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AGREEMENT FOR THE SUPPLY OF SERVICES

IN RELATION TO APPRENTICESHIPS

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**THIS AGREEMENT** is made ……………………….

**BETWEEN:**

1. CTSW Skills Ltd, incorporated and registered in England with company number 11513708, whose registered office is at Unit 10, Burrington Business Park, Plymouth PL5 3LX (the **Supplier**)

**INTRODUCTION:**

1. The client and the Supplier intend to work together to deliver apprenticeships.
2. The Supplier is an organisation registered on the Register of Apprenticeship Training Providers and is in the business of supplying certain Services (as defined in Schedule 1) and the Client wishes to receive such Services from the Supplier.
3. The Client and the Supplier have agreed that the Supplier will provide the Services to the client on the terms and conditions set out in this Agreement and in accordance with schedule 1.

**IT IS AGREED**

1. **In this Agreement the following definitions will apply:**

**“Accreditation** means full compliance with all requirements, qualifications and

Specifications as may be made from time to time by any Regulator.

**“Affiliate”** means a person or entity controlling, controlled by or under common

control with such party.

**“Agreement”** means this Agreement together with the schedules and any appendices attached hereto or referred to herein.

**“Agents”** means directors, officers, employees, agents, professional advisers, contractors, subcontractors or any Affiliate of either party.

**“Apprentice”** a person who works under an Apprenticeship Agreement

**“Apprenticeship”** the training and (where applicable) end-point assessment for an employee as part of a job with an accompanying skills development programme.

**“Apprenticeship Agreement”** means an agreement between the Client and the Apprentice

**“Apprenticeship Levy”** the levy payable by all employers with an annual pay bill of more then £3 million which is used to support the funding of Apprenticeships.

**“Assessment Plan”** means the Department for Education approved Assessment Plan as part of an Apprenticeship standard.

**“Associated Person”** means in relation to any entity, a person who (by reference to all the relevant circumstances) performs services for or on behalf of that entity in any capacity and including, without limitation, employees, agents, subsidiaries, representatives and subcontractors.

**“Bribery Act”** the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning legislation.

**“Client”** an employer which enters into this contract with the Supplier to commission Training (a) for its own Apprentices and/or (b) on behalf of a Connected Client for the Connected Client’s Apprentices, to be funded in whole or in part from the Client’s Digital Account.

**“Client Data”** means all data, information, text, drawings and other materials which are embodied in any medium including all electronic, optical, magnetic or tangible media and which are supplied to the Supplier by the Client or which the Supplier is required to generate, collect, process, store or transmit in connection with this agreement.

**“Client’s Digital Account”** the part of the Apprenticeship Service which shows the amount of Funding available to the Client or a Connected Client to spend on Training of Apprentices in accordance with the Employer Agreement with the Education and Skills Funding Agency.

**“Client Obligations”** means those obligations set out in clause 5 (Client Obligations)

**“Client Personnel”** means the employees, agents, and approved subcontractors of the Client.

**“Co-Investment”** means where the Client has to pay to the supplier 10% of any shortfall in available Apprenticeship Levy in the Client’s Digital Account in any given month.

**“Commencement Date”**  means the start of the contract as dated in this document or the date of the Client’s signature and acceptance of these terms and conditions (whichever is later)

**“Commitment Statement”**  means the document as specified in the Funding Rules which is to be provided by the Supplier and then signed by the Apprentice, the Client and the Supplier and annexed to this Agreement.

**“Completion Review”** means the formal review to finalise the submission of all evidence to cover the learning outcomes and agree on submission to the independent apprenticeship assessment organisation.

**“Confidential Information”** means Information relating to one party or its Agents (the “**Disclosing Party”)** and/or the business carried on or proposed or intended to be carried on by the Disclosing Party and which is made available in connection with this Agreement to the other party (the “Receiving Party”) (or its Agents) by the Disclosing Party (or its Agents) or which is recorded in agreed minutes following oral disclosure to the Receiving Party and any other information which is otherwise made available by the Disclosing Party (or its Agents) to the Receiving Party (or its Agents), whether before, on or after the date of this Agreement, including any information, analysis or specifications derived from, containing or reflecting such information which:

1. is publicly available at the time of its disclosure or becomes publicly available (other than a result of disclosure by the Receiving Party or any of its Agents contrary to the terms of this Agreement); or

(ii) was lawfully in the possession of the Receiving Party or its Agents (as can be demonstrated by its written records or other reasonable evidence) free of any restriction as to its use or disclosure prior to its being so disclosed; or

(iii) following such disclosure, becomes available to the Receiving Party or its Agents (as can be demonstrated by its written records or other reasonable evidence) from a source other than the Disclosing Party (or its Agents), which source is not bound by any duty of confidentiality owed, directly or indirectly, to the Disclosing Party in relation to such information.

**“Connected Client”** any entity (being a distinct legal entity from the Client) which is connected with the Client within the meaning of Schedule 1 Parts 1 and 2 of the National Insurance Contributions Act 2014, and which, not being contracting party to the Agreement, carries out activities on behalf of the Client in relation to the Apprenticeship Service or employs an Apprentice whose Training is Funded in whole or in part from the Client’s Digital Account.

**“Control”** means the power, direct or indirect, to direct or cause the direction of the management and policies of such entity whether by contract, ownership of shares, membership of the board of directors, agreement or otherwise and, in any event and without limitation of the foregoing, any entity owning more than 50% of the voting securities of a second entity shall be deemed to control that second entity. The terms **“controlling”** and **“Controlled”** shall have a corresponding meaning.

**“Date Protection Legislation”** means all legislation and regulations relating to the protection of Personal Data including (without limitation) the Data Protection Act 2018, the privacy and Electronic Communications (EC Directive) Regulations 2003, the EU Data Protection Directive, the Regulation of Investigatory Powers Act 2000, the Data Protection (Processing of Sensitive Personal Data) Order 2000, the General Data Protection Regulation (EU) 2016/679 and/or any corresponding or equivalent national laws or regulations and all Code of Practice issued by the Information Commissioner relating to the processing of Personal Data or privacy or any amendments and re-enactments thereof.

**“Default”** means any breach of the obligations of either party or any act, omission, negligent act or statement of either party, its employees, agents or subcontractors and in respect of which liability arises from the defaulting party to the other pursuant to the terms of this Agreement.

**“Deliverables”** means any information, technology or other deliverable delivered by the Supplier under or in connection with this Agreement.

**“Dispute”** means any dispute between the parties arising under or in connection with this Agreement.

**“Employer Agreement”** means the agreement between the Client and the ESFA

**“ESFA”** 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

**“Fees”** means the fees for the Services as set out in Schedule 2 (Fees and Payment)

**“Force Majeure Event”** means any and all events which are not reasonably foreseeable which would affect the performance by a party of its obligations under this Agreement including but not limited to an act of God, local government, war, fire, flood, earthquake or storm, acts of terrorism, explosion, civil commotion or industrial dispute affecting a Third Party (for which a substitute Third Party is not readily available). In the case of the Supplier such event will only be considered a Force Majeure Event to the extent that any insurance taken out by the Supplier would not have mitigated such circumstances or the effect of such circumstances.

**“Funding”** the funding paid to the Supplier on behalf of the Client towards the cost of Training of Apprentices in accordance with the Employer Agreement with the Education and Skills Funding Agency.

**“Funding Band”** means the ESFA published funding cap rates for individual apprenticeship frameworks and standards.

**“Funding Rules”** means the ESFA’s Apprenticeship funding: rules and guidance for employers available at [**https://assests.publishing.service.gov.uk/goverment/uploads/system/uploads/attachment\_data/file/821577/1920\_Employer\_Rules\_Version\_1.0\_FINAL.pdf**](https://assests.publishing.service.gov.uk/goverment/uploads/system/uploads/attachment_data/file/821577/1920_Employer_Rules_Version_1.0_FINAL.pdf)

and Apprenticeship funding and performance management rules for training providers available at[**https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\_data/file/821581/1920\_Provider\_Rules\_Version\_1.0\_FINAL.pdf**](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/821581/1920_Provider_Rules_Version_1.0_FINAL.pdf)as revised and amended from time to time.

**“Good Industry Practice”** means the exercise of such reasonable skill, care, prudence, efficiency, foresight and timeliness as would be expected from a reasonably and suitably skilled, trained and experienced person engaged in the same type of undertaking and for the same or similar circumstances.

**“Information”** means all information including, without limitation, any information relating to operations, plans, intentions, market opportunities, know-how, trade secrets and business affairs in whatever form, whether in oral, tangible or in documented form and, if in tangible or documented form, whether marked or identified as being proprietary or not.

**“Intellectual Property Rights”** Includes:

1. any copyright, design rights, patents, inventions, logos, business names, service marks and trademarks, internet domain names, moral rights, rights in databases, data, source codes, reports, drawings, specifications, know how, business methods, trade secrets, semi-conductor rights, topography rights, whether registered or unregistered, rights in the nature of unfair competition and the right to sue for passing off;
2. applications for registration, and the right to apply for registration, for any of these rights; and
3. all other intellectual property rights and equivalent or similar forms of protection; existing anywhere in the world.

**“Personal Data”** means any and all personal data in respect of which the Client is a data controller and which will be processed by the Supplier in the performance of the Services where “personal data” and “data controller” have the meanings given to them by the EU Data Protection Directive 95/46/EC and from 25 May 2018, the General Data Protection Regulation (EU) 2016/679;

**“Payment Schedule”** means the schedule of payments due to the Supplier for the delivery of the Apprenticeship where such monthly payment may be made up from Apprenticeship Levy**,** Co-Investment or a direct Client payment as outlined in the Funding Rules.

**“Payments”** means the action or process of paying someone or a company something or of being paid; includes Client Co-Investment and incentive payments as outlined in the Funding Rules.

**“Personnel”** means the employees, agents and approved subcontractors of the Supplier who are assigned to perform the Services.

**“Personnel Liability”** means liability for all claims (including but not limited to claims for redundancy payments, unlawful deduction of wages, unfair, wrongful or constructive dismissal, discrimination on the grounds of sex, sexual orientation, race, religion, belief or disability discrimination, equal pay, less favorable treatment of part-time workers and fixed term employees, failure to consult under TUPE and any claims whether in tort, contract or statute or otherwise), demands, actions, proceedings and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, payment made by way of settlement and costs and expenses reasonably incurred in connection with a claim or investigation (including without limitation any investigation by the Equal Opportunities Commission, the Disability Rights Commission or the Commission for Racial Equality or any other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from any such investigation) and legal costs and expenses;

**Processing”** has the meaning given to that term by the EU Data Protection Directive 95/46/EC and from 25 May 2018, the General Data Protection Regulation (EU) 2016/679 and Process and Processed shall have corresponding meanings.

**“Regulator”** means any person having regulatory or supervisory authority over any part of the Services or the Supplier’s or the Client’s business.

**“Regulatory Change”** means any change in law, enactment, order, regulation, regulatory policy, guideline or industry code which impacts on the performance of the Services.

**“Regulatory Requirements”** means: 1) all legal and regulatory requirements in the United Kingdom and any other jurisdiction from which the Services are provided that are applicable in relation to the Services and 2) activities of the Client as the case may be;

**“Representatives”**  means the Training Manager of the Client and the Managing Director of the Supplier.

**“Schedule”** means a schedule attached to the Agreement.

**“Services”** means the Services as set out in Schedule 1 (Services) and Schedule 4 (Approved Framework or Standard)

**“Site”** means in respect of the Services the Client sites specified in the Agreement and any additional premises the Supplier may be required to access in connection with the provision of the Services.

**“Supervisory Authority”** means any competent regulatory authority including but not limited to the UK Information Commissioner’s Office and any equivalent authority in any jurisdiction in which the Supplier is providing the Services or Processing the Personal Data.

**“Supplier Tools”** means all know-how, development tools, processes, methodologies and technologies which are vested in or licensed to the Supplier and which are used by the Supplier in performing the Services.

**“Standard Materials”** means the documents, data, information, courseware, training materials and all other materials provided to the Client by the Supplier or its Agent or used by the Supplier, including any materials as identified in Schedule 1.

**“Term”** has the meaning ascribed to it in clause 2 (Term)

**“Third Party”** means any person or entity which is not a party to this Agreement

**“Training”** the delivery of training and on-programme assessment by the Supplier to one or more Apprentices

**“TUPE”** means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended or replaced)

**“VAT”** means Value Added Tax

1.2 In this Agreement, unless the context otherwise requires:

1. references to the singular include the plural and vice versa, and references to a gender include the other gender
2. references to a person include an individual, a body corporate and an unincorporated association of persons
3. references to a party to this Agreement include references to the successors or assigns (immediate or otherwise) of that party in accordance with clause 29 (Assignment)
4. subject to clause 24 (Subcontracting) references to the Supplier are also references to any subcontractor where that subcontractor is performing any obligation of the Supplier under this Agreement
5. references to a statutory provision include a reference to that statutory provision as from time to time amended, extended or re-enacted and any regulations made under it provided that in the event that the amendment, extension or re-enactment of any statutory provision or introduction of any new statutory provision has a material impact on the obligations of either party, the parties will negotiate in good faith to agree such amendments to this Agreement as may be appropriate in the circumstances
6. the headings in this Agreement are for ease of reference only and shall not affect its interpretation
7. use of the words includes or including means without limitation and the use of these or similar words shall not limit the meaning of the general words
8. the Schedules to this Agreement form part of it
9. if there is any conflict or inconsistency between a term in the main part of this Agreement and a term in any of the Schedules or other documents referred to or otherwise incorporated into this Agreement the term in the main part of this Agreement will take precedence, unless the Schedule or other document which is incorporated into this Agreement is expressly stated to take precedence over the main part of this Agreement; and
10. any indemnities given under this Agreement are subject to the indemnified party using such reasonable endeavors as are appropriate in the circumstances to mitigate any losses, damages, liabilities, claims, expenses and costs which are the subject matter of any such indemnities.

2. **TERM**

2.1 This Agreement shall commence on the Commencement Date and shall continue for a period of three years from the Commencement Date (subject to earlier termination in accordance with the provisions of this Agreement) and shall then continue unless and until terminated by either party giving to the other six months’ written notice of termination. (“**Term**”). The Supplier is not appointed on an exclusive basis.

3. **SERVICES**

3.1 In consideration of the Client entering into this Agreement the Supplier will:

1. Perform its obligations to the Client set out in this Agreement for the Term; and

b) Provide the Services on the terms and conditions set out in this Agreement and in accordance with the minimum service levels set out in Schedule 1.

3.2 The Supplier is not authorised to undertake any work for the Client which is not the subject of this Agreement properly authorsied and signed on behalf of the client.

4. **FEES, INVOICING & PAYMENT**

4.1 The Fees are specified in Schedule 2 (Fees & Payment Schedule).

4.2 The Fees are the only amounts payable by the Client under this Agreement unless otherwise agreed between the parties.

4.3 All sums due under this Agreement shall, unless the subject of a bona fide dispute, be paid by the Client within ten (10) calendar days of the date of receipt of a proper invoice.

4.4 If either party fails to make any payment on the due date the other party may charge that party interest on the amount unpaid, at the rate of 2% per annum above the base rate of the Bank of England, provided that no such interest shall be payable if there is a genuine dispute which has been notified to the other party.

5. **CLIENT OBLIGATIONS**

5.1 The Client shall, as soon as reasonably possible following the Supplier’s reasonable request, provide the Supplier with such information concerning its operations and activities as may be reasonably necessary in the Client’s opinion for the Supplier to comply with its obligations under this Agreement.

5.2 The Client’s obligation under clause 5 (Client Obligations) shall be subject at all times to the confidentiality obligations under this Agreement.

5.3 The Client shall provide the Supplier and its Personnel such access to Sites as is reasonably necessary in the Client’s opinion to allow the Supplier to perform its obligations under this Agreement.

5.4 The Client’s obligations are specified in Schedule 3 (Client Obligations)

6. **PROGRESS & REVIEW MEETINGS**

6.1 The Supplier shall conduct regular progress reviews with apprentices and provide up-to-date information regarding achievement to the Client. Appointments with apprentices will be conducted at the Client’s premises with the prior agreement of the Client and the Supplier will ensure that reasonable notice of cancellation is given wherever possible.

6.2 Representatives of the Supplier and the Client shall meet and conduct review meetings at least every three months to monitor the progress of apprentices unless otherwise agreed.

6.3 Any change in either party’s representatives at these reviews shall be promptly notified to the other party.

7. **PERSONNEL**

7.1 The Personnel shall be regarded at all times as employees agents or subcontractors of the Supplier and no relationship of the Client and employee shall arise between the Client and any Personnel under any circumstances regardless of the degree of supervision that may be exercised over the Personnel by the Client.

7.2 The Supplier shall ensure that the Personnel abide by all of the provisions of this Agreement which impose obligations on them.

7.3 The Supplier shall ensure that the Personnel comply with any Site or premises policies and procedures as specified by the Client.

7.4 The Supplier shall ensure that any written or oral representatives and all facts relating to the Personnel that are provided to the Client are materially correct and that all qualifications, Accreditation and experience that the Personnel are stated to possess have been checked thoroughly by the Supplier and verified as accurate.

7.5 The Client reserves the right to refuse to admit, or remove from, any premises occupied by or on behalf of it, any Personnel whose admission or presence would, in the Client’s reasonable opinion be undesirable or who represents a threat to confidentiality, or security or whose presence would be in breach of any rules and regulations governing the Client’s own staff provided that the Client notifies the Supplier of any such refusal (with reasons why) The exclusion of any such individual from such premises shall not relieve the Supplier from the performance of its obligations under this Agreement.

7.6 If and when directed by the client, the Supplier shall provide a list of the names and business addresses of all persons who may require admission to the Sites or any other premises in connection with its performance of the Services under this Agreement, specifying the capacities in which they are entering such premises and giving such other particulars as the Client may reasonably require.

7.7 Failure by the Client to comply with the provisions of clause 7.5 (Personnel) within a reasonable time of written notice to do so will entitle the Client to refuse admission to any Site to any person who has not been notified to the Client.

7.8 The Supplier shall ensure that the Personnel continue in the functions and responsibilities to which they are assigned to the Client for as long as required by the Client during the course of this Agreement. If any re-assignment by the Supplier of those Personnel is necessary, or if the Client advises that any Personnel assigned are in any respect unsatisfactory, including where any such Personnel are, or are expected to be or have been absent for any period for whatever reason (including without limitation sickness or holiday) of if there is any breach (or if the Client reasonably suspects any breach) of clause 20 (Equality & Diversity) by any Personnel or if the employment of these Personnel by the Supplier is terminated for any reason, then the Supplier will promptly supply a replacement of equivalent caliber and experience at no additional cost or expense to the Client, and any such replacement shall be approved by the Client prior to commencing provision of the Services, such approval not to be unreasonably withheld.

7.9 The Supplier shall procure that all Personnel shall hold all valid Accreditation as is necessary to provide the Services in compliance with all Regulatory Requirements or hold valid Accreditation as the Client deems necessary and specifies in Schedule 1. The Client shall not be responsible for any costs or expenses whatsoever related to the Supplier’s compliance with this clause. The Supplier shall ensure that the applicable Accreditation held by the relevant Personnel remains valid throughout the duration of this Agreement. The Supplier will indemnify and hold the Client and each of its Affiliates harmless on written demand in respect of all loses, damages, costs and expenses and other liabilities (including legal fees, disbursements and expenses) incurred by or awarded against the Client resulting from any breach of this clause.

7.10 The Supplier will ensure that, where appropriate, its employees and trainers have been checked with the Disclosure Barring Service prior to delivery of the apprenticeship programme.

7.11 The Supplier will perform and discharge all obligations in respect of the Personnel for its own account. The Supplier will indemnify the Client against all Personnel Liabilities arising from the Supplier’s failure to perform and discharge any such obligation and against all Personnel Liabilities arising out of or as a result of:

a) any act or omission by the Supplier;

b) all emoluments and outgoings in relation to the Personnel (including without limitation all wages, bonuses, PAYE, national insurance, pension contributions and otherwise);

c) any statement communicated to or action done by the Supplier to any Personnel which has not been agreed in advance by the Client in writing.

8. **DUTY OF GOOD FAITH**

8.1 The Supplier will not, and undertakes to ensure that its Personnel will not, during the provision of the Services, accept any consideration or incentive to promote the equipment, products or services of any organisation, company, firm, person or other entity (other than the Supplier) to the Client and will inform the Client immediately of any such interest or change of circumstances which might affect the objectivity of advice given or work carried out in the provision of the Services.

9. **WARRANTIES & UNDERTAKINGS**

9.1 Each party warrants that, as at the date of this Agreement:

a) it has full capacity and authority to enter into and perform its obligations under this Agreement

b) this Agreement is executed by a duly authorised representative of that party; and

c) there are no actions, suits or proceedings or regulatory investigations pending or, to that party’s knowledge, threatened against or affecting that party before any court or administrative body or arbitration tribunal that might affect the ability of that party to meet and carry out its obligations under this Agreement.

9.2 The Supplier warrants on an ongoing basis that:

a) its obligations under this Agreement will be performed by a sufficient number of appropriately experienced, qualified, competent, trained and efficient personnel with necessary Accreditation as required and in accordance with Good Industry Practice;

b) it will solely be responsible for the payment of remunerations and associated benefits, if any, of the Personnel, and for withholding and remitting income tax and national insurance contributions (or the relevant local equivalent) for its Personnel in conformance with any applicable laws and regulations;

c) all Personnel are entitled to work in the United Kingdom or any other country in which the Services are performed;

d) the Services shall be provided with reasonable care and skill;

e) all documents, data, software, or other materials relevant to the supply of the Services are kept under secure conditions with appropriate back-up arrangements in place;

f) the Supplier will perform its obligations under this Agreement in compliance with all applicable laws, enactments, orders, regulations, guidance and all Regulatory Changes;

g) the Supplier has and will continue to hold all necessary approvals from Regulators necessary to perform the Supplier’s obligations under this Agreement;

h) the Supplier has and will continue to have all rights in and to the Supplier Tools necessary to perform the Supplier’s obligations under this Agreement;

i) the performance of its obligations under this will not infringe any Intellectual Property Rights of any Third Party;

j) it has taken all reasonable precautions to ensure that, in the event of a disaster, the impact of such disaster on the ability of the Supplier to comply with its obligations under this Agreement will be reduced to the greatest extent possible and that the Supplier shall ensure that it has appropriate back-up arrangements in place; and

k) it will comply with the Client’s security requirements including those relating to Sites.

9.3 Except as expressly stated in this Agreement, all warranties and conditions, whether express or implied by statue, common law or otherwise are hereby excluded to the extent permitted by law.

10.0 **INTELLECTUAL PROPERTY RIGHTS**

10.1 All Intellectual Property Rights belonging to a party prior to the execution of this Agreement shall remain vested in that party.

10.2 None of the Intellectual Property Rights in the Client trademarks and brands shall be used by the Supplier for any purpose without the Client’s prior written consent.

10.3 All Intellectual Property Rights in the Standard Materials in existence as at the Commencement Date of this Agreement (and developed independently of this Agreement) are and shall remain the property of the Supplier. To the extent that the Deliverables constitute Standard Materials of the Supplier, the Supplier will retain all Intellectual Property Rights in the Standard Materials and hereby grants, and will procure that its Affiliates and Agents grant, to the Client, its Affiliates, Apprentices and Agents, a royalty-free, non-exclusive, non-transferable, irrevocable licence to use the Standard Materials (with a right to sub-licence under identical terms) for the purposes of the Services in which they were provided. To the extent that the Deliverables constitute materials which have been developed for the Client (“Commissioned Materials”) including, but not limited to, the Apprenticeship Agreements, Commitment Statements and Individual Learning Plan templates as described in Schedule 1. The Supplier assigns by present assignment for future rights, and (if required) shall procure that subcontractors assign, the Intellectual Property Rights in the Commissioned Materials to the Client (or as directed by the Client) with full title guarantee, including any renewals, reversions, extensions or revivals and including the right to take action for past acts of infringement. The Supplier shall execute such documents that the Client may reasonably require to perfect title in the commissioned Materials. The Supplier hereby unconditionally and irrevocably waives in relation to the Commissioned Materials all moral rights. The Client grants the Supplier a non-exclusive licence during the Term to use, access, copy, maintain, modify, enhance and create derivative works of Commissioned Materials for the sole purpose of providing the Services, with the right to grant sublicenses to Supplier subcontractors upon prior written consent of the Client.

10.4 The Supplier will retain all Intellectual Property Rights in the Supplier Tools. The Supplier hereby grants, and will precure that its Affiliates grant, to the Client a royalty-free, non-exclusive, non-transferable, irrevocable licence to use the Supplier Tools (with a right to sub-licence under identical terms) to the extent necessary to receive the Services during the Term.

10.5 All licences granted under the terms of this Agreement shall co-terminate with this Agreement provided that both parties agree and acknowledge that each Apprentice is entitled to retain any materials that form part of the Standard Materials provided during its Apprenticeship after expiry or termination of this Agreement.

11. **CLIENT DATA**

11.1 The Supplier acknowledges that the Client owns and shall own all Intellectual Property Rights in the Client Data. If, at any time, the Supplier (or any Supplier Affiliate or any Subcontractor) is deemed to be the first owner of any Intellectual Property Rights in any of the Client Data, the Supplier shall immediately assign (or procure the assignment of) all Intellectual Property Rights in the Client Data to the Client or its nominee.

11.2 The Supplier shall only store, copy or use the Client Data to the extent necessary to perform its obligations under this Agreement.

12 **LIABILITY**

12.1 Neither party limits its liability for:

a) fraud or theft by it or its employees (Personnel); or

b) death or personal injury caused by its negligence or that of its employees, agents or subcontractors as applicable; or

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

12.2 Subject to clause 12.2 (Liability) the maximum aggregate liability of either the Supplier or the Client to each other will be 150% of the Fees paid or payable pursuant to this Agreement.

12.3 Neither party will be liable to the other party for any indirect or consequential loss or damage including, without limitation, any indirect loss of business, profits, revenue, goodwill or anticipated savings in each case whether arising from negligence, breach of contact under an indemnity or otherwise. The Parties agree that re-sit fees incurred by the Client as a result of the material breach or negligence of the Supplier shall be a directly coverable loss.

12.4 The Parties expressly agree that is any limitation or provision contained or expressly referred to in this clause 12 (Liability) is held to be invalid under any applicable statute or rule of law it will to that extent be deemed omitted but it any party becomes liable for loss or damage which would otherwise have been excluded that liability will be subject to the other limitations and provisions set out in this clause 12 (Liability)

12.5 Nothing in this clause 12 (Liability) will be taken as in any way reducing or affecting a general duty to mitigate loss suffered by a party.

12.6 The Parties agree that they have negotiated this clause 12 (Liability) and that it represents a fair and equitable position.

13. **INSURANCE**

13.1 During this Agreement, the Supplier shall maintain in force the following insurance policies with reputable insurance companies:-

a) professional indemnity insurance of £1 million (for any one claim);

b) public liability insurance for £5 million (for any one accident/occurrence or period); and

During this Agreement, the Client shall maintain in force the following insurance policies with reputable insurance companies

c) employers liability insurance of £5 million (for any one accident/occurrence)

14. **TERMINATION**

14.1 Either party will have the right, without prejudice to its other rights or remedies, to terminate this Agreement immediately by written notice to the other party, if the other party: -

a) is unable to pay its debts or becomes insolvent;

b) is the subject of any order made or a resolution passed for the administration, winding-up or dissolution (otherwise than for the purpose of a solvent amalgamation or reconstruction);

c) has an administrative or other receiver, manager, trustee, liquidator, administrator, or similar officer appointed over all or any substantial part of its assets;

d) enters into or proposes any composition or arrangement with its creditors generally; or

e) is the subject of any events or circumstances analogous to the foregoing in any applicable jurisdiction

14.2 If ESFA funding is unavailable for any reason whatsoever, either party will have the right, without prejudice to its other rights or remedies, to terminate this Agreement immediately by written notice to the other party, provided that this right may not be exercised without prior discussion with the other party.

14.3 The Client may, without prejudice to its other rights or remedies, terminate this Agreement immediately by written notice to the Supplier:

a) if the Supplier is in material breach of this Agreement (being a single event or a series of events which are together a material breach) and either such breach is not capable of remedy or, if the breach is capable of remedy, the Supplier has failed to remedy such breach within 30 days of receiving written notice requiring to do so.

b) if a Force Majeure Events persists for more than 30 days in accordance with clause 17 (Force Majeure);

c) if the supplier is in breach of clauses 16 (Confidentiality);

d) if the Supplier fails to comply with clauses 20 (Equality & Diversity) or 21 (Health and Safety);

e) if the Employer Agreement terminates or expires for any reason.

14.4 The Client may terminate this Agreement for convenience by giving six months’ written notice of termination at any time during the term.

15. **CONSEQUENCES OF TERMINATION**

15.1 Any termination of this Agreement will not affect any accrued rights or liabilities of either party nor will it affect the coming into force or continuation in force of any other clauses and provisions of this Agreement which are expressly or by implication intended to come into force or continue in force on or after termination.

15.2 On termination or expiry of this Agreement for whatever reason, the Supplier shall, and shall procure that its Personnel shall, immediately, or as otherwise advised in writing by the Client deliver up to the Client, or any third party nominated in writing by the Client, property belonging to the Client including any Confidential Information which may be in the possession of, or under the control of the Supplier and/or its Personnel. The Supplier may not withhold such delivery for any reason, including any dispute between the Client and the Supplier arising from the operation, construction, or termination of this Agreement and the Supplier shall on request supply a certificate signed by a director as to its full compliance with the requirements of this clause 15.2 (Consequences of Termination)

15.3 At termination of this Agreement, the Supplier shall continue to provide the Services and shall at the Client’s request provide to the Client, its nominated Agent or a replacement Supplier all reasonable assistance requested by the Client to enable an orderly hand-over of the Supplier’s responsibilities to an alternative Supplier of the Client’s choice to enable the provision of services similar to or the same as the Services. This will be provided for a minimum of 3 months. The Supplier may not withhold such assistance for any reason, including any dispute between the Client and the Supplier arising from the operation, construction or termination of this Agreement. If the Supplier is in default of this Agreement the Supplier shall bear the costs of providing such assistance. In all other cases, the Client shall bear the reasonable out-of-pocket costs of the Supplier for such assistance subject to the Client prior to written approval (but, for the avoidance of doubt, any such payment made by the client shall be without prejudice)

16. **CONFIDENTIALITY**

16.1 The Receiving party will treat and keep all Confidential Information of the Disclosing Party as secret and confidential and will not, without the Disclosing Party’s written consent, directly or indirectly communicate or disclose (whether in writing or orally or in any other manner) Confidential Information to any other person other than in accordance with the terms of this Agreement. The foregoing shall not apply to the extent that:

a) the Receiving Party needs to disclose the Confidential Information of the Disclosing Party to any of its Affiliates or subcontractors in order to fulfill its obligations, exercise its rights under this Agreement or to receive the benefit of the Services, provided always that the Receiving Party solely for such purposes, and complies with this clause 18 to the same extent as if it were a party to this Agreement; or

b) any Supplier Confidential Information is embodied in or otherwise incorporated into any Deliverable.

16.2 Clause 16.1 shall not apply to any Confidential Information to the extent that:

a) such Confidential Information is in the public domain at the Commencement Date or at a later date comes into the public domain, where such Confidential Information has come into the public domain other than as a result of breach of this Agreement or any confidentiality obligations;

b) the Receiving Party can show that such Confidential Information was known to it before receipt pursuant to this Agreement, or and had not previously been obtained or otherwise learnt under an obligation of confidence;

c) the Receiving Party obtains or has available such Confidential Information from a source other than the Disclosing Party without breaching any obligation of confidence;

d) subject to clause 16.4, such Confidential Information is required to be disclosed pursuant to any Relevant L Law or the rules of any Regulator or stock exchange; or

e) the Receiving Party can show Confidential Information was independently developed by it otherwise than in connection with this Agreement, without the aid of any personnel who have or have had access to the Disclosing Party’s Confidential Information.

16.3 If the Supplier is the Receiving Party, the Receiving Party will only use the Confidential Information of the other party for the sole purpose of performing or complying with its obligations under this Agreement.

16.4 Notwithstanding clause 16.1, the Client may disclose Confidential Information to its solicitors, auditors, insurers, accountants or other operational or service-related advisers for the purposes of reporting to or seeking advice from the relevant party. In such circumstances the Client shall ensure, to the extent it is able to do so, that every person to whom disclosure is made pursuant to this clause 16.4 uses such Confidential Information solely for such purpose and complies with this clause 16 to the same extent as if it were a party to this Agreement.

16.5 The Receiving Party agrees to implement and maintain to the Disclosing Party’s reasonable satisfaction all reasonable security measures to safeguard the Disclosing Party’s Confidential Information from unauthorised access, use or disclosure, and to ensure proper and secure storage of all confidential Information and any copies thereof.

17. **FORCE MAJEURE**

17.1 Neither party will be liable to the other party for any delay or non-performance of its obligations under this Agreement to the extent it arises from a Force Majeure Event subject to the affected party:

a) promptly notify the other party in writing of the cause of the delay or non-performance and the likely duration of the delay or non-performance; and

b) Using its best endeavors to limit the effect of the delay or non-performance on the other party.

17.2 If performance is not resumed within 30 days after the occurrence of the Force Majeure Event the Client may terminate this Agreement immediately by written notice to the Supplier.

18. **DATA PROTECTION**

18.1 The Supplier shall, at all times, comply with its obligations and procure that its subcontractors comply with their obligations under all applicable Data Protection Legislation in relation to all Personal Data that is processed by it in the course of performing its obligations under this Agreement, including by maintaining any valid and up to date registration or notification required under the Data Protection Legislation.

18.2 The Supplier shall only process Personal Data:

a) For the purpose of providing the Services to the Client; or

b) As otherwise expressly authorised by the Client.

18.3 The Supplier shall ensure that neither it nor any of its Agents shall publish, disclose or divulge Personal Data to any Third Party without the express written consent of the Client.

18.4 The Supplier shall implement appropriate technical and organisational measures to protect Personal Data against unlawful Processing or Processing otherwise than in accordance with the terms of this clause 18 (Date Protection) and against accidental loss, destruction, damage, alteration or disclosure of the Personal Data. Such measures shall be appropriate to the harm that might result from unauthorised or unlawful Processing or accidental loss, destruction or damage to Personal Data and to the nature of Personal Data to be protected and shall include taking reasonable steps to ensure the reliability of employees having access to the Personal Data.

18.5 The Supplier shall not (and shall procure that its subcontractors shall not) store Personal Data on digital or electronic portable storage devices such as computer laptops, CDs, diskettes, portable drives, magnetic tapes and other similar devices.

18.6 The Supplier shall not process Personal Data outside the European Economic Area (“EEA”) or a country not deemed to provide an adequate level of protection for Personal Data by the Supervisory Authority without the prior written consent of the client. It shall be a condition of any consent given by the Client to the Supplier to transfer Personal Data by the Supervisory Authority that the Supplier shall enter into a Data Transfer Agreement in the form required by the Client and (acting reasonably) such Data Transfer Agreement is regarded as acceptable by the Supplier.

18.7 The Supplier shall without undue delay notify the Client if:

a) the subject of any Personal Data makes a written request to have access to Personal Data or any other complaint, allegation or request is made (including by any Supervisory Authority) relating to the Client’s obligations under the Data Protection Legislation and provide full cooperation and assistance to the Client in relation to any such complaint, allegation or request; or

b) It becomes aware of:

i) The Loss, damage or destruction of any Personal Data; or

ii) Any Third Party processing Personal Data other than as expressly permitted under this Agreement;

And shall take whatever action is necessary to minimize the impact of such event and prevent such events recurring.

18.8 In respect of an apprentice that is not funded by ESFA or other agencies, the Supplier agrees to return all the Personal Data and any copies thereof or shall destroy all the Personal Data and certify to the Client that it has done so.

18.9 In respect of an apprentice that is funded by ESFA or other agencies, the Supplier agrees to only retain minimum information and data to comply with current Funding Rule requirements provided it is held in compliance with all Data Protection Legislation.

18.10 The Supplier shall, at the Client’s request, submit those of its facilities at which any of the Personal Data is processed for audit of the Processing activities covered by this Agreement which shall be carried out by the Client or on the Client’s behalf at a time to be agreed between the parties.

18.11 The Supplier agrees to indemnify and keep indemnified the Client from and against all costs, claims, demands, liabilities, expenses, damages or losses arising out of or in connection with any action by the Information Commissioner, any other authority or any relevant individual in relation to a breach by the Supplier of this clause 18 (Data protection)

19. **THIRD PARTY RIGHTS**

19.1 A person who is not a party to this Agreement may not enforce any of its terms.

20. **EQUALITY & DIVERSITY**

20.1 During the performance of this Agreement, the Supplier will not victimize, harass or discriminate against any employee of either party to this Agreement or any applicant for employment with either party to this Agreement due to their gender, race, disability, age, religious belief, sexual orientation or part time status, subject to any applicable legislation and any amendments and re-enactments thereof. The Supplier further undertakes that it will endeavor to ensure that no damage to the Client’s reputation will occur as a result of any failure by the Supplier to comply with its obligations under this clause If any such failure by the Supplier results, or is likely to result, in material adverse reputational damage to the Client, the client may terminate this Agreement with immediate effect.

21. **HEALTH & SAFETY**

21.1 The Supplier shall ensure that:

a) all apprentices attending off-the-job training and testing facilities are provided with a working environment that complies with all relevant health and safety legislation, provides adequate welfare facilities and safe equipment;

b) adequate supervision and emergency arrangements exist and that they are understood by all apprentices.

21.2 The Client shall ensure that all apprentices are covered to the same extent and manner as an Employer is required to do in relation to employees by or under the legislation and other provisions listed below, or any amending, consolidating or superseding provision from time to time in force in Great Britain:

a) Health & Safety at Work Act, 1974 and all relevant Codes of Practice;

b) Management of Health and Safety at Work 1999 and approved Code of Practice HS (G) 65;

c) Control of Substances Hazardous to Health Regulations 2002 (COSHH);

d) Safeguarding Policies as signed/agreed with the Supplier;

e) Equality Act 2010;

f) The Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995;

g) Factories Act 1961;

h) Offices, Shops and Railway Premises Act 1963

21.3 The Client shall ensure that any notification in respect of his/her undertaking or operations for the time being required to be given by or under the Health & Safety or other legislation is or will be duly given to the appropriate person or authority.

21.4 The Client shall carry out an induction programme with apprentices (wherever possible on the first day of placement) which will include:

a) Health and Safety requirements relating to the Client (location of fire exits and fire extinguishers, assembly assembly points, COSHH regulations, EC directives and corresponding regulations, first aid facilities and procedures/name of first aider);

b) Prohibited areas and equipment;

c) Issue of specialist protective clothing

22. **ANNOUNCEMENTS**

22.1 Neither party shall make or authorise any public or private announcement or communication concerning this Agreement or refer to or use any business name or trade mark of the other party in any promotional or other communications without the prior written approval of the other party (which shall not be unreasonably withheld or delayed), except as required by any regulator.

23. **SUBCONTRACTING**

23.1 Where services under this Agreement are delivered by subcontractors the Supplier will remain responsible for all the acts and omissions of the Subcontractors as fully as if they were the acts and omissions of the Supplier or its employees or agents. The Supplier shall not assign this Agreement or subcontract its obligations under it without the Client’s prior written consent.

23.2 The Supplier shall ensure that its contract with its Subcontractor is on the same as or equivalent to the provisions of the Agreement which impose obligations or restrictions (or both) on the Supplier relevant to the Subcontract.

24. **NOTICES**

24.1 To give notice under this Agreement, a letter must be delivered personally or sent by pre-paid first class post or email to the addresses set out below or to any other addresses given in writing. A notice delivered by hand is served when delivered, a notice served by email is effective upon delivery.

The Client: xxxxxxxxxxxxx

Address: xxxxxxxxxx

Contact: xxxxxxxx

Email: xxxxxxxxxxxx

The Supplier: CTSW Sklls Ltd

Address: Unit 10, Burrington Business Park, Plymouth PL5 3LX

Contact: 01752 782046

Email: learning@xxxxxxxxx

25. **WHOLE AGREEMENT**

25.1 Except to the extent of any misrepresentation or breach of warranty which constitutes fraud this Agreement constitutes the entire agreement between the parties relating to the transactions contemplated by this Agreement and supersedes all previous agreements between the parties relating to the transactions.

25.2 Each party acknowledges that in entering into this Agreement it has not relied on any representation, warranty, collateral contract or other assurance (except those set out in this Agreement and the documents referred to in it and any other entered into on the date of this Agreement between the parties) made by or on behalf of any other party before the date of this agreement. Each party waives all rights and remedies which, but for this clause 25 (Whole Agreement) might otherwise be available to it in respect of any such representation, warranty, collateral contract or other assurance.

26. **DISPUTE RESOLUTION**

26.1 If any dispute arises out of this Agreement, the Dispute shall be referred to the Representatives, who shall seek in good faith to resolve the Dispute with thirty (30) days of the issue being referred, escalating it within their respective companies as necessary for this purpose. If the parties are unable to settle any dispute by negotiation within 30 days, the parties may elect to refer the dispute to mediation or an alternative form of dispute resolution however nothing in this clause shall prevent the parties commencing or continuing court proceedings at any time. Without prejudice to either party’s right to seek redress in court, each party shall continue to perform its obligations under this Agreement, notwithstanding any Dispute.

26.2 The Supplier shall provide a transparent system for dealing with complaints from apprentices. Responses to complaints will be made within 5 working days of the complaint being received and copies of the complaint and response shall be provided promptly to the Client.

26.3 In the event of any dispute the Client or any apprentices employed by the Client shall have their right to contact the ESFA on the Apprenticeship Helpline at 0800 015 0400 or 0247 682 6482 or [nationalhelpdesk@apprenticeships.gov.uk](mailto:nationalhelpdesk@apprenticeships.gov.uk)

26.4 In the event of any dispute involving Subcontractors, the Client or any apprentices employed by the Client shall have their right to contact the Supplier in accordance with the Supplier’s resolution procedures, policy and process.

27 **GENERAL**

27.1 **No Partnership or agency**: anything in this Agreement will be deemed to neither constitute a partnership between the parties nor constitute either party as the agent of the other party for any purpose.

27.2 **Counterparts:** This Agreement may be executed in any number of counterparts all of which taken together will constitute one and the same agreement, and any party may enter into this Agreement by executing a counterpart.

27.3 **Waiver**: The rights of each party under this Agreement:

a) may be exercised as often as necessary;

b) are cumulative and not exclusive of rights or remedies provided by law save to the extent that such rights are inconsistent with those rights as expressly set out in this Agreement; and

c) may be waived only in writing and specifically,

Delay in exercising or non-exercise of any such right is not a waiver of that right.

27.4 **Amendments**: Any amendment of this Agreement will not be binding on the parties unless set out in writing, expressed to amend this Agreement and signed by authorised representatives of each of the parties.

27.5 **Severability:** If any term of this Agreement is or becomes illegal, invalid or unenforceable in any jurisdiction, that will not affect:

a) the legality, validity or enforceability in that jurisdiction of any other term of this Agreement; or

b) the legality, validity or enforceability in other jurisdictions of that or any other provision of this Agreement.

27.6 **Further Assurance:** Each party undertakes, at the request and cost and expense of the other party, to sign all documents and to so all other acts, which may be necessary to give full effect to this Agreement.

27.7 **Costs:** Each party will pay their own costs and expenses in connection with the entering into of this Agreement.

28. **ANTI-BRIBERY**

28.1 The Supplier must not violate any Applicable Anti-Bribery Law.

28.2 The Supplier has and must at all times implement adequate procedures designed to prevent it or any Associated Person from engaging in any activity which would constitute an offence under the Bribery Act if it were carried out in the UK, or violate any Applicable Anti-Bribery Law.

28.3 The Supplier represents that, in connection with this Agreement, no improper financial or other advantage has been, will be or is agreed to be given to any person (whether working for or engaged by the client or any third party) by or on behalf of Supplier or its Associated Persons.

28.4 Breach of any of the provisions in this clause 28 or of any Applicable Anti-Bribery Law is a material breach of this Agreement and, without prejudice to any other right, relief or remedy, entitles the Client to terminate this Agreement immediately.

28.5 The Supplier must give reasonable assistance and cooperation to the Client in relation to any police, judicial or regulatory investigation or enquiry in relation to any suspected bribery or corruption, whether during the term of this Agreement or up to six years after its termination;

28.6 The Supplier represents that the responses it provided to the Client due diligence enquiries remain true, accurate and complete.

29. **ASSIGNMENT**

29.1 Neither party shall be entitled to assign, transfer or otherwise deal with its rights and obligations arising under or in connection with this Agreement without the prior written consent of the other party, such consent not to be unreasonably withheld or delayed.

29.2 The Client may assign, transfer or otherwise all or any of its rights and obligations hereunder to any other company in the Client group on written notice of the Supplier.

30. **LAW & JURISDICTION**

30.1 This Agreement is governed by English Law.

30.2 Subject to clause 26 (Dispute Resolution) the courts of England and Wales shall have exclusive jurisdiction over any disputes arising out of or in connection with this Agreement and the parties accordingly submit to the exclusive jurisdiction of the English courts.

**Signed** by the parties or their duly authorised representatives on the date of this Agreement.

Signed by ) …………………………………………………………………………………

duly authorised and on behalf of )

**‘Employer’** ) …………………………………………………………………………………..

Signed by ) …………………………………………………………………………………….

duly authorised for and on behalf of )

**CTSW Training Ltd** ) …………………………………………………………………………………….

**SCHEDULE 1 – SERVICES**

The Supplier, together with its approved Subcontractors, agrees to carry out without limitation the following services in relation to all apprentices employed by the Client in respect of whom the Client wishes the Supplier to provide services:

1. Brief the Client on apprenticeship opportunities and requirements and promote apprenticeships within the Client’s business as agreed with the Client.
2. Assist the Client in assessing potential apprentices to determine whether they are eligible for funding through the ESFA and obtain a declaration of eligibility signed by the apprentice and the Client.
3. Discuss the Client’s requirements for the apprenticeship, agree and document a formal training programme for each apprentice.
4. Carry out an initial assessment and skills scan for each apprentice to accredit Recognition of Prior Learning and Experience (RPL) and identify training needs, including the need for any additional learner support.
5. Agree an Individual learner price with the Client after adjusting for any RPL.
6. Prepare and agree an Individual Learning Plan (ILP) with specific programme milestones and targets.
7. The ILP is to include a detailed plan for the 20% Off The Job (OTJ) training requirement of the Funding Rules agreed with the apprentice and the Client.
8. Produce a commitment Statement to be signed by the apprentice, the Client and the Supplier.
9. Provide information, advice and guidance to apprentices throughout the training programme.
10. Enroll apprentices on to the apprenticeship programme and ensure that all relevant funding and compliance paperwork is in place.

Note: a cohort of learners will not be inducted onto the apprenticeship programme until the ILP, the 20% OTJ plan and the Commitment Statement are all fully completed and agreed and signed by all parties.

1. Deliver the training as per the agreed programme and the ILP to allow the apprentice to achieve the apprenticeship standard.
2. Deliver Functional Skills qualifications to those learners not exempt.
3. Register apprentices with the appropriate awarding body and apply for certificates on completion.
4. Liaise with the Client on the appointment of an End Point Assessment Organisation (EPAO) and liaise as necessary to facilitate End Point Assessment (EPA) and certification.
5. Arrange progress reviews with the apprentice and the client every 3 months (as a minimum)
6. Facilitate the completion of all requirements for EPA as identified in the Assessment Plan, as detailed in Schedule 4.
7. Provide a named member of staff to visit the apprentice in the workplace to provide training, assessment and guidance as required.
8. Provide remote support to apprentices between visits as agreed.
9. Notify the Client if the Apprentice fails to attend training or support session or fails to complete learning plans.

**SCHEDULE 2 – FEES & PAYMENT**

The Client agrees to the following, in respect of all apprentices starting under this Agreement from 1 May 2017 onwards:

1. Agree with the Supplier a price for each apprentice.
2. Before the programme(s) commences, a Payment Schedule will be agreed between the Client and Supplier, which will detail the payment to be received by the Supplier each month and the amount to be released when an Apprentice sits their EPA.
3. The Supplier has no influence or control of the amount of Apprenticeship Levy available. The Client has the financial and contractual obligation to ensure that the agreed monthly amounts are paid to the Supplier in accordance with the Payment Schedule. The Client acknowledges that if there is no Apprenticeship Levy or ESFA funding available then the full cost will be met by the Client.
4. Authorise monthly payments before commencement of the apprenticeship programme for each apprentice through the Digital Apprenticeship Service (DAS) in accordance with the ESFA Funding Rules. The amount of these payments shall be equivalent to the agreed price or Funding Band (whichever is lower) for each apprentice less 20%, divided by the number of months the apprentice is expected to be on the programme as agreed between the Client and Supplier.
5. Pay to the Supplier the Client Co-Investment sum equivalent to 10% of any shortfall in the Client’s Digital Account in any given month. The ESFA will notify the Supplier of such shortfall after the Supplier’s monthly data upload and the amount of the required Co-Investment. The Supplier will then invoice the Client the Co-Investment and such payment is to be received by the Supplier before the end of that month.
6. Paying the Supplier for such additional cost as may be necessary and agreed where an apprentice has to re-sit exams or EPA.
7. Paying the Supplier for any reasonable expenses incurred for the cancellation or re-arrangement of pre-programmed delivery dates. If cancelled or postponed within 7 days of the arranged date then a commercial day rate may be charged.
8. The Client accepts that the Supplier’s pricing for the Services is based on cohort numbers. If an apprentice leaves the programme, for whatever reason, then the client will pay the Supplier for the remaining ESFA funding that would be due to the Supplier if that apprentice had completed the apprenticeship. Any such payment from the Client must be requested by the Supplier before the expiry of two calendar months from the date of receipt by the Supplier of the official exit paperwork for an apprentice from the Client. The Supplier will notify the client of the outstanding funding amount and the client will then raise a Purchase Order in favour of the Supplier for said amount. The Supplier will raise an invoice which will be paid by the Client in accordance with this agreement.
9. If an apprentice leaves the programme on a Break in Learning this will reduce the income to the Supplier and increase the unit cost of the classroom delivery element. The Client accepts there will be a commercial charge for this shortfall. The Client also accepts that when the apprentice returns to programme an individual delivery plan will be required and this will necessitate an employer contribution in addition to any remaining apprenticeship funding.
10. If an apprentice is unable to attend a classroom delivery day(s) and the Client wishes for the delivery to be repeated then a commercial day rate will be chargeable.
11. If the Supplier was unable to draw down the apprenticeship completion payment from the ESFA for an apprentice, because the apprentice failed to complete and pass either of the Functional Skills English or Maths tests, then the Client will pay the Supplier that completion payment.
12. If the Supplier is subject to a funding clawback from the ESFA as a result of the Client being in breach of or not fully following and implementing the Funding Rules, then the Client will pay the Supplier for the full value of any funding clawback.
13. Pay to the Supplier any additional payment as agreed between the Client and Supplier.

**SCHEDULE 3 – CLIENT OBLIGATIONS**

The Client agrees to carry out the following obligations in relation to all apprentices employed by the Client and coming within the terms of this Agreement:

1. Sign an Apprenticeship Agreement between themselves and the apprentice.
2. The Client is to fully comply with the Funding Rules and the ESFA contract. The Supplier cannot accept any liability for any misinterpretation or non-compliance by the Client.
3. The Client acknowledges and accepts that the Funding available in the Client’s Digital Account is to support the Training of Apprentices and shall be paid directly to the Supplier in accordance with the Funding Rules. The Client understands that the Funding may not be used for any other purpose.
4. Sign a Commitment Statement with the Supplier and Apprentice and keep the signed copy annexed to this Agreement.
5. If an Apprenticeship Standard is being followed the Client will, in liaison with the Supplier, select an EPAO that must be listed on the ESFA’s Register of Apprenticeship Assessment Organisations to carry out the end point assessment.
6. If an EPAO has not been appointed or if a price for EPA is not agreed before commencement of the apprenticeship programme a provision for the price of EPA needs to be included in the price agreed with the supplier for each apprentice. The Client accepts that there may be an invoice from the Supplier to cover any shortfall between that provision and the price then agreed between the Client and the EPAO if the shortfall cannot be added to the agreed price on the DAS.
7. Adhere to health & Safety obligations under the Health & Safety at Work Act and ensure that their insurance company is informed that an apprentice is undergoing training.
8. Notify the Supplier or its Subcontractors within 24 hours of any accidents or incidents involving the apprentice in their employment that falls under the requirements of RIDDOR, and provide a report within 10 days confirming the details and any actions taken.
9. Provide evidence of Public & Employer’s Liability insurance to the supplier on request.
10. Carry out risk assessments as required by the Health and Safety at Work Act.
11. Comply with the ESFA’s health and safety requirements and allow Education and Skills Funding Agency Health and Safety Officers to visit their premises.
12. Provide specialised equipment, materials and tools for apprentices’ use and ensure that apprentices receive appropriate direction in their use including suitable and sufficient information, instructions and training.
13. Nominate a supervisor/mentor to oversee the practical training and progression towards the apprenticeship aims and participate in discussions to determine the most appropriate types of evidence to be collected, taking into account job role and internal systems and processes.
14. Notify the Supplier or its Subcontractors of any changes to the apprentice’s training programme.
15. Provide Regular and varied training opportunities to enable the apprentice to meet all elements and components of their apprenticeship.
16. Notify the Supplier or its Subcontractors with any information which may prevent the apprentice from completing or failing to progress in their apprenticeship.
17. Allow the apprentice to attend all training sessions for the duration of the apprenticeship, including any learning support or additional sessions, as deemed necessary by the Supplier or its Subcontractors.
18. Ensure that the Supplier is kept informed of any formal disciplinary action taken, other than that required for day-to-day supervision.
19. Allow the apprentice to attend specific assessments including examinations, “end point” assessments, professional interviews and associated tasks.
20. Allow access to and comply with all reasonable requests for assistance and information made by the Supplier or its Subcontractors, ESFA, Department for Education (DfE), Ofsted or any body or bodies authorised by any of these to undertake evaluation of the efficiency and effectiveness of the training programme.
21. Meet at least every three months, unless otherwise agreed, with the Supplier or its Subcontractors to review the apprentice’s progress/welfare and to discuss and agree any appropriate amendments to the training programme.
22. Allow the Supplier’s or its Subcontractors’ Personnel to visit the workplace as and when required, to carry out work-based training and assessments with the apprentice, providing an appointment is made prior to the visit.
23. Give sufficient notice to the Supplier or its subcontractors of cancellation of any appointments or visits.
24. Supply evidence to the Supplier or its Subcontractors and/or ESFA confirming attendance of the apprentice at work as and when required.
25. Provide evidence of time spent off the job for the purpose of completing training or learning contributing to the achievement of the Apprenticeship.
26. Notify the Supplier or its subcontractors within 48 hours if the apprentice leaves their employment, or if there is any material change in the circumstances of their employment.
27. Provide signed evidence confirming that the apprentice has completed the apprenticeship and to participate in the Completion Review to agree on submission to the EPAO.