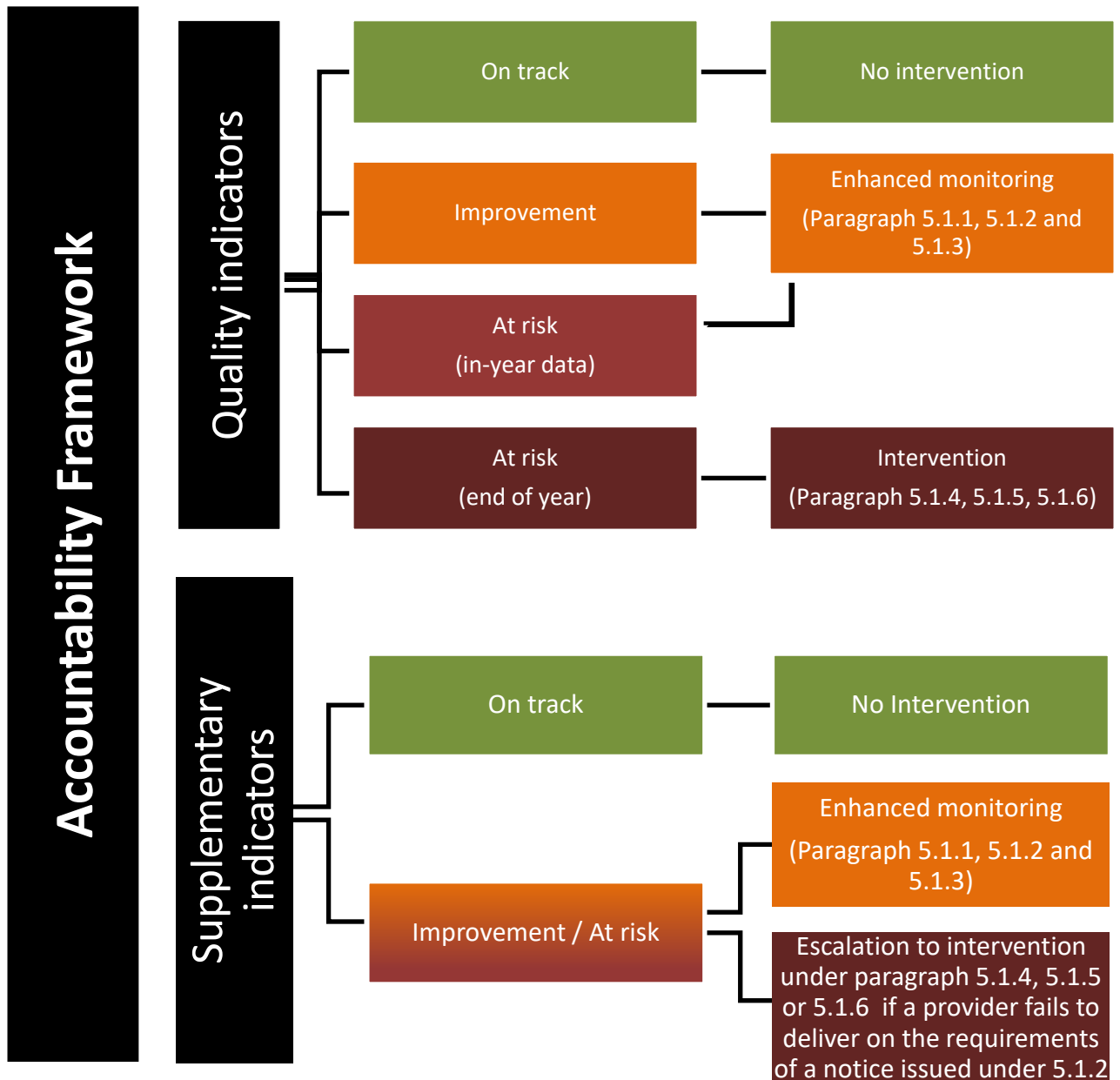
Supplementary Indicators that the Training Provider is underperforming, the ESFA may take one or more of the following measures:

- 5.1.1. Require the Training Provider to attend one or more meetings with the ESFA;
- 5.1.2. Serve on the Training Provider a notice that details one or more failures and requires the Training Provider to rectify the failure(s) specified within a given timeframe;
- 5.1.3. Inform Ofsted of concerns that the ESFA has about the Training Provider;
- 5.1.4. Require the Training Provider to cease to use a named Subcontractor by a specified date;
- 5.1.5. Withhold or suspend the payment of Funding where any of the grounds set out in Clause 23 apply;
- 5.1.6. Terminate the Agreement if any of the grounds set out in Clause 24 apply which may also lead to the removal of the Training Provider from RoATP.

## **6. How the ESFA will take decisions to intervene based on the Quality Indicators and the Supplementary Indicators**

- 6.1. The Accountability Framework as referred to at paragraph 1.1 will set out the trigger points for the ESFA to intervene.

6.2. The ESFA will rate the performance of the Training Provider in relation to Quality Indicators and Supplementary Indicators green, amber or red and will consider taking the intervention action as set out in the Supplementary Indicators and Quality Indicators diagrams below:



6.3. In taking the decision as to what intervention, if any, to take, the ESFA shall act in accordance with the Accountability Framework and take into account one or more of the following factors and / or any other factors that the ESFA considers to be relevant:

6.3.1. Whether it is a Quality Indicator or a Supplementary Indicator that the Training Provider has failed to meet;

- 6.3.2. Whether the data for the relevant Quality Indicator or Supplementary Indicator is in-year data or the final outturn for the relevant academic year;
- 6.3.3. In relation to the Supplementary Indicators whether there are any specific circumstances that the ESFA considers are relevant to the Training Provider's performance;
- 6.3.4. Previous performance of the Training Provider.

### Schedule 3 Subcontracting

- 1.1. The Training Provider must comply with;
  - 1.1.1. the Funding Rules; and
  - 1.1.2. the Subcontractor Policy; and
  - 1.1.3. the [Subcontracting Funding Rules for ESFA funded post-16 funding](#) (excluding apprenticeships); and
  - 1.1.4. the Funding Higher Risk Organisations and Subcontractors Policy (hereafter referred to as the “**Funding Higher Risk Organisations Policy**”).
- 1.2. The Training Provider must select its Subcontractors fairly and without discrimination and must comply with any procurement rules that apply when doing so, including the Public Contracts Regulations 2015 where the Training Provider is a contracting authority under the said regulations.
- 1.3. The Training Provider must ensure that proposed Subcontractors are of adequate financial standing and have sufficient capacity and capability to deliver the services that are to be Subcontracted.
- 1.4. When appointing and working with Subcontractors the Training Provider must have regard to paragraphs EP 215 of the [Apprenticeship Funding Rules for Employer Providers](#) and P189.9 of the [Apprenticeship Funding Rules for Main Providers](#), in relation to conflicts of interest.
- 1.5. The Training Provider must have a direct contractual relationship by way of a Subcontract with all of its Subcontractors, as set out in paragraphs 1.7 and 1.8 of this Schedule. The Training Provider must ensure that its Subcontractors do not subcontract any of the services further to other suppliers.
- 1.6. The Training Provider must not enter into any agreement for Brokerage in relation to the services under this Agreement.

### Requirements for Sub-Contracts

- 1.7. The Training Provider must enter into a written Subcontract with any supplier that the Training Provider is proposing to use as a Subcontractor. The Training Provider and the Subcontractor must enter into the Subcontract before the Subcontractor commences the delivery of the proposed subcontracted services.
- 1.8. In accordance with your ESFA contract(s) you must obtain the ESFA subcontracting standard detailed in the link below if the aggregate total of all subcontractors delivering ESFA funded provision on your behalf exceeds or is anticipated to exceed £100,000 in any single funding year. Whilst otherwise excluded from these rules, for the purposes of calculation of aggregate total of subcontractor delivery you must include delivery of apprenticeships

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[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1007581/subcontracting\\_standard\\_guidance.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1007581/subcontracting_standard_guidance.pdf)

- 1.9. The Subcontract must include:
- 1.9.1. terms and conditions substantially the same as those set out in this Agreement, including but not limited to the right for the Training Provider to terminate the Subcontract if the Subcontractor does not pass the annual due diligence checks and such other matters as are set out in paragraph P180 of the [Apprenticeship Funding Rules for Main Providers](#) and paragraph EP205 of the [Apprenticeship Funding Rules for Employer Providers](#).
  - 1.9.2. payment provisions such that the Training Provider must pay the Subcontractor within 30 days of receiving a valid invoice;
  - 1.9.3. an obligation on the Sub-Contractor to obtain express written permission from the Training Provider before enrolling any Apprentices;
  - 1.9.4. an obligation on the Subcontractor to fund and support enrolled Apprentices for the duration of their Learning Programme;
  - 1.9.5. an obligation on the Subcontractor to participate in any rectification plan as appropriate in the event that the Subcontractor has committed an act which would constitute a material breach of this Agreement (whether or not it is also a breach of the Subcontract); and
  - 1.9.6. sanctions on the Subcontractor for material breach of the Subcontract substantially the same as those set out in this Agreement.
- 1.10. Subcontracts must be available at all times for the ESFA to inspect on request.

### **Training Provider Obligations**

- 1.11. The Training Provider must make payment to any Subcontractor within 30 days of receiving a valid invoice in accordance with the required provisions of the Subcontract set out at paragraph 1.9 of this Schedule.
- 1.12. The Training Provider must make a Subcontractor Declaration by using the '[Manage your education and skills funding](#)' (MYESF) service on at least two occasions per funding year by the dates notified to it by the ESFA. If the Training Provider does not have any Subcontractors at the specified date it must submit a nil return. If after submission of its most recent Subcontractor Declaration the Training Provider enters into any Subcontract within the funding year, it must submit an updated Subcontractor Declaration to the ESFA. Further information can be found in the guidance [Declaring subcontracting arrangements to ESFA](#).
- 1.13. The Training Provider must carry out annual due diligence checks on its Subcontracting arrangements, including but not limited to reviewing its Subcontracts and the rationale for entering into each Subcontract, any fees and charges involved in the delivery of its subcontracted services and whether each cost is reasonable and proportionate in accordance with the Due diligence requirements paragraph P182 in

the [Apprenticeship Funding Rules for Main Providers](#) and paragraph EP207 in the [Apprenticeship Funding Rules for Employer Providers](#).

- 1.14. The Training Provider must publish a policy statement on its public facing website summarising the information in paragraph 1.13 of this Schedule by 31 October in each funding year. The policy statement must accord with the provisions of paragraph P175 in the [Apprenticeship Funding Rules for Main Providers](#) and paragraph EP201 to EP202 in the [Apprenticeship Funding Rules for Employer Providers](#)
- 1.15. The Training Provider must inform the ESFA whenever a Subcontractor goes into administration or liquidation.
- 1.16. The Training Provider must have a contingency plan in place to ensure that there is continuity of services for existing Apprentices in the event of any circumstances that may arise that render a Subcontractor unable to deliver the subcontracted services including but not limited to the expiry or termination of the Subcontract.
- 1.17. If a Subcontractor does not pass the annual due diligence checks set out at paragraph 1.13 of this Schedule, the Training Provider must take action in accordance with the [Apprenticeship Funding Rules for Main Providers](#) and the [Apprenticeship Funding Rules for Employer Providers](#).
- 1.18. The Training Provider must ensure that a Subcontractor that has committed an act which constitutes a material breach of this Agreement (whether or not it is also a breach of its Subcontract) participates in any rectification plan as appropriate.
- 1.19. The Training Provider must carry out an investigation at its own cost if there is any evidence of a Subcontractor having irregular financial or delivery activity and notify the ESFA of this and of the outcome of any such investigation.
- 1.20. The Training Provider must not enter new subcontracting arrangements or increase the value of existing arrangements if any of the following circumstances apply:
  - 1.20.1. Ofsted has rated the Training Provider's management and leadership as inadequate;
  - 1.20.2. the outcome of the Training Provider's annual financial health assessment is inadequate, unless the ESFA has provided its written consent to the proposed sub-contracting arrangement in advance of a Subcontract being entered into;
  - 1.20.3. a Subcontractor has been inspected and judged to be inadequate by Ofsted; or
  - 1.20.4. a Subcontractor is subject to ongoing intervention or investigation by the ESFA.

### **Subcontracting Thresholds**

- 1.21. The Training Provider must review the value of its Subcontracted services and, subject

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to paragraph 1.22 of this Schedule, take such steps as are necessary to reduce that value so that by the 2022/ 2023 funding year the value of its subcontracted services will not exceed the Subcontracting Threshold.

- 1.22. By 31<sup>st</sup> of July 2022 the Training Provider must, where necessary, produce a plan to reduce the amount of its subcontracted services to the Subcontracting Threshold and such plan must be produced to the ESFA on its request.
- 1.23. If the Training Provider considers that it cannot reduce the value of its subcontracted services to the Subcontracting Threshold by 31<sup>st</sup> of July 2022 it must submit an Exemption Case to the ESFA by 31<sup>st</sup> of March 2022.
- 1.24. The Exemption Case and the Training Provider's submission of it must comply with 'Subcontracting threshold and exemption cases' paragraphs P211 in the [Apprenticeship Funding Rules for Main Providers](#) and paragraph EP233 in the [Apprenticeship Funding Rules for Employer Providers](#).
- 1.25. The Exemption Case and the Training Provider's submission of it must comply with 'Subcontracting threshold and exemption cases' paragraphs 29 to 30 of the Subcontracting funding rules.
- 1.26. The ESFA will consider any submitted Exemption Case in accordance with the provisions of paragraph P211 of the [Apprenticeship Funding Rules for Main Providers](#) and EP233 of the [Apprenticeship Funding Rules for Employer Providers](#) and will notify the Training Provider as to whether or not the Exemption Case is accepted.
- 1.27. The ESFA expects that any fee retained by the Training Provider as a management fee for a Subcontract will not exceed 20% of the overall value of the Subcontract. In the event that the management fee is in excess of 20% of the overall value of the Subcontract the ESFA reserves the right to require the Training Provider to provide further information in relation to the rationale for the management fee and why it represents good value for money.

## Financial Thresholds

- 1.28. Where the annual value in any funding year of this Agreement exceeds £5 million and the Training Provider wants to subcontract one or more of the services it must comply with the provisions set out in Funding Higher Risk Organisations and Subcontractors Policy, which can be found in the following link <https://www.gov.uk/government/publications/esfa-policy-on-funding-higher-risk-organisations-and-subcontractors/funding-higher-risk-organisations-and-subcontractors-policy>
- 1.29. The Training Provider must refer to the List of Declared Subcontractors to determine the aggregate value of all subcontracts a Subcontractor holds. Where any Subcontractor holds Subcontracts with an aggregate value of £100,000 or greater for any funding year the Training Provider must comply with the Apprenticeship Funding Rules for Main and Employer Providers.
- 1.30. The Training Provider must obtain an annual report from an external auditor if the

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aggregate total of all its Subcontracts exceeds or is anticipated to exceed £100,000 in any single funding year. The calculation of aggregate total of Subcontractor delivery must include delivery of Apprenticeships.

## **ESFA Rights**

- 1.31. In the event that the Training Provider fails to comply with any of the requirements set out in this Schedule the ESFA reserves the right to take such remedial action under this Agreement as it considers appropriate in the circumstances, which may include but is not limited to requiring the Training Provider to terminate an existing Subcontract and/ or prohibiting the Training Provider from entering enter into any new Subcontract to deliver the services under this Agreement.