



**THIS VARIATION** is made on the date the Variation is digitally signed by the Training Provider on the “Manage your education and skills funding service” (“the Variation Date”).

**BETWEEN: -**

- (1) **THE SECRETARY OF STATE FOR EDUCATION DEPARTMENT FOR EDUCATION** 20 Great Smith Street London SW1P 3BT (“**the Department**”);  
and
- (2) «**OrgName**» «**CompanyNumber**» («**UKPRN**») whose registered office is situated at «**LegalAddress**» (“**the Training Provider**”).

**RECITALS: -**

- (A) The Department and the Training Provider entered into an Apprenticeship Agreement for the provision of Apprenticeship Training with the Department’s reference number of «**MasterContractRef**» (“**Original Agreement**”).
- (B) The Department and the Training Provider have agreed to vary the terms of the Original Agreement as set out in this Variation.
- (C) The Department’s reference for this Variation is October 2024, Version 4.4.

**IT IS AGREED** as follows: -

**1. CONSIDERATION**

In consideration of each of the parties entering into this Variation (such consideration being agreed by the parties to be good and valuable consideration, the adequacy and sufficiency of which is hereby acknowledged and agreed), the parties have agreed to vary the Original Agreement in accordance with Clause 30 (Variation) of the Original Agreement.

**2. VARIATION OF THE ORIGINAL AGREEMENT**

- 2.1 The parties agree with effect from the Variation Date the Original Agreement shall be varied as set out in Annex 1 attached.
- 2.2 Subject to Annex 1, the Original Agreement as amended by the previous variations shall continue in full force and effect in all respects.
- 2.3 In addition to the amendments set out in Annex 1, the Original Agreement shall be construed and interpreted with such further consequential amendments as are necessary to give effect to the amendments set out in

Annex 1 of this Variation, as if such further amendments were also expressly set out in Annex 1.

- 2.4 Except as expressly provided for in Clause 2.3 and Annex 1, the parties agree that no other liabilities, financial or otherwise, shall accrue to the Department because of this Variation.

3. **SEVERABILITY**

The provisions of this Variation are intended by the parties to be severable in the event that any part of it is held to be illegal or unenforceable (in whole or in part) and such part shall not affect the validity and enforceability of the remaining provisions or the remainder of the affected provision under this Variation.

4. **AUTHORITY AND COSTS**

Each party undertakes that it has full power and authority to enter into and shall be responsible for its own costs arising in relation to this Variation.

5. **THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

- 5.1 Subject to Clause 5.2 below, this Variation is not intended to create any benefit, claim or rights of any kind whatsoever enforceable by any person who is not a party to this Variation. Accordingly, the parties confirm that no term of this Variation is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to this Variation.

- 5.2 It is the intention of the parties that any other department, officer or agency of the Crown, may as required from time to time act as the Department's agent in enforcing the Department's rights under this Variation.

6. **GOVERNING LAW AND JURISDICTION**

The parties agree that this Variation and any dispute arising under or in any way connected with the subject matter of this Variation (whether of a contractual or tortious nature or otherwise) shall be governed by and construed in accordance with the laws of England, and the parties submit to the jurisdiction of the English Courts.

7. **ACCEPTANCE BY THE TRAINING PROVIDER**

The person that accepts this Variation via the "Manage your education and skills funding service" on behalf of the Training Provider represents and warrants to the Department that the Training Provider has read and understood this Variation, that the Training Provider agrees to be bound by this Variation and that he/she is duly authorised to enter into this Variation and legally bind the Training Provider.

This Variation is made on the date the Variation is digitally signed by the Training Provider on the “Manage your education and skills funding service”.

**SIGNED FOR AND ON BEHALF OF  
THE SECRETARY OF STATE FOR EDUCATION**

by David Withey, Chief Executive of the Education and Skills Funding Agency

A handwritten signature in black ink, appearing to read 'David Withey', with a long horizontal flourish underneath.

## ANNEX 1

### VARIATIONS TO ORIGINAL AGREEMENT

All references to clauses/paragraphs in this Annex 1 are to clauses/paragraphs in the Original Agreement.

A summary of the main changes are detailed below. Where new clauses/paragraphs have been added and existing clauses/paragraphs have been re-ordered or deleted, subsequent clauses/paragraphs and cross-referencing to clauses/paragraphs have been re-numbered throughout the Agreement. In addition, URL's have been amended where appropriate to ensure that the URL points to the updated resource/publication on GOV.UK.

Amended wording appears in **bold** below.

You must refer to your revised Agreement and associated Schedules which incorporate all amendments.

A copy of the revised Department for Education Apprenticeships-Provider Agreement, October 2024, Version 4.4, which incorporates the amendments detailed below, is attached to this Variation.

#### Entire Agreement

**Replace** all references to "[Apprenticeship funding rules 2023 to 2024](#)" with "the latest Funding Rules".

#### 1. Definitions

**Add** the definition of "External Quality Assurance Organisation" as follows:

<b>"External Quality Assurance Organisation"</b>	means the relevant organisation undertaking an external quality assurance of End-Point Assessments.
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**Amend** the definition of "Expiry Date" as follows:

<b>"Expiry Date"</b>	means <b>31 July 2026</b> or such later date as is notified in writing by the Department and agreed by the Training Provider in accordance with Clause 3 (Commencement and Duration).
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**Add** the definition of "Financial Handbook for Independent Training Providers" as follows:

<p><b>“Financial Handbook for Independent Training Providers”</b></p>	<p>means the guidance found at <a href="http://www.gov.uk">Financial handbook for independent training providers - Guidance - GOV.UK (www.gov.uk)</a> as updated and amended from time to time;</p>
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**Amend** the definition of “Insolvency Event” as follows:

<p><b>“Insolvency Event”</b></p>	<p>means, in respect of the Training Provider:</p> <ul style="list-style-type: none"> <li>(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</li> <li>(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</li> <li>(c) a petition is presented for its winding up (which is not dismissed within 14 Working Days) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986; or</li> <li>(d) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or</li> <li>(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</li> <li>(f) 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; <b>or</b></li> <li>(g) <b>it suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or:</b> <ul style="list-style-type: none"> <li>a. <b>(being a company or a LLP) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or</b></li> <li>b. <b>(being a partnership) is deemed unable to pay its debts within the meaning of section 222 of the Insolvency Act 1986; or</b></li> </ul> </li> </ul>
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	<p>(h) a creditor or encumbrancer attaches or takes possession of, or a distress, execution or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within fourteen (14) days; or</p> <p>(i) where the Training Provider or a Subcontractor is an individual:</p> <ul style="list-style-type: none"> <li>a. if a petition is presented for the Training Provider's or a Subcontractor's bankruptcy; or</li> <li>b. if a criminal bankruptcy order is made against the Training Provider or a Subcontractor; or</li> <li>c. if the Training Provider or a Subcontractor makes any composition or arrangements with or for the benefit of creditors, or makes any conveyance or assignment for the benefit of creditors, or</li> <li>d. if an administrator is appointed to manage the affairs of the Training Provider or a Subcontractor; or</li> </ul> <p>(j) where the Training Provider or Subcontractor is not an individual but is a firm or a number of persons acting together in any capacity: if any of the events mentioned in paragraphs (a)-(h) above occurs in respect of any partner in the firm or any of those persons or a petition is presented for the Training Provider or Subcontractor to be wound up as an unregistered company; or</p> <p>(k) any event occurs, or proceeding is taken, with respect to it in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned above.</p>
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**Delete** the definition of "Minimum Standards".

**Add** the definition of "OFQUAL" as follows:

<b>"OFQUAL"</b>	means the Office of Qualifications and Examinations Regulation, a non-ministerial department that regulates qualifications, examinations and assessments in England.
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**Add** the definition of "Procurement Law" as follows:

<b>"Procurement Law"</b>	means the Public Contract Regulations 2015 or the Procurement Act 2023, as applicable.
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**Amend** the definition of "Regulated Activity" as follows:

<b>"Regulated Activity"</b>	as defined by Schedule 4 of the Safeguarding Vulnerable Groups Act 2006.
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**Amend** the definition of "Subcontracting" as follows:

<b>"Subcontracting"</b>	means <b>the</b> delivery of <b>Training</b> by a separate legal entity <b>to the Training Provider</b> , irrespective of whether such learning is provided by a third party recruited to deliver on site (travel to teach), online learning or whether it is described as a service.
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**Amend** the definition of "Subcontractor" as follows:

<b>"Subcontractor"</b>	means a separate legal entity or an individual (not an employee) that has an agreement (called a Subcontract) with the Training Provider to deliver any element of the Training <b>paid for by the Funding</b> . A separate legal entity includes but is not limited to companies in the Training Provider's group, other associated companies and sole traders. An individual could include a person who is a sole trader, self-employed, a freelancer or someone who is employed by an agency, unless those individuals are working under the Training Provider's direct management and control in the same way as the Training Provider's own employees. This does not include relationships between the Training Provider and other third parties providing services such as marketing.
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**Amend** the definition of "Subcontractor Declaration" by removing the references to "End-Point Assessments" as follows:

<b>"Subcontractor Declaration"</b>	means the declaration that the Department requires a Training Provider to complete specifying whether or not the Training Provider is Subcontracting any of the Training and, if so, which elements of the Training <b>are</b> subcontracted and the amount of Funding attributed to the same.
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**Amend** Clause 1.7 (previously Clause 42.1) as follows:

- 1.7. The headings **in this Agreement are inserted for convenience only and shall not affect the interpretation or construction of this Agreement.**

**Amend** Clause 1.8 and re-number as Clause 1.9 as follows:

- 1.9. Without prejudice to the provisions set out in Clause **1.8**, the Department for Education will principally manage the Apprenticeship Provider and Assessment Register, the relationship with the Training Provider and any intervention; and the ESFA (**or any successor body**) will principally be responsible for payments, Agreement administration and assurance.

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

**Delete** Clause 2.10.

## **4. Training Provision**

**Rename** Clause 4 as “**Provision of Training and End-Point Assessments**”

**Add** Clauses 4.1 to 4.4 as follows:

- 4.1. The Training Provider acknowledges the importance of:
  - 4.1.1. providing the Training to Apprentices;
  - 4.1.2. Apprentices receiving End-Point Assessments; and
  - 4.1.3. ensuring there are no gaps in an Apprentice's Apprenticeship.
- 4.2. The Parties acknowledge that, in accordance with the Funding Rules:
  - 4.2.1. the Training Provider may be responsible for delivering End-Point Assessments in addition to delivering the Training where it is delivering an integrated degree Apprenticeship; in such circumstances the Training Provider may be an EPAO; and
  - 4.2.2. save as provided for in Clause 4.2.1, the Training Provider is only responsible for arranging End-Point Assessments and is not itself responsible for the delivery of End-Point Assessments. Accordingly, the Training Provider receives the Funding in order to arrange End-Point Assessments by an EPAO. The EPAO is not a Subcontractor to the Training Provider.
- 4.3. Where the Training Provider is delivering an integrated degree Apprenticeship and intends also to be the EPAO, the Training Provider shall:
  - 4.3.1. ensure that it is recognised by the External Quality Assurance Organisation for integrated degrees as being able to deliver the End-Point Assessment; and
  - 4.3.2. comply with the Funding Rules with regard to End-Point Assessments processes for integrated standards.



- 4.4. Where the Training Provider is not itself delivering End-Point Assessments, the Training Provider shall ensure that:
- 4.4.1. prior to entering into any contract with an EPAO, the EPAO has prior written approval to deliver an End Point Assessment for that standard by the applicable External Quality Assurance Organisation; and
  - 4.4.2. its contract with an EPAO to deliver End-Point Assessments includes charges that are calculated by reference to the agreed price that the Training Provider or the Employer has negotiated with the EPAO, and such charges shall comply with the limits set out in the Funding Rules. The End-Point Assessment must always be provided to the Apprentice without any charge.

**Amend** Clause 4.1 and re-number as Clause 4.5 as follows:

- 4.5. The Training Provider shall deliver the Training and, **if applicable, End-Point Assessments and**, where relevant, **perform** its role in relation to **arranging** End-Point Assessments in accordance with the Funding Rules and/or the Apprenticeship Accountability Framework which are incorporated into this Agreement as if they were set out in this Agreement.

**Add** Clause 4.6 and Sub-Clauses 4.6.1 to 4.6.2.3 as follows:

- 4.6. The Department reserves the right to instruct the Training Provider to seek alternative arrangements for the End-Point Assessment activity in relation to any concerns raised regarding the quality of the End-Point Assessment or the appropriate use of public funds (for example suspected or confirmed fraud or financial health risks). In such circumstance the Department may, in its absolute discretion, take one or more of the following actions:
- 4.6.1. where the Training Provider is the EPAO, the Department may:
    - 4.6.1.1. require the Training Provider to immediately suspend or cease the delivery of End-Point Assessments;
    - 4.6.1.2. require the Training Provider to transfer its End-Point Assessments to another EPAO in order to ensure that there is minimal disruption to Apprentices; and/or
    - 4.6.1.3. require the Training Provider to refrain from undertaking any further End-Point Assessments until permitted to do so by the Department;
  - 4.6.2. where the training provider is contracting with an EPAO to deliver the End-Point Assessment, the Department may:
    - 4.6.2.1. require the Training Provider to immediately suspend or cease the delivery of End-Point Assessments with the relevant EPAO (the 'Affected EPAO');
    - 4.6.2.2. require the Training Provider to transfer its End-Point Assessment arrangements with the Affected EPAO to another EPAO in order to ensure that there is minimal disruption to Apprentices; and/or

4.6.2.3. require the Training Provider to refrain from undertaking any further End-Point Assessments with the Affected EPAO until permitted to do so by the Department;

## **5. Requirements**

**Add** Clause 5.1 and Sub-Clauses 5.1.3 to 5.1.8 as follows (Sub-Clauses 5.1.1 and 5.1.2 were previously Clauses 5.1.2 and 5.1.5):

- 5.1. It is a condition of this Agreement (and, if the Training Provider is in breach of this Clause 5.1, the Department can terminate this Agreement pursuant to Clause 24.1 (Termination)) that the Training Provider:
  - 5.1.1. complies at all times with the Funding Rules;
  - 5.1.2. adheres to the Conditions of Acceptance for the Apprenticeship Provider and Assessment Register at all times;
  - 5.1.3. subject to Clause 5.2, delivers Training (without Subcontracting) within six (6) months of being listed on the Apprenticeship Provider and Assessment Register;
  - 5.1.4. does not, at any time, have any period of longer than six (6) months whereby it is not delivering Training itself (without Subcontracting);
  - 5.1.5. where the Training Provider's application to the APAR was successful through the 'gap in provision' exceptions process (which began in September 2021), only delivers the apprenticeship standards listed on their Apprenticeship Provider and Assessment Register application unless they have had prior written agreement from the Department to expand to other apprenticeship standards;
  - 5.1.6. if requested to do so by the Department, the Training Provider re-applies to the Apprenticeship Provider and Assessment Register by the date specified by the Department;
  - 5.1.7. has provided adequate, complete and accurate information in its Apprenticeship Provider and Assessment Register application; and
  - 5.1.8. promptly (and no later than one (1) month of any change) informs the Department in writing if there is a material change in the information submitted in the Training Provider's Apprenticeship Provider and Assessment Register application.

**Add** Clause 5.2 and Sub-Clauses 5.2.1 to 5.2.2 as follows:

- 5.2. Where:
  - 5.2.1. the Training Provider is an accredited initial teacher Training Provider, then the Training Provider must deliver Training itself (without Subcontracting) within eighteen (18) months of being listed on the Apprenticeship Provider and Assessment Register; or
  - 5.2.2. the Training Provider's application to the APAR was successful through the 'gap in provision' exceptions process (which began in September

2021), then the Training Provider must deliver the apprenticeship standard they were nominated to deliver within three (3) months of entry on to the Apprenticeship Provider and Assessment Register through or with the Employer that supported their application to the APAR.

**Add** Clause 5.3.10 and Sub-Clauses 5.3.10.1 to 5.3.10.2 as follows:

5.3.10. in relation to its APAR application:

5.3.10.1. promptly provide the Department with any additional information to evidence the examples and/or any information contained in its application to the APAR; and/or

5.3.10.2. fully co-operate at all times with any enquiry made by the Department regarding its APAR application;

## **6. Funding and Payment**

**Add** Clause 6.9 as follows:

6.9. With effect from 1 August 2024, the Training Provider shall comply with the requirements of, and have regard to the guidance in, the Financial Handbook for Independent Training Providers (the 'Financial Handbook') unless the Training Provider is a provider which is outside the scope of the Financial Handbook as set out in Annex A of the Financial Handbook.

## **8. Assignment and Subcontracting**

**Rename** Clause 8 as "Subcontracting"

**Delete** Clause 8.1.

**Amend** Clause 8.2 and re-number as Clause 8.1 as follows:

8.1. The Training Provider **may Subcontract** any part of the delivery of the Training **provided it complies** with the provisions set out in Schedule 3 (Subcontracting) of this Agreement and [Apprenticeship funding rules - GOV.UK \(www.gov.uk\)](http://www.gov.uk).

**Amend** Clause 8.4 and re-number as Clause 8.3 as follows:

8.3. The Training Provider is responsible for all acts and omissions of its **Training Provider Related Parties** connected to or arising out of the delivery of the Training **under this Agreement**.

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

**Amend** Clause 9.1 as follows:

- 9.1. **Subject to Clause 0**, the Training Provider shall not, without the prior written consent of the Department, assign, novate, **charge** or otherwise dispose of this Agreement and/or any or all of its rights, obligations or liabilities under this Agreement **to any third party**, including to other legal entities within the same group as the Training Provider.

**Amend** Clause 9.3 as follows:

- 9.3. The Training Provider will inform the Department as soon as reasonably practicable and, in any event 12 weeks before any proposed 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 Department of the Change of Control **of the Training Provider** within 10 Working Days of it becoming lawful to do so.

**Amend** Clause 9.4 and Sub-Clause 9.4.2 as follows:

- 9.4. The Department 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, **charge**, disposal or other dealing, including any Change of Control and/or **change** of name of the Training Provider, may or would:

9.4.2. put at risk the delivery of Training **and/or End-Point Assessments** to Apprentices; and/or

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

As the amendments made to Clause 15 are extensive, please refer to the revised Clause 15 of your Department for Education Apprenticeships-Provider Agreement, October 2024, Version 4.4.

## **17. Prohibited Activities**

**Amend** Clause 17.4 by removing the reference to “without the Department’s permission” as follows:

- 17.4. The Training Provider shall not hold itself out as acting on behalf of the Department.

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

**Amend** Clause 18.2 as follows:

- 18.2. In the collection and processing of the data set out in Schedule 1a (Processing, Personal Data and Data Subjects), the requirements of Cabinet Office [PPN](#)

[09/23: Updates to the Cyber Essentials Scheme - GOV.UK \(www.gov.uk\)](https://www.gov.uk) dated **September 2023**, or any subsequent updated document, are mandated, and the Training Provider will work towards meeting the requirements of Cyber Essentials during the **2024/25** funding year and present the evidence to the Department on request. The scope must be relevant to the submission of data to the Department, including an allowance for a sub-set scope if appropriate.

## 20. Submission of Apprentices Data through the ILR

**Amend** Clause 20.4 as follows:

20.4. The Training Provider must notify the Department 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. **Failure to report withdrawals by this time will result in the Department being entitled to recover payment of any applicable Funding in accordance with Clause 16 (Liability to Settle Demands for Repayment of Funding).**

**Amend** Clause 20.6 as follows:

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 [Individualised Learner Record \(ILR\) technical documents, guidance and requirements \(submit-learner-data.service.gov.uk\)](https://submit-learner-data.service.gov.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. **The EAS should also be used to repay Funding claimed in error by the Training Provider from previous funding years. The Training Provider must claim or repay Funding via the EAS as set out in the EAS guidance: [Earnings adjustment statement \(EAS\) - GOV.UK \(www.gov.uk\)](https://www.gov.uk) as updated and amended from time to time.**

## 21. Fraud and Irregularity

**Amend** Clause 21.1 as follows:

21.1. The Training Provider **must immediately** notify the Department **in writing** where **the Training Provider** becomes aware of any instance of suspected fraud or financial irregularity in the delivery of the Training, and/or **the arrangement** of End-Point Assessments **and/or, where applicable, the delivery of End-Point Assessments** including, but not limited to, cases of:

**Add** Clause 21.1.8 as follows:

21.1.8. financial irregularities that have been identified by any other party,

## 22. Additional Conditions

**Amend** Clause 22.1 as follows:

22.1. The Department 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 **and/or End-Point Assessments** by the Training Provider to the required standard and/or to ensure that the Funding provided by the Department is being used effectively and efficiently and/or to ensure that the Training Provider complies with requests made by the Department under the Apprenticeship Accountability Framework.

## 23. Withholding, Suspension and Repayment of Funding

**Amend** Clause 23.1.2 to 23.1.4 as follows:

23.1.2. the Department, acting reasonably, has concerns about the standard of Training that the Training Provider **and/or a Subcontractor** is delivering or has delivered including in respect of one or more standard or framework;

23.1.3. the Department, acting reasonably, has concerns that the standard of Training and/or care that the Training Provider **and/or a Subcontractor** is delivering to Apprentices is such that one or more Apprentice may be at risk on safeguarding grounds;

23.1.4. an Awarding Organisation **or an External Quality Assurance Organisation** is taking remedial and/or enforcement action against the Training Provider **and/or a Subcontractor**;

**Amend** Clause 23.6.1 as follows:

23.6.1. suspend the payment of Funding to the Training Provider in **part and/or for a specified period** in relation to current Apprenticeships; and/or

## 24. Termination

**Add** Clauses 24.1.1 to 24.1.2 as follows:

24.1.1. the Training Provider fails to comply with the requirements imposed under Clause 5.1 (Requirements);

24.1.2. the occurrence of an Insolvency Event of the Training Provider;

**Amend** Clause 24.1.2 and re-number as Clause 24.1.3 as follows:

24.1.3. the Training Provider fails to comply with **any of the** requirements imposed under Clause **15** (Monitoring and Financial Health);

**Amend** Clauses 24.1.1 and re-number as Clauses 24.1.4 as follows:

24.1.4. where the Training Provider has failed two audits **and/or investigations** undertaken by or on behalf of the Department in accordance with **Clauses 15.2, 15.3.7 and/or 15.5.3 (rights to audit and investigate - Monitoring and Financial Health)**;

**Delete** Clauses 24.1.3 to 24.1.5

**Add** Clause 24.1.5 as follows:

24.1.5. where the circumstances in Clause 15.5.9 applies (Failure to comply, respond or co-operate - Monitoring and Financial Health);

**Amend** Clause 24.1.11 and re-number as Clause 24.1.6 as follows:

24.1.6. **where the circumstances in Clause 15.5.10 applies** (the outcome of any financial health and/or control assessment is inadequate - **Monitoring and Financial Health**);

**Amend** Clause 24.1.10 and re-number as Clause 24.1.11 as follows:

24.1.11. on the occurrence of the statutory provisos contained in **Procurement Law** notwithstanding that this Agreement is not a public services contract as defined in the **Procurement Law**;

**Add** Clause 24.1.13 as follows:

24.1.13. where the circumstances set out in Clause 15.6.5 applies (OFSTED "insufficient progress" and safeguarding risk or risk to Apprentice);

**Amend** Clause 24.1.13 and re-number as Clause 24.1.14 as follows:

24.1.14. **where the circumstances set out in Clause 15.6.6 applies** (two consecutive OFSTED Monitoring Visits resulting in one or more "insufficient progress" judgements);

**Add** Clauses 24.1.15 and 24.1.16 as follows:

24.1.15. where the circumstances set out in Clause 15.9.1 applies (two consecutive OFSTED inspections result in part of the Training being assessed as "requires improvement", and the Training Provider has failed to ensure that the curriculum for a teaching Apprenticeship meets the principles and requirements of an Apprenticeship);

24.1.16. where the circumstances set out in Clause 15.9.2 applies (two consecutive OFSTED inspections result in the Training being assessed as overall "requires improvement", and the Training Provider has failed to ensure that

the curriculum for a teaching Apprenticeship meets the principles and requirements of an Apprenticeship);

**Amend** Clauses 24.1.14 and 24.1.15 and re-number as Clauses 24.1.17 and 24.1.18 as follows:

24.1.17. **where the circumstances set out in Clause 15.9.3 applies** (an OFSTED inspection results in part of the Training being assessed as inadequate, and/or the Training Provider has failed to ensure that the curriculum for a teaching Apprenticeship meets the principles and requirements of an Apprenticeship);

24.1.18. **where the circumstances set out in Clause 15.9.4 applies** (an OFSTED inspection results in the Training being assessed as overall inadequate and/or the Training Provider has failed to ensure that the curriculum for a teaching Apprenticeship meets the principles and requirements of an Apprenticeship);

**Add** Clauses 24.1.19 to 24.1.20 as follows:

24.1.19. where the circumstances set out in Clause 15.10 applies (failure to comply with additional conditions relating to the improvement of the Training);

24.1.20. where the circumstances set out in Clause 20.8.6 (concerns with data submitted by the Training Provider on an ILR);

**Amend** Clause 24.1.16 by removing the reference to “Minimum Standards” and re-number as Clause 24.1.21 as follows:

24.1.21. the Department assesses that the Training is, in whole or part, below any performance expectations set out in the Apprenticeship Accountability Framework;

**Add** Clauses 24.1.23 and 24.1.24 as follows:

24.1.23. the Training Provider commits material breach of any of its obligations under this Agreement which is incapable of remedy; and/or

24.1.24. the Training Provider commits material breach of any of its obligations under this Agreement which is capable of remedy and fails to remedy it or persists in such breach after [10] Working Days of having been required in writing to remedy or desist.

## **25. Effect of Termination**

**Amend** Clause 25.2 as follows:

25.2. The Training Provider must upon notice (**including notice** of termination of the Agreement) make available to the Department all Apprentice files (including but not limited to e-portfolios), correspondence, documents, specification papers



and other property belonging to the Department, which may be in its possession or under its control.

## 26. Transfer of Responsibility on Expiry or Termination

**Rename** Clause 26 as “Transfer of Responsibility on **Notice**, Expiry or Termination”

**Amend** Clause 26.1 as follows:

26.1. **On (i) the Department giving notice under Clause 15.5.8 (notice to transfer Apprentice(s)); or (ii) either Party giving notice of termination for any reason; or (iii) 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 Department.**

**Amend** Clause 26.2 as follows:

26.2. The Training Provider shall, at no cost to the Department, promptly provide such assistance and comply with such timetable as the Department may reasonably require for the purpose of ensuring an orderly transfer of responsibility for provision of the Apprenticeship upon **receipt of notice or** 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 Department shall be entitled to require the provision of such assistance both prior to and after the expiry or other termination of this Agreement.

**Amend** Clause 26.4 as follows:

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 Department and/or an Employer to ensure an orderly transfer of responsibility of the delivery of the Training, **performance of its role in relation to End-Point Assessments and/or, where applicable, the delivery of End-Point Assessments.**

## 42. Entire Agreement / Amendments

**Rename** Clause 42 (previously Clause 43) as “Entire Agreement”

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

**Amend** the details of “Subject matter of the Processing” as follows:

<b>Subject matter of the</b>	The subject matter is the Personal Data of Apprentices on education or training programmes administered by the Department that are subject to this Agreement as defined in the
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<b>Processing</b>	<p>Department Personal Information Charter, the Privacy <b>information</b>: key stage <b>4 and 5</b> and adult education and ILR privacy notice and documentation.</p> <p><a href="https://www.gov.uk/government/publications/personal-information-charter-department-for-education">Personal information charter - Department for Education - GOV.UK (www.gov.uk)</a></p> <p><a href="https://www.gov.uk/government/publications/privacy-information-key-stage-4-and-5-and-adult-education">Privacy information: key stage 4 and 5 and adult education - GOV.UK (www.gov.uk)</a></p> <p><a href="#">ILR Privacy Notice 2024 to 2025 version 1: January 2024</a></p>
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**Amend** the Description of “Plan for return and destruction of the data once the processing is complete UNLESS requirement under Data Protection Legislation to preserve that type of data” by removing the reference to “**UNLESS requirement under Data Protection Legislation to preserve that type of data**” as follows:

<b>Plan for return and destruction of the data once the processing is complete</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 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 2034.</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>
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## Schedule 2 – Apprenticeship Accountability Framework for Training Providers

**Amend** Paragraph 2.1 as follows:

- 2.1. The Quality Indicators **include those** informed through OFSTED Inspections and the Department intervention regime as set out in Clauses 15.6 to **15.11** of this Agreement and include (but are not limited to) the following:

**Amend** Paragraph 5.1 as follows:

- 5.1. The Department will continually monitor **performance against** the Indicators set out in the Apprenticeship Accountability **Framework** and may contact the Training Provider at any point in the Academic Year to discuss these. Intervention can be taken at any point in the Academic Year following any such

management conversation **and/or correspondence**.

**Amend** Paragraph 5.2.2 as follows:

5.2.2. Require the Training Provider to **make use of the professional development support available through the government funded [Apprenticeship Workforce Development - The ETF \(et-foundation.co.uk\)](https://www.et-foundation.co.uk)**;

**Delete** Paragraph 6.2 and the corresponding 'Supplementary Indicators' and Quality Indicators' diagram.

**Add** Paragraph 6.2.5 as follows:

6.2.5. if the resource the Department must commit to manage this Agreement is disproportionate to (i) the total number of Apprentices that are/were supported in the current, or prior Academic Year; and/or (ii) the total number of Apprentices that are/were supported in a non-priority area in the current or prior Academic Year.

### **Schedule 3 – Subcontracting**

**Amend** Paragraph 1.2 as follows:

1.2. The Training Provider must select its Subcontractors fairly and without discrimination and must comply with any **Procurement Law** that **may** apply when doing so, including where the Training Provider is a contracting authority under **Procurement Law**.

**Amend** Paragraph 1.5 and split out into two Paragraphs as follows:

1.5. The Training Provider must **enter into** a direct contractual relationship by way of a Subcontract with all of its Subcontractors **before any Subcontractor commences the delivery of the subcontracted services, and such Subcontracts shall comply with the requirements** set out in Paragraph Error! Reference source not found. **below**.

1.6. **The Training to be delivered with the Funding provided under this Agreement may only be subcontracted to one level. Accordingly,** the Training Provider must ensure that its Subcontractors do not **further** Subcontract any of the **Subcontractor's** services to other suppliers.

**Delete** Paragraph 1.7.

**Add** Paragraphs 1.8.2 to 1.8.4 as follows:

1.8.2. where applicable, terms that comply with the requirements of Clause 12.10.2 (Modern Slavery);

1.8.3. an obligation for the Subcontractor to comply with the Department Policies and Subcontractor Policies;

1.8.4. where a Training Provider is a contracting authority as determined by Procurement Law, provisions that comply with the requirements of such Procurement Law;

**Amend** Paragraph 1.8.2 and re-number as 1.8.5 as follows:

1.8.5. payment provisions such that the Training Provider must pay the Subcontractor within 30 days of receiving a valid invoice, **unless compliance with Paragraph 0 will require otherwise**;

**Amend** Paragraph 1.11 as follows:

1.11. The Training Provider must make a Subcontractor Declaration by using the [Manage your education and skills funding](#) (MYESF) service **twice during the Academic Year. The first declaration must be made by 31 October and the second declaration must be made by 30 June.** 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 Department. Further information can be found in the guidance: [How to declare subcontracting arrangements for post-16 education and training - GOV.UK \(www.gov.uk\)](#).

**Delete** Paragraph 1.14.

**Amend** Paragraph 1.20 and re-number as Paragraph 1.19 as follows:

1.19. The Training Provider must continuously review the size of its Subcontracted services and ensure this does not exceed 25% **of the services provided by the Training Provider.**

**Amend** Paragraph 1.27 and re-number as Paragraph 1.26 as follows:

1.26. If the aggregate total of all Subcontractors delivering ESFA funded provision on the Training Provider's behalf exceeds or is anticipated to exceed £100,000 in any Academic Year, the Training Provider must meet the requirements detailed in [ESFA subcontracting standard - GOV.UK \(www.gov.uk\)](#). The £100,000 threshold includes Apprenticeships, ESFA **Adult Skills Fund** and 16 to 19 provision subcontracted by the Training Provider.