



SCHEDULE 4
CALL OFF CONTRACT

DIRECTORY OF APPROVED APPRENTICESHIP TRAINING PROVIDERS

BETWEEN:

[EMPLOYER NAME]

and

[TRAINING PROVIDER NAME]

**DIRECTORY OF APPROVED APPRENTICESHIP TRAINING PROVIDERS
CALL OFF CONTRACT**

THIS AGREEMENT is made on the **[INSERT DATE]**

BETWEEN:

- (1) **[insert Name of Employer]** whose address for the purposes of this Agreement is **[insert address]** (“**Employer**”); and
- (2) **[insert Name of Training Provider]** which is a company registered in England and Wales under company number **[insert company no]** \ a Further Education College \ a Higher Education Institution under Register of Training Providers number **[insert RoTP number]** (“**Training Provider**”)

BACKGROUND:

- (A) Nottingham City Council (**the “Council”**) has established a Directory of Approved Apprenticeship Training Providers (**the “Directory”**) who deliver education services for Education and Skills Funding Agency (“**ESFA**”) approved Apprenticeships.
- (B) The Services procured by the Council fall within the remit of the Light Touch Regime (“**LTR**”) under the Public Contract Regulations 2015 which allowed the Council some flexibility to determine the most suitable procedure for awarding contracts, provided that Regulation requirements are met and the Council ensures continued compliance with the principles of transparency and equal treatment to economic operators. The Directory allows the Council and other Contracting Bodies to choose a Training Provider to provide the Services they require from time to time on a call off basis in accordance with this Agreement.
- (C) The Training Provider has undertaken to provide the Services on terms set out in the Services Agreement dated **[insert date]** between the Council and the Training Provider.
- (D) The Council and the Training Provider agree that Employers identified during the procurement in the OJEU Notice may enter into Call off Contracts with Training Providers to provide Services pursuant to a Request for Service by the Employer.
- (E) The Training Provider shall provide the Services in accordance with the terms and conditions of this Call off Contract.

NOW IT IS HEREBY AGREED as follows:

PART 1
ORDER FORM

| Contact Details: | | |
|--------------------------------------|---|---|
| 1.1 | Employer Authorised Representative (including contact details) | Insert name |
| 1.2 | Training Provider Authorised Representative (including contact details) | Insert name |
| Call-Off Contract Particulars | | |
| 2. | Call-Off Contract Commencement Date | Insert date |
| 3. | Call-Off Contract End Date | insert period |
| 4. | Contract Price £ | Insert price |
| 5. | Insurance requirements: | <ul style="list-style-type: none"> • Employee Liability Insurance in the sum of £5,000,000 (five million pound); • Public Liability Insurance for the minimum sum of: £1,000,000 (one million pounds) for office based apprenticeships; and £10,000,000 (ten million pounds) for higher risk apprenticeships Professional Indemnity Insurance in the sum of £1,000,000 (one million pounds) and that any Professional Indemnity Insurance is in an amount for each and every claim, act or occurrence or series of claims, acts or occurrences which is sufficient to cover the Provider's liabilities under this Call off Contract. • That insurance is maintained in respect of any one act or occurrence or series of acts or occurrences arising from one event but with no aggregate limit during any one period of cover. |
| 6. | Address for Service of Notices | Insert contact details |

| Name(s) of Apprentices undertaking Apprenticeship Programme | | |
|--|---|--------|
| 7. | Name(s) of Apprentices | Insert |
| Apprenticeship Programme | | |
| 8. | Apprenticeship Occupation | Insert |
| 9. | Apprenticeship Standard or Framework | Insert |
| 10. | Level of qualification | Insert |
| 11. | Start Date | Insert |
| 12. | End Date | Insert |
| 13. | Location of training | Insert |
| Training Provider Actions | | |
| 14. | Training to be delivered by Training Provider | Insert |
| 15. | Training Provider Equipment | Insert |
| Employer Actions | | |
| 16. | Training to be delivered by Employer | Insert |
| 17. | Employer Equipment | Insert |

| Apprentice Assessment Organisation (Standards Only) | | |
|--|--|-------------|
| 18. | Name of Apprentice Assessment Organisation | Insert |
| Subcontracting | | |
| 19. | Name of Subcontractor(s) | Insert |
| 20. | Training to be delivered by Subcontractor | Insert |
| 21. | Training Provider monitoring of Subcontractor | Insert |
| Functional Skills Provision | | |
| 22. | Maths Provision | Insert |
| 23. | English Provision | Insert |
| 24. | Other functional skills | Insert |
| Non-Funded Items | | |
| Detail of items not eligible for ESFA funding | | Cost |
| a) | Insert | Insert |
| b) | | |
| c) | | |
| Additional Payments (formerly known as Employer Incentives) | | |
| Apprentice aged between 16 -18 years old at the start of the apprenticeship | Y/N £ Insert value Estimated due date: insert date | |
| Apprentice aged between 19 and 24 years old and has either an Education, Health and Care (EHC) plan provided by their local authority or has been in the care of their local authority | Y/N £ Insert value Estimated due date: insert date | |
| Employer will invoice the Provider within 28 days of the due date of additional payments | | |

| Employer Charges | |
|--|----------------|
| The agreed price (exc VAT) for training each Apprentice under this Agreement is as follows: | |
| Total Price of Apprenticeship | Insert value |
| Total Government Contribution | Insert value |
| Total Charge to Employer (100% Levy Payer / 5% Co-investment) <i>(N.B. where a learner withdraws from their programme charges are due to this point/ overpayment will be reconciled to the withdrawal date)</i> | Insert value |
| The Price of the Apprenticeship will be made up of the following costs: | |
| Training Provider Training Costs | Insert value |
| Sub-Contractor Training Costs | Insert value |
| End-Point Assessment Costs (Standards Only) | Insert value |
| Lead Provider Costs of monitoring/managing subcontractors | Insert value |
| Total | Insert value |
| Employer Payments | |
| Employer: | Insert |
| Employer address for Invoicing: | Insert address |
| Employer Contact for invoicing matters: Name and Title: Position: Email: Telephone: | Insert details |

Payment Schedule via Digital Account

| | Employer Levy Payments (or 5% Co-investment) | Government share (Co-investment 95%) | Date for payment |
|--|---|---|-------------------------|
| Month 1 | Insert value | Insert value | Insert |
| Month 2 | | | |
| Month 3 | | | |
| Month 4 | | | |
| Month 5 | | | |
| Month 6 | | | |
| Month 7 | | | |
| Month 8 | | | |
| Month 9 | | | |
| Month 10 | | | |
| Month 11 | | | |
| Month 12 | | | |
| Month 13 | | | |
| Month 14 | | | |
| Month 15 | | | |
| Month 16 | | | |
| Month 17 | | | |
| Month 18 | | | |
| Insert additional lines if required | | | |

Additional Key Performance Indicators Agreed

| KPI | GREEN | AMBER | RED |
|--------------------|--------------|--------------|------------|
| Insert if required | | | |
| | | | |
| | | | |

Formation of Call off Contract

By signing and returning this Order Form, the Training Provider agrees to enter a legally binding contract with the Employer to provide the Services specified in this Order Form (Part 1) incorporating the rights and obligations in the Call-Off Terms and Conditions (Part 2) to this Call-Off Contract.

SIGNATURES

| | |
|--|------------|
| Signature | Print Name |
| _____ | _____ |
| Signed for and on behalf of [INSERT EMPLOYER NAME] | |
| Position | Date |
| _____ | _____ |
| Signature | Print Name |
| _____ | _____ |
| Signed for and on behalf of [INSERT NAME OF TRAINING PROVIDER] | |
| Position | Date |
| _____ | _____ |

PART 2

CALL OFF TERMS AND CONDITIONS

Contents

Clause

| | |
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| | |
|---|---|
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1. DEFINITIONS AND INTERPRETATION

1.1 In this Call-off Contract, except where the context requires the following terms shall have the following meanings:-

| | |
|------------------------------------|--|
| Active Training Provider | Means a Training Provider listed within the Directory of Approved Apprenticeship Training Providers (the "Directory") with an Active Call off Contract in place. |
| Apprentice Assessment Organisation | Means an organisation on the Register of End-Point Assessment Organisations (RoEPAO) and selected by an Employer and contracted by the Training Provider for the delivery of independent end point assessment as part of the Employer's agreed apprentice programme |
| Apprentice | Means the individual who will receive apprenticeship training and (where applicable) end point assessment, programme assessment, accreditation, certification and qualification through an apprenticeship framework or standard. |
| Apprenticeship | Means a job with an accompanying skills development programme that is approved by the Education and Skills Funding Agency (ESFA), which includes training and (where required) end- point assessment, programme assessment, accreditation, certification and qualification for an employee as part of a job with an accompanying skills development programme. |
| Apprenticeship Agreement | Means an agreement between an Employer and an Apprentice. For standards, this is defined in section A1 (3) of the Apprenticeships, Skills, Children and Learning Act 2009 (as amended by the Enterprise Act 2016); for frameworks, this is defined in section 32 of the same Act. |
| Apprenticeship Levy Funding | Means the Employers Funding held in the Digital Account which is used to pay for apprenticeships training and assessment in accordance with the Funding Rules. |
| Break in Learning | Means when an Apprentice does not continue with their learning but intends to resume learning in the future. |
| Call off Contract | Means this binding agreement for the provision of Services entered into by the Training Provider and Employer comprising the Call-Off Terms and Conditions (at Part 2), the Order Form (Part 1) and the Annexes to the Call-Off Contract together with all other documents referred to herein as amended and updated from time to time. |
| Call off Information | Means the information required from Training Providers at the point of tender to inform the Course Information Catalogue. |
| Call off KPI | Means the key performance indicators reported by the Active Training Provider to the Employer. |

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| Call off Procedure | Means the procedures that will be followed by Employers when calling off from the Directory and as set out in Schedule 1. |
| Co-Investment Funding | Means Funding that is not paid from an Employer's digital account because the Employer does not have sufficient levy funds in their digital account. Co-investment is 95% UK Government funded and 5% Employer funded. |
| Commencement Date | Means the date of this Call off Contract. |
| Commitment Statement | Means a statement between the Training Provider, the Apprentice and their Employer as set out in the Funding Rules, which details the support required for the Apprentice to achieve success. A Commitment Statement Template is set out in Annex 3. |
| Contract Period | means the period from the Commencement Date up until and including the End Date as set out in section 4 of the Order Form. |
| Course Information Catalogue | Means the catalogue of available courses that will be provided to Employers to enable the Call off Procedure to be implemented. |
| Comment, Compliment or Complaint | Means a Comment, Compliment or Complaint submitted to the Council by an Other Contracting Body or Apprentice regarding a Training Provider which would be managed in accordance with Clause 27. |
| Data Protection Legislation | Means the General Data Protection Regulation (EU) 2016/679; the Data Protection Act 2018 and any subordinate legislation made under such Acts from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation. |
| Default | Means any breach of the obligations of the Training Provider (including but not limited to fundamental breach or breach of a fundamental term). |
| Default Notice | Means the Notice as set out in Clause 28.3 of this Call-Off Contract. |
| Digital Account | Means the account from which Employers access Apprenticeship Levy Funding. |
| Directory of Approved Apprenticeship Training Providers (the "Directory") | Means the list of all Training Providers providing the Services under the Services Agreement and that have successfully been selected following the Council's competitive tender process. The Directory shall be made available to all eligible Contracting Authority Employers. |
| KPI | Means the key performance indicators reported on by every active Training Provider to the Employer in accordance with Clause 28, Annex 1 (Performance & Contract Management) |

| | |
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| | and any additional key performance indicators that the Employer and Training Provider agree as set out in the Order Form. |
| Dispute Notice | Means the Notice as set out in Clause 30 of this Call off Contract. |
| Distance Learning | Means learning delivered remotely (not face to face). This could include, but is not limited to, e- learning and webinars. |
| Economic Development Team | Means the team within the Council who will manage the Directory and the Local Apprentice Service. |
| EIRs | Means the Environmental Information Regulations 2004 |
| Employer | Means the party who is either the Council or any Other Contracting Body who is able to call off the Directory to procure services for an Apprentice to meet their Apprentice training needs. |
| Employment Contract | Means the contract that is established between the Employer and the Apprentice |
| Education and Skills Funding Agency ("ESFA") | Means the executive agency of the Department for Education. |
| Evidence Pack | Means evidence brought together to form a single point of reference relating to the learning. |
| Extension Period | Means any periods agreed in writing between the Parties up to the maximum amount of time permitted within the Funding Rules and in accordance with Clause 2.2. |
| FOIA | Means the Freedom of Information Act 2000 and any guidance and/or codes of practice issued by the Information Commissioner in relation to such act. |
| Force Majeure | Means any supervening event beyond either Parties reasonable control, including without limitation war, national emergency, flood or earthquake, but excluding any strikes or other industrial action. |
| Funding Rules | Means the current and any future Funding Rules as published and amended from time to time by the ESFA. There are different funding rules for different apprenticeship start dates. Employers and Providers must follow the funding rules that apply to each apprentice. The 2019 to 2020 funding rules apply to apprenticeships starting between 1 August 2019 and 31 July 2020. |

At the commencement of this Agreement the applicable Funding Rules are:

Employer

Apprenticeship funding rules and guidance for employers August 2019 to July 2020 Version 1 together with the Apprenticeship Employer Agreement with the ESFA form part of the standard terms and conditions for Employers on the use of funds in an employer's digital account or where a levy-paying employer is accessing government employer co-investment; and

Training Provider

Apprenticeship funding rules for main providers August 2019 to July 2020 Version 1 together with their Funding Agreement with the ESFA form part of the Training Providers terms and conditions for the use of funds inn an employer's digital account or for government-employer co-investment.

Apprenticeship technical funding guide April 2019 to March 2020 April 2019: version 1 for new starts on or after 1 April 2019. Apprenticeship Technical Funding Guide Version 2 February 2017 for starts from May 2017 to 30th March 2019.

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|-------------------------------|--|
| Gateway Criteria | Means the minimum pass or fail criteria that each Training Provider must satisfy in order to maintain their eligibility to remain listed within the Directory. |
| Intellectual Property | Means all intellectual property rights whether registered or unregistered including patents, trade-marks, registered designs and domain names, copyright, design rights, rights in databases, moral rights, know-how and any other intellectual property rights which subsist in computer software, computer programs, websites, documents, information, techniques, business methods, drawings, logos, instruction manuals, lists and procedures. |
| Learning Planned End Date | Means the date when the Apprentice is expected to complete their learning and is entered onto the Individual Learner Record. |
| Local Apprenticeship Service | Means the services offered to Employers and Training Providers by the Council's Economic Development Team resulting from the Directory. |
| Local Apprenticeship Standard | Means the standard that all Training Providers listed within the Directory will sign up to implementing as required by this Agreement at Clause 6.2. |
| Other Contracting Bodies | Means all Contracting Bodies using the Directory except the Council and "Other Contracting Body" shall be construed accordingly. |
| Order Form | Means the document used to place an Order which includes without limitation the description of the Services to be supplied. |
| Parent Company | Means any company which is the ultimate Holding Company of the Provider or any other company of which the ultimate Holding Company of the Provider is also the ultimate Holding Company |

and which is either responsible directly or indirectly for the business activities of the Provider or which is engaged in the same or similar business to the Provider. The term “Holding Company” shall have the meaning ascribed by Section 736 of the Companies Act 1985 or any statutory re-enactment or amendment thereto.

| | |
|---|---|
| Party | Means either the Council or Other Contracting Body Employer or the Training Provider as the context requires. |
| Price | Means the tendered prices for the Services as set out in the Order Form. |
| Progression Review Meeting | Means monthly review meeting that will need to take place between the Training Provider and each Apprentice. |
| Register of Apprenticeship Training Providers | <p>Means the Register which from May 2017, levied employers will be able to choose a provider from a new register, the register of apprenticeship training providers (RoATP). The register is aimed at encouraging diversity and competition in the provider market, supporting quality and employer choice. To be added to the register, organisations must apply to the SFA and pass tests on due diligence, financial health and tests on quality, capacity and capability.</p> <p>In addition to the RoATP, public bodies must also comply with the Public Contracts Regulation 2015 when selecting a Training Provider. The Council conducted the procurement exercise which is detailed in Recitals to this Call off Contract at paragraphs (A) to (E).</p> |
| Register of Apprentice Assessment Organisations | Means a register of assessment organisations from which an employer can select an organisation (to be contracted by a main provider) to deliver end-point assessment as part of the employer’s agreed apprenticeship programme. |
| Remedial Notice | Means a notice served in accordance with Clause 28.2. |
| Request for Services | Means a written Request for Service to be completed by the Council or Other Contracting Body Employer (whoever is the party to this Call off Contract), which is sent to a preferred Training Providers in accordance with the Call Off Procedure. |
| Services | Means the Apprenticeship Training and Assessment Services set out in this Call off Contract. |
| Services Agreement | Means the Agreement between the Council and selected Training Providers who are listed within the Directory which sets out the award and calling-off ordering procedure for purchasing Services that other Contracting Bodies may require, the terms and conditions for any Call off Contract and the obligations of the Training Provider during and after the Services Agreement ends. |

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|------------------|--|
| Sub-Contractor | Means a sub-contractor being a legal entity that has a contractual relationship with and is appointed by the Training Provider to deliver apprenticeship training. |
| Variation Notice | Means a Notice served in accordance with the Variation Procedure set out in Annex 2. |
| Working Days | Means any day other than a Saturday, Sunday or public holiday in England and Wales |
| Year | Means a calendar year. |

1.2 In this Agreement:

- 1.2.1 reference to any gender includes any other gender and the singular includes the plural and vice versa;
- 1.2.2 headings are included in this Agreement for ease of reference only and shall not affect the interpretation or construction of this Agreement;
- 1.2.3 reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent statute, enactment, order, or instrument or as contained in any subsequent re-enactment thereof;
- 1.2.4 reference to clauses and schedules are to clauses of and schedules to this Agreement. The order form and schedules form part of the terms and conditions of this Agreement;
- 1.2.5 reference to a “person” includes any individual, firm, unincorporated association, corporate body or public authority;
- 1.2.6 “comply with” includes observe and perform;
- 1.2.7 reference to Training Provider shall include the Training Provider’s subcontractors unless expressly excluded. This Agreement shall apply to a sub-contractor as if he is the Training Provider;
- 1.2.8 the term “Party” and “Parties” shall mean the Employer and or the Training Provider as the context so permits or requires.

2. CALL OFF CONTRACT PERIOD

- 2.1 This Contract shall take effect on the Commencement Date and shall expire automatically on the End Date set out the Order Form, unless it is otherwise terminated in accordance with the provisions of the Call off Contract.
- 2.2 The Employer may, by giving written notice to the Training Provider not less than 2 Month(s) before the last day of the Initial Term, extend the Contract providing that such period of extension is permitted within the Funding Rules. The provisions of this Call off Contract will apply throughout any such extension period.

3. TRAINING PROVIDER'S STATUS

At all times during the Contract Period the Training Provider shall be an independent service provider and nothing in the Contract shall create a contract of employment, a relationship of agency or partnership or a joint venture between the Parties and, accordingly, neither Party shall be authorised to act in the name of, or on behalf of, or otherwise bind the other Party except as expressly permitted by the terms of the Contract.

4. SCOPE OF THIS CALL OFF CONTRACT

- 4.1 This Call off Contract governs the relationship between the Employer with the Training Provider in respect of the provision of Services relating to apprenticeship training and assessment to the Employer's Apprentice.
- 4.2 The Training Provider shall at all times during the Term maintain the organisational ability and capacity to provide the Services in accordance with this Call off Contract.
- 4.3 The Training Provider acknowledges that in entering into this Call off Contract no form of exclusivity has been conferred on the Training Provider nor volume or value guarantee granted by the Employer in relation to further Services by the Training Provider for additional Apprentices.

5. EMPLOYER'S OBLIGATIONS

- 5.1 The Employer shall:
 - 5.1.1 appoint an Authorised Representative to manage this Call off Contract. The identity of the Employer's Authorised Representative is set out in the Order Form.
 - 5.1.2 notify the Training Provider if any circumstances change that affect this Call off Contract and revise any existing agreements or create new agreements to reflect such changes where appropriate and follow the process as set out in Annex 4 (Call Off Contract Variation Procedure), this includes but is not limited to any changes in price and apprenticeship eligibility and any updates to the Employer's digital account;
 - 5.1.3 Co-operate in good faith with the Training Provider, Sub Contractor(s) or End Point Assessor, or other awarding body to enable the successful delivery and completion of the Apprenticeship;
 - 5.1.4 promptly comply and not omit to do any acts reasonably requested by the Training Provider, Sub Contractor(s) or End Point Assessor or other awarding body for the purposes of:
 - (i) compliance with the Funding Rules;
 - (ii) obtaining any payment to which they may be entitled under this Call off Contract or Funding Rules;
 - (iii) compliance with the terms of any agreement with the ESFA;
 - (iv) compliance with any other legislative requirements relevant to the Apprenticeship.

6. TRAINING PROVIDER'S OBLIGATIONS

6.1 The Training Provider shall comply with the Funding Rules which form part of their terms and conditions for the use of funds in an employer's Digital Account or for government-employer co-investment in conjunction with the funding agreement with the Secretary of State for Education acting through the SFA. The Training Provider shall ensure it maintains its registration on the RoATP in order to be eligible to be listed within the Directory.

6.2 The Training Provider shall:

- 6.2.1 appoint an Authorised Representative for this Call off Contract. The identity of the Authorised Representative is set out in the Order Form;
- 6.2.2 have in place all policies required in accordance with the Specification as set out in the Services Agreement;
- 6.2.3 exercise its rights and perform its obligations under this Call off Contract and shall do so in accordance with all applicable laws and regulations including but not restricted to:
 - (i) applicable, legally and non-legally-binding governmental regulations and guidance;
 - (ii) relevant codes of conduct and practice issued by any applicable regulatory body having power to enforce any such regulations against the Training Provider or the Employer;
 - (iii) any relevant statutory code of practice that is applicable to the provision of the Services; and
 - (iv) compliance with all applicable anti-slavery and human trafficking laws from time to time in force including but not limited to the Modern Slavery Act 2015;
- 6.2.4 enter into a Commitment Statement together with the Employer and Apprentice and retain the Commitment Statement with, or in, the Call off Contract;
- 6.2.5 enter into an Agreement with an Apprentice Assessment Organisation on behalf of and as instructed by the Employer and shall ensure that payment is made to them for conducting the end-point assessment. The Agreement between the Training Provider and Assessment Organisation shall set out the arrangements for sharing relevant information about the Apprentice, to ensure that end-point assessment and certification take place, including arrangements for any re-takes and payments;
- 6.2.6 notify the Employer if any circumstances change that affect this Call off Contract and revise any existing agreements or create new agreements to reflect such changes where appropriate and follow the process as set out in Schedule 1 (Variation Procedure). This includes but is not limited to any changes in price and apprenticeship

eligibility and any updates to the Employer's digital account;

- 6.2.7 provide the Employer and Apprentice with the Employer's written complaints and dispute resolution procedure, policy and process. The identity of the first contact point for dispute and complaints shall be recorded in the Order Form of this the Call off Contract and also within the Commitment Statement;
- 6.2.8 ensure that the Employer and Apprentice are made aware of the national Apprenticeship Helpline number to assist them with any apprenticeship concerns, complaints and enquires. The contact number and website for the Apprenticeship Helpline are set out in the Order Form of this Call off Contract and also within the Commitment Statement;
- 6.2.9 supply the Services during the Term in accordance with the Employer's requirements as set out in this Call off Contract in consideration for the payment of the Contract Price as set out in the Order Form. The Employer may inspect and examine the manner in which the Training Provider supplies the Services during normal business hours on reasonable notice;
- 6.2.10 co-operate in good faith with Employer to enable the successful delivery and completion of the Apprenticeship;
- 6.2.11 promptly comply and not omit to do any acts reasonably requested by the Employer for the purposes of:
 - (i) compliance with the Funding Rules;
 - (ii) obtaining any payment to which they may be entitled under this Call off Contract or Funding Rules;
 - (iii) compliance with the terms of any agreement with the ESFA;
 - (iv) compliance with any other legislative requirements relevant to the Apprenticeship.

6.3 The Provider acknowledges that it has made its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Employer before submitting its Service information so as to be satisfied in relation to all matters connected with the performance of its obligations under the Call off Contract.

7. PRICE AND PAYMENT FOR SERVICES

- 7.1 The Price for Services shall be those tendered by the Training Provider as set out in the Order Form and payment shall be in accordance with the Funding Rules.
- 7.2 The Price for supplies of training which are paid by government funding, including the apprenticeship levy are exempt from VAT.
- 7.3 The Employer and/or ESFA may take action to recover all or part of the funding from the Training Provider where they are satisfied there has been a breach of the Funding Rules. This includes where claims are made for

funding through the digital account, government co-investment or additional payments to which the Training Provider was not entitled. The Employer's rights under this Clause will be without prejudice to any other rights or remedies available to the Employer under this Call off Contract or otherwise.

- 7.4 Notwithstanding Clause 7.3 above, in the event that the Training Provider receives any overpayment then on written notification of such overpayment by the EFSA and/or the Employer the Training Provider shall arrange to make any repayments within the timescales specified and without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Training Provider has a valid court order requiring an amount equal to such deduction to be paid by the EFSA and/or Employer to the Training Provider.

8. WARRANTIES

- 8.1 The Training Provider warrants represents and undertakes that:
- 8.1.1 the execution, delivery and performance of this call off Contract (and the provision of the Services) are within the Training Provider's power and authority and have been duly authorised by all requisite actions (corporate or otherwise) by the Training Provider and that it has all necessary licences, assignments and authorities to perform its obligations under this Agreement;
 - 8.1.2 as at the date of this Call off Contract, all information submitted to the Council in the evaluation process remains true, accurate, and not misleading save as may have been specifically disclosed in writing to the Council prior to the execution of this Call off Contract;
 - 8.1.3 on behalf of itself and its Parent Company, in the three (3) years prior to the date of this call off contract and continuing throughout the Term, it has not performed any act or omission with respect to its financial accounting or reporting which could have an adverse effect on the Provider's position as an ongoing business concern or its ability to fulfil its obligations under this Call off Contract.

9. TERMINATION

- 9.1 Without prejudice to any other rights and remedies it may possess, the Employer will be entitled forthwith to terminate this Call off Contract by serving written notice on the Training Provider with effect from the date specified in such notice:
- 9.1.1 upon discovery of a material misrepresentation by the Training Provider during the Call off Contract process; or
 - 9.1.2 if there is a material or substantial breach by the Training Provider of any of its obligations under this Call off Contract which is incapable of remedy; or
 - 9.1.3 the Training Provider fails to comply with a Default Notice; or
 - 9.1.4 upon notification by the ESFA that a Training Provider has been removed from the RoATP;

- 9.1.5 upon notification by the Council that a Training Provider has been suspended or removed from the Directory;
- 9.1.6 where the Training Provider commits persistent minor breaches of this Call off Contract whether remedied or not;
or
- 9.1.7 if the Training Provider, or where applicable, any Director, partner or senior officer of it:
- changes its location or composition of partners or staffing in a way which seriously affects the ability of the Training Provider to discharge its obligations under this Call off Contract in accordance with the Standards (but maternity or paternity leave taken by staff under statutory or contractual entitlements will be disregarded for the purposes of this clause); or
 - any Director or partner is convicted of an offence involving dishonesty; or
 - becomes bankrupt, or makes a composition or arrangement with its creditors, or has a proposal for voluntary arrangement for a composition of debts, or scheme or arrangement approved in accordance with the Insolvency Act 1986; or
 - has an application made or notice of intention is given under the Insolvency Act 1986 to appoint an administrative receiver or administrator or an administrative receiver or administrator is appointed; or
 - has a winding-up order made, or (except for the purposes of amalgamation or reconstruction) a resolution for voluntary winding-up passed; or
 - has a provisional liquidator, receiver or manager appointed; or
 - has possession taken by or on behalf of the holders of any debentures secured by a floating charge, of any property comprised in or subject to the floating charge; or
 - is in circumstances which entitle the Court or a creditor to appoint, or have appointed, a receiver, a manager, an administrator, or administrative receiver, or which entitle the Court to make a winding-up order; or
 - ceases to carry on the whole of its business or threatens to cease the same or becomes unable to pay its debts as they fall due, or if the Employer believes that any of the events in this sub-clause 9.1.6 may occur; or
 - commits a breach of this Call-Off Contract as a result of which the image and reputation of the Employer has been seriously adversely affected; or

- 9.2 operates without the insurances required under the provisions of Clause 11.
- 9.3 Without affecting any other right or remedy available to it, the Employer may terminate this Call off Contract without further liability at any time by giving three Months' written notice to the Training Provider.

10. CONSEQUENCES OF SUSPENSION, TERMINATION AND EXPIRY

- 10.1 Upon such termination resulting from a Training Provider cause in addition to such consequences as are set out in the other provisions of this Call-Off Contract:
- 10.1.1 the Training Provider will be deemed to be in breach of this Call off Contract; and
- 10.1.2 the Training Provider will forthwith cease to perform any of the Services; and
- 10.1.3 the Training Provider will be liable forthwith to compensate the Employer for any loss or damage it has sustained in consequence of any antecedent breaches of contract by the Training Provider; and
- 10.2 The Employer may take action to recover all or part of the funding from the Training Provider where they are satisfied there has been a breach of the Call off Contract in accordance with the Funding Rules or where the EFSA have sought recovery of Funding from the Employer. Any sums due to the Employer and not recovered by means of deduction or set-off will be recoverable from the Training Provider as a debt; and the Training Provider will forthwith release and hand over to the Employer any and all Employer property.
- 10.3 Notwithstanding the service of a notice to terminate this Call off Contract, the Training Provider shall continue to fulfil its obligations to the Employer and to the Apprentice. The Parties shall co-operate in good faith with each other until such time that a replacement Training Provider is appointed.
- 10.4 Within 20 Working Days of the date of termination or expiry of the Call off Contract, the Training Provider shall return or destroy at the request of the Employer any data, personal information relating to the Employer or its Apprentices or Confidential Information belonging to the Employer in the Training Provider's possession, power or control either in its then current format or in a format nominated by the Employer together with all training manuals and other related documentation, and any other information and all copies thereof owned by the Employer, save that it may keep one copy of such data or information for a period of up to 12 Months to comply with its obligations under the Call off Contract, or such period as is necessary for such compliance.
- 10.5 Termination or expiry of this Call off Contract shall be without prejudice to any rights remedies or obligations of either Party accrued under this Call off Contract before termination or expiry.

11 INSURANCE LIABILITY AND INDEMNITY

- 11.1 The Training Provider shall Indemnify, keep indemnified and hold

harmless, the Employer fully against all actions, costs, claims, demands and liability whatsoever arising under any statute or at common law in respect of without limitation any damage which arises as a consequence of the neglect or default of the Training Provider, to property, real or personal, and any injury to persons, including injury resulting in death arising out of or in the course of or in connection with the performance of, or failure to perform, or breach of any of its obligations under this Call off Contract and in particular resulting in any failure to perform the Services (except insofar as such damage or injury shall be due to the negligence of or breaches of this Call off Contract by the Employer).

- 11.2 Neither party seeks to exclude or limit its liability for:
- 11.2.1 death or personal injury caused by its negligence;
 - 11.2.2 fraud or fraudulent misrepresentation;
 - 11.2.3 any actual or alleged infringement of a third party's intellectual property rights;
 - 11.2.4 any specific indemnity provided within this Call off Contract; or
 - 11.2.5 any other matter in respect of which, as a matter of law, liability cannot be excluded or limited.
- 11.3 Subject to clauses 11.1 and 11.2 the aggregate liability of either Party in respect of direct loss of or damage to the property of the other under or in connection with this Agreement shall be limited and will in no event exceed £2,000,000.
- 11.4 The Training Provider will put in place and maintain throughout the Call off Contract Period (and for a period of no less than 6 months following termination of this agreement for any reason) appropriate insurances in respect of:
- 11.4.1 employers' liability;
 - 11.4.2 public liability;
 - 11.4.3 professional indemnity;
- and the insurance shall provide at least the minimum levels of cover as set out in the Order Form in respect of all risks which may be incurred by the Training Provider in the performance of its obligations under this Call off Contract, or in accordance with any statutory insurance requirements in force from time to time.
- 11.5 The Training Provider will prior to the Commencement Date and on each anniversary of the Commencement Date upon request, provide details of such insurances to the reasonable satisfaction of the Authorised Representative and enhance that all premiums relating to such insurances have been paid.

- 11.6 For the avoidance of doubt the Training Provider will be liable to make good any deficiency in the event that the proceeds of any insurance are insufficient to cover the settlement of any claim relating to this Contract.
- 11.7 The Training Provider warrants that it will not take any action or fail to take any reasonable action or (in so far as it is reasonable and within its power) permit or allow others to take or fail to take any action, as a result of which any insurances put in place pursuant to Clause 11.4 may be rendered void, voidable, unenforceable, or be suspended or impaired in whole or in part, or which may otherwise render any sum paid out under such insurance repayable in whole or in part.

12 CONFIDENTIALITY

- 12.1 The Parties to this Call off Contract will each keep confidential any Confidential Information obtained from the other in pursuance of this Call off Contract and will not divulge the same to any third party without the prior consent in writing of the other Party, except where the Employer is required to do so under any legislative requirement.
- 12.2 Notwithstanding the provisions of this Clause 12, a Party shall be entitled to disclose the whole or any part of the Confidential Information (received in accordance with Clause 12) to its directors, officers, employees, sub-contractors, agents or professional advisers on a need-to-know basis and to the extent necessary to enable it to perform (or to cause to be performed) or to enforce any of its rights or obligations under this Call off Contract.
- 12.3 The Training Provider shall procure that any Sub-Contractors enter into a confidentiality undertaking with the Training Provider on terms at least as restrictive as in this Clause 12.
- 12.4 The obligations aforesaid shall not apply to any material or information which is:
- 12.4.1 already in the public domain (other than as a result of a breach of this Call Off Contract);
 - 12.4.2 already known to the receiving Party prior to receipt from or on behalf of the other Party (or an Apprentice in the case of the Apprentice's Confidential Information);
 - 12.4.3 lawfully received from a third party (without obligation to keep the same confidential);
 - 12.4.4 ordered to be disclosed by any Court or other tribunal of competent jurisdiction or required to be disclosed by law or regulation;
 - 12.4.5 as may be reasonably required for the purpose of the Employer conducting a due diligence exercise for any proposed replacement Training Provider, its advisers and lenders (subject to such bodies signing appropriate confidentiality obligations), should the Employer decide to re-tender all or any part of this Call off Contract; or

12.4.6 to the extent required for the purpose of the continuance of the Services in the event of termination or expiry of this Call off Contract (howsoever occurring).

12.5 Where a Court or other tribunal of competent jurisdiction is to hear any application for disclosure by a Party of Confidential Information or has ordered such disclosure, the Party subject to such application or order shall provide the other with as much notice as is reasonably practicable in the circumstances of such application or order, and provide any assistance reasonably requested by the other Party in order for that Party to oppose such application or appeal such order.

12.6 Subject to and without prejudice to any obligation under this Clause 12 or under any Contract on the expiry or termination of this Call off Contract each Party shall destroy or return to the other such Confidential Information of the other within its possession or control (and in the case of the Training Provider, within any of its Sub-Contractor's possession or control) as may belong to the other Party, save that this Clause 12 shall not apply to any Confidential Information necessary for the continued maintenance, operation and development of any Services under any Contract (in force) or where required by law or regulation.

13 DATA PROTECTION

13.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Employer is a Data Controller in relation to Personal Data it collects for the purposes of the Apprenticeship. The Training Provider will also be a Data Controller in relation to Personal Data it receives from the Employer and Personal Data it collects directly from the Apprentice to deliver the Apprenticeship training.

13.2 The Parties shall comply with all applicable requirements imposed on a Data Controller under the Data Protection Legislation. This clause 13 is in addition to and does not relieve, remove or replace a party's obligations under the Data Protection Legislation. The Parties shall enter in to a data sharing agreement upon the other's reasonable request and agree to any changes reasonably required to this Call off Contract to ensure compliance by a Party with Data Protection Legislation.

14 PUBLICITY

14.1 The Training Provider shall not publicise any matter concerning this Call off Contract or the Services without the prior written approval of the Employer.

14.2 The Employer reserves the right to publish information about the performance of this Call off Contract and/or any other information as it may deem appropriate from time to time including for Parliamentary, governmental, statutory, regulatory or judicial purposes.

15 INTELLECTUAL PROPERTY

15.1 Each Party shall retain ownership of all intellectual Property Rights in any

materials created by that Party (whether before or after the Commencement Date) and used for the delivery of the Services under this Call-Off Contract (the Project Materials).

- 15.2 Each Party shall make available to the other free of charge and hereby grants to the other Party a non-exclusive, non-transferable, royalty free licence to use the Project Materials for the sole purpose of enabling the Services to be provided during the Term.
- 15.3 Where the Employer requests the Training Provider to use specific training materials which are not provided for by the Training Provider in its usual course of business providing Services and which contain Intellectual Property Rights in the ownership of a third party the Training Provider shall use reasonable endeavours to negotiate any required licences from the Third Party and the Employer shall be responsible for the costs of any licence from the third party. In the event the Training Provider is unable to obtain a licence or the Employer is unwilling to pay the proposed licence fees, the Parties shall agree an alternative course of action based on the available Project Materials.
- 15.4 Each Party shall indemnify the other against all claims, demands, actions, costs, expenses (including reasonable legal costs and disbursements), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Rights in the performance of a Party's obligations under this Call-Off Contract, except to the extent that they have been caused by or contributed to by the indemnified Party's acts or omissions.

16 FREEDOM OF INFORMATION

- 16.1 The Parties both acknowledge that the Employer and the Training Provider (the latter only where the Training Provider is a public authority) are subject to the requirements of the FOIA and the EIRs and agree to assist and co-operate with each other to enable each Party to comply with the requirements of the FOIA and EIRs.
- 16.2 Without prejudice to the generality of their obligations under clause 16.1, the Training Provider and the Council shall:
 - 16.2.1 transfer (or procure the transfer) to the other Party of all Requests for Information pursuant to the FOIA or EIR that it (or in the case of the Training Provider or any of its Sub-Contractors) receives relating to this Call-Off Contract as soon as practicable and in any event within two (2) Working Days of receipt; and
 - 16.2.2 provide the other Party with a copy of all Information requested in the Request for Information which is in its (or in the case of the Training Provider, in , its Sub-Contractor's) possession or control in the form that the other Party requires within five (5) Working Days (or such other period as the other Party may reasonably specify) of the other Party's request for such Information.
- 16.3 The Parties further acknowledge that, notwithstanding any other provision of this clause 16, or clause 12 (confidentiality), the Parties may be required under the FOIA and EIRs to disclose Information without consulting or obtaining consent from the other Party. The relevant Party shall take reasonable steps to notify the other

Party of a Request for Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Call-Off Contract), for the purposes of this Call-Off Contract, the relevant Party shall be responsible for determining in its absolute discretion whether any information is exempt from disclosure in accordance with the FOIA and /or the EIRs.

16.4 Without prejudice to the foregoing provisions of this Clause 16, each Party shall (and in the case of the Training Provider, shall procure that its Sub-Contractors shall):

- 16.2.1 provide the other Party with such particulars as the other Party may reasonably request in order to adopt and maintain a publication scheme under the FOIA, for the alteration of any particulars included in such publication scheme and for any renewal of such publication scheme; and
- 16.2.2 if either Party is served with a FOIA notice by the Information Commissioner, take such steps within such time as the other Party may by notice in writing reasonably require (being steps and time specified in such FOIA notice) for complying with the FOIA notice in question.

17 EQUALITY AND DIVERSITY

- 17.1 The Training Provider shall comply with, and procure that its Sub-Contractors perform its obligations under this Call off Contract (including those in relation to the provision of the Services) in accordance with:
 - 17.1.1 all applicable equality Law (whether in relation to race, sex, gender reassignment, religion or belief, disability, sexual orientation, pregnancy, maternity, age or otherwise); and
 - 17.1.2 any other requirements and instructions which the Employer reasonably imposes in connection with any equality obligations imposed on the Employer at any time under applicable equality Law.

18 PREVENTION OF BRIBERY

- 18.1 The Training Provider shall not:
 - 18.1.1 offer or give or agree to give any person acting for and on behalf of the Employer any gift or consideration of any kind as an inducement or reward for doing, forbearing to do, or for having done or forborne to do any act in relation to the obtaining or execution of this Call off Contract or Contracts or any other contract with any UK public sector organisation or for showing favour or disfavour to any person in relation to this or any other contract with any UK public sector organisation;
 - 18.1.2 enter into this Call off Contract or any other contract with any UK public sector organisation or any person acting for and on behalf of the Employer in connection with which commission has been paid or agreed to be paid by the Training Provider or on its behalf, or to its knowledge, unless before this Call off Contract is made particulars of any such commission and

of the terms and conditions of any agreement for the payment thereof have been disclosed in writing to the Employer.

- 18.2 Any breach of Clause 18.1 by the Training Provider or by anyone employed by him or acting on his behalf (whether with or without the knowledge of the Training Provider) or the commission of any offence by the Training Provider or by anyone employed by him or acting on his behalf under the Bribery Act 2011, in relation to this Call off Contract or any other contract with any UK public sector organisation, shall entitle the Employer to terminate this Call off Contract and recover from the Training Provider the amount of any loss resulting from such termination and/or to recover from the Training Provider the amount or value of any such gift, consideration or commission.
- 18.3 Any dispute, difference or question arising in respect of the interpretation of this Clause 18, the right of the Employer to terminate this Call off Contract or the amount or value of any such gift, consideration or commission shall be decided by the Employer, whose decision shall be final and conclusive.

19 TRANSFER AND SUB-CONTRACTING

- 19.1 This Call off Contract is personal to the Training Provider. The Provider shall not assign, novate, sub-contract or otherwise dispose of this Call off Contract or any part thereof except in accordance with the following conditions:
- 19.1.1 compliance with the Funding Rules relating to contracting and sub- contracting;
 - 19.1.2 subject to the submission of information in writing as set out in Clause 19.2 below to the Employer for its consideration and consent. The decision relating to the approval or not of a proposed Sub-Contractor by a Training Provider shall be at the absolute discretion of the Employer.
- 19.2 The Training Provider shall in accordance with Clause 19.1 above provide:
- 19.2.1 confirmation of the apprenticeship training and/or on programme assessment that they will directly deliver;
 - 19.2.2 the amount of funding they will retain for their direct delivery;
 - 19.2.3 the apprenticeship training and/or on-programme assessment that each delivery subcontractor will contribute to the employer's apprenticeship programme;
 - 19.2.4 the amount of funding they will pay each delivery subcontractor for their contribution;
 - 19.2.5 the amount of funding they will retain to manage and monitor each delivery sub-contractor;

- 19.2.6 the support they will provide each delivery subcontractor in exchange for the amount of funding they will retain;
 - 19.2.7 the monitoring they will undertake to ensure the quality of the apprentice training and/or on programme assessment they have contracted their delivery subcontractors to carry out;
 - 19.2.8 any actual or perceived conflict of interest between them and any delivery sub-contractors.
- 19.3 In the event that Sub-contracting for the Apprenticeship is granted consent in accordance with this Clause 19, the Training Provider shall be responsible for resolving issues and disputes between the Employer with their delivery subcontractors.
- 19.4 The Employer shall be entitled to assign, novate or otherwise dispose of this Call off Contract to any other body (including any private sector body) which substantially performs any of the functions that previously had been performed by the Employer provided that where such assignment, novation or other disposal increases the burden of the Training Provider's obligations pursuant to this Call off Contract, the Training Provider shall be entitled to such charges as may be agreed between the Employer with the Training Provider to compensate for such additional burdens.

20 VARIATIONS

- 20.1 Any variations to this Call off Contract shall be made only in accordance with the Variation Procedure set out in Schedule 2.

21 NOTICES

- 21.1 Any notice or other communication required or permitted under this Call off Contract to be given in writing shall be deemed duly given if signed by or on behalf of a duly authorised officer of the person giving the notice and sent to the address of the recipient stipulated herein or as notified from time to time and will be deemed to have been given or made when:

21.1.1 upon delivery if delivered personally;

21.1.2 if properly addressed and posted by first class mail in England within 2 (two) Working Days of posting;

For the Training Provider:

[INSERT ADDRESS]

For the Employer:

[INSERT ADDRESS]

- 21.2 Either Party may change its address or designated recipient for

notices by prior notice to the other Party in accordance with the provisions of this Call off Contract.

22 RIGHTS OF THIRD PARTIES

22.1 This Call off Contract shall not create any rights, under the Contracts (Rights of Third Parties) Act 1999 or otherwise, that shall be enforceable by anyone other than the Employer and/or the Training Provider.

22.2 The rights of the Parties to terminate rescind or agree any variation, waiver or settlement under this Call off Contract is not subject to the consent of any person that is not a Party.

23 WAIVER

23.1 No failure or delay on the part of either Party to exercise any right or remedy under this Call off Contract shall be construed or operate as a waiver thereof, nor shall any single or partial exercise of any right or remedy preclude the further exercise of such right or remedy.

23.2 No waiver of any breach or default under this Call off Contract or any of the terms hereof shall be effective unless such waiver is given in writing and has been signed by the Party waiving its entitlement. No waiver of any breach or default, in accordance with this Clause 23, shall constitute a waiver of any other or subsequent breach or default.

24 SEVERABILITY

24.1 If any provision of this Call off Contract is held invalid, illegal or unenforceable for any reason by any Court of competent jurisdiction, such provision shall be severed and the remaining provisions shall continue in full force and effect as if this Call off Contract had been executed with the invalid, illegal or unenforceable provision eliminated.

24.2 The Parties shall use all reasonable endeavours to replace any provision held to be invalid, illegal or unenforceable provision by a valid, legal and enforceable substitute provision the effect of which is as close as possible to the intended effect of the invalid, illegal or unenforceable provision.

24.3 In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of this Call off Contract, the Parties shall forthwith immediately commence good faith negotiations to remedy such invalidity.

25 RELATIONSHIP

25.1 Neither Party shall act or describe itself as the agent of the others, nor shall it make or represent that it has authority to make any commitments on the others' behalf.

26 ENTIRE AGREEMENT

26.1 This Call off Contract and all documents referred to in it contain the entire agreement between the Parties with respect to the subject matter of this Call Off Contract and supersedes all previous agreements and understandings between the Parties with respect

to it, provided that nothing in this Agreement shall prejudice any condition or warranty (express or implied) or any legal right or remedy to which the Parties may be entitled in relation to the Services by virtue of any statute, custom or any general law or local law or regulations.

26.2 In entering into this Call off Contract, neither Party has relied on, nor shall have any remedy in respect of, any statement or other representation made by the other Party (whether written or oral).

26.3 This Clause 26 shall not apply to any statement, representation or warranty made fraudulently, or to any provision of this Call off Contract which was induced by fraud.

27 COMPLAINTS HANDLING AND RESOLUTION

27.1 The Training Provider shall provide the Employer and Apprentice with their written complaints and dispute resolution procedure, policy and process. The first contact point for dispute and complaints shall be recorded in the Order Form to this Call off Contract and must also be recorded in the Commitment Statement.

27.2 Without prejudice to any rights and remedies that the complainant may have at Law, including under this Call off Contract and/or within the Commitment Statement and without prejudice to any obligation of the Training Provider to take remedial action under the provision of this Call off Contract, the Training Provider shall use its best endeavours to resolve the Complaint and shall deal with the Complaint fully, expeditiously and fairly.

28 PERFORMANCE AND CONTRACT MANAGEMENT

28.1 The Training Provider shall submit the Performance and Contract Management information in accordance with Annex 1 (Performance and Contract Management).

28.2 Training Providers performance shall be assessed in accordance with the Directory KPIs and in the Specification. The Training Provider shall if requested by the Employer attend a Performance and Contract Review meeting to discuss and agree any improvements required to their performance and any such improvements shall be recorded in writing in the form of a 'Remedial Notice'. A Remedial Notice may be served on the Training Provider by the Employer without a Performance and Contract Review Meeting.

28.3 If in accordance with Annex 1 (Performance and Contract Management) the Employer serves a Default Notice on the Provider and the Provider fails to remedy within 30 days the Default in their performance to the standard set out in Green Performance Band, the Employer may terminate the Training Provider's existing Call Off Contract with them, and may make a formal complaint to Nottingham City Council to terminate the Training Provider's appointment to the Approved Provider List.

28.4 The Employer may share the Performance and Contract Management Information supplied by the Provider with the Council.

28.5 The Training Provider shall co-operate, and shall procure that its Sub-Contractors co-operate, with the Employer in carrying out the monitoring referred to in this Clause.

29 RECORDS AND AUDIT ACCESS

- 29.1 The Training Provider shall keep and maintain until 6 years after the date of termination or expiry (whichever is the earlier) of this Call off Contract full and accurate records and accounts of its operation and the Charges or other sums paid by the Employer.
- 29.2 The Training Provider shall keep the records and accounts referred to in Clause 29.1 above in accordance with good accountancy practice.
- 29.3 The Training Provider shall afford the Employer or the Auditor (or both) such access to such records and accounts as may be required from time to time.
- 29.4 The Training Provider shall provide such records and accounts (together with copies of the Training Provider's published accounts) during the Term and for a period of 6 years after the expiry of the Term to the Employer and the Auditor.
- 29.5 The Employer shall use reasonable endeavours to ensure that the conduct of each Audit does not unreasonably disrupt the Training Provider or delay the provision of the Services pursuant to this Call off Contract, save insofar as the Training Provider accepts and acknowledges that control over the conduct of Audits carried out by the Auditor is outside of the control of the Employer.
- 29.6 Subject to the Employer's rights of confidentiality, the Training Provider shall on demand provide the Auditor with all reasonable co-operation and assistance in relation to each Audit, including;
- 29.6.1 all information requested by the Auditor within the scope of the Audit;
 - 29.6.2 reasonable access to sites controlled by the Training Provider and to equipment used in the provision of the Services; and
 - 29.6.3 access to the Staff.
- 29.7 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 28, unless the Audit reveals a material default by the Training Provider in which case the Training Provider shall reimburse the Employer for the Employer's reasonable costs incurred in relation to the Audit.

30 DISPUTE RESOLUTION

30.1 If a dispute arises out of or in connection with this Call off Contract

or the performance, validity or enforceability of either (“Dispute”) then except as expressly provided for in this Call off Contract, the Parties shall follow the procedure set out in this Clause:

30.1.1 Either Party shall give to the other written notice of the Dispute, setting out its nature and full particulars (“Dispute Notice”), together with relevant supporting documents. On service of the Dispute Notice, the Authorised Representatives of both Parties shall attempt in good faith to resolve the dispute;

30.1.2 If the Authorised Representatives are for any reason unable to resolve the Dispute within 20 Working Days of service of the Dispute Notice, the Dispute shall be referred to a Senior Human Resources Representative of the Employer or officer nominated by a Senior Human Resources Representative of the Employer and Managing Director of the Training Provider who shall attempt in good faith to resolve it; and

30.1.3 If the Senior Human Resources Representative of the Employer or officer nominated by a Senior Human Resources Representative of the Employer and Managing Director of the Training Provider are for any reason unable to resolve the Dispute within 5 Working Days of it being referred to them, the Parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR to resolve. To initiate the mediation, a party must serve notice in writing (“ADR Notice”) to the other party to the Dispute, requesting mediation. The mediation will start not later than 10 Working Days after the date of the ADR notice.

30.2 If the Dispute is not resolved within 40 Working Days after service of the ADR Notice, or either party fails to participate or to continue to participate in the mediation before expiration of the said period of 40 Working Days, or the mediation terminates before the expiration of the said period of 40 Working Days, the Dispute shall be finally resolved by the Courts of England and Wales.

31 RETENDERING AND HANDOVER

31.1 Subject to Clauses 12 (Confidentiality) and 13 (Data Protection), during the 12 months preceding the expiry of this Call off Contract or after the Employer has given notice to terminate this Agreement or at any other time as directed by the Employer, and within fifteen (15) Working Days of being so requested by the Employer, the Training Provider shall fully and accurately disclose to the Employer free of charge any and all information in relation to all personnel engaged in carrying out the Services including but not limited to all relevant employees who it is envisaged by the Training Provider will transfer as a consequence of a transfer under TUPE as the Employer may request, in particular but not necessarily restricted to any of the following:

31.1.1 a list of employees employed by the Training Provider;

- 31.1.2 a list of agency workers, agents and independent contractors engaged by the Training Provider;
 - 31.1.3 the total payroll bill (i.e. total taxable pay and allowances including employer's contributions to pension schemes) of those personnel;
 - 31.1.4 the terms and conditions of employment of the employees of the Training Provider engaged in the provision of Services, their age, salary, date continuous employment commenced (for the purposes of calculating redundancy payments) and (if different) the commencement date, enhancement rates, any other factors affecting their redundancy entitlement and any outstanding claims arising from employment;
 - 31.1.5 The proportions of working time spent by individual employees in servicing individual service users;
 - 31.1.6 The Training Provider shall warrant the accuracy of all the information provided to the Employer pursuant to this Clause and authorises the Employer to use any and all the information as it may consider necessary for the purposes of its business or for informing any tenderer of any services which are substantially the same as the Services (or any part thereof).
- 30.1.7 During the 12 months preceding the expiry of this Call off Contract or where notice to terminate this Call off Contract for whatever reason has been given, the Training Provider shall allow the Employer or such other persons as may be authorised by the Employer to communicate with and meet all relevant employees who it is envisaged by the Training Provider and/or the Employer will transfer as a consequence of a transfer under TUPE and their trade union or employee representatives as the Employer may reasonably request.
- 30.1.8 During the 12 months preceding the expiry of this Call off Contract or where notice to terminate this Agreement for whatever reason has been given, the Training Provider shall not without the prior written consent of the Employer unless bona fide in the ordinary course of business:
- (i) vary or purport or promise to vary the terms and conditions of employment of any employee employed in connection with the Services;
 - (ii) increase or decrease the number of employees employed in connection with the Services; or
 - (iii) assign or redeploy any employee employed in connection with the Services to other duties unconnected with the Services.
- 30.2 The Training Provider shall indemnify and shall keep indemnified in full the Employer and at the Employer's request any new contractor

appointed by the Employer against all direct, indirect or consequential liability, loss, damages, injury, claims, costs and expenses (including legal expenses) arising from any claim by any party as a result of the Training Provider failing to provide or promptly to provide the Employer and/or any new contractor appointed by the Employer where requested by the Employer with any retendering information pursuant to this clause and/or Employee Liability Information under TUPE or to provide full retendering information pursuant to this clause and/or Employee Liability Information under TUPE or as a result of any material inaccuracy in or omission from the retendering information pursuant to this clause and/or Employee Liability Information under TUPE provided that this indemnity shall not apply in respect of the retendering information pursuant to this clause to the extent that such information was originally provided to the Training Provider by the Employer and was materially inaccurate or incomplete when originally provided.

- 30.3 The Training Provider shall co-operate fully with the Employer during the handover arising from the completion or earlier termination of this Call off Contract. This co-operation, during the setting up operations period of the new provider, shall extend to allowing full access to, and providing copies of all documents, reports, summaries and other information necessary in order to achieve an effective transition without disruption to the routine operational requirements.

31 COUNTERPARTS

- 31.1 This Call off Contract may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this Call off Contract, but all the counterparts shall together constitute the same agreement.

32 GOVERNING LAW AND JURISDICTION

- 32.1 This Call off Contract (and any disputes under or in relation to it) shall be subject to the law of England and Wales.
- 32.2 The Parties hereby submit to the exclusive jurisdiction of the courts of England and Wales in relation to any disputes under or in relation to this Call off Contract.

ANNEX 1 CALL OFF PROCEDURE

Nottingham City Council has established Course Information Catalogue which will be used in place of the SFA 'Find an Apprenticeship' website by Employers when Calling-off. Training Providers will provide the course information required when requested by Nottingham City Council. This information will form the basis of the Course Information Catalogue. The Course Information Catalogue will include the following information for each course, delivered by each provider approved onto the list:

| |
|---|
| The Course Name & Detail |
| The Course Delivery Requirements |
| The Cost |
| The Location Required |

Call-off from The DAAP

- Step 1: Access Directory of Approved Apprenticeship Providers:** Employers will sign a Customer Access Agreement which will permit access to The DAAP.
- Step 2: Identify Suitable Training Providers:** The Employer will search for a Training Provider by matching the course details and delivery location(s) to the known Apprentice(s) needs. Employers will consult the Directory of Approved Apprenticeship Providers to select only Approved Providers offering the required course in the delivery location.
- Step 3: Contact Training Providers and relevant third parties:** The Employer may take steps to clarify Training Provider(s) ability to cater for the Apprentice(s) needs and/or to confirm the whole apprenticeship cost based upon the individual circumstances. The Employer may also contact relevant third parties where some or all of the training and/or assessment is to be delivered by a third party.
- Step 4: Select the route for Call-off Contract Award:** The Employer may choose either of the following Call-off Options:
- Option A – Direct Award:** The Employer will directly award the Call-off contract to the most suitable Training Provider identified based on the closest match to known Apprentice(s) needs, subject to any exclusions (as set out below).
- Option B – Quote for Further Competition:** The Employer will circulate all relevant information about the Apprenticeship required to all potentially suitable Training Providers identified and request quotes. The Employer will select a Training Provider in a fair and consistent manner which demonstrates value for money will be achieved and the relevant needs of the Apprentice(s) will be met. This will be subject to any exclusion (as set out below).
- Step 5: Notification of Call-off Contract Award**

Option A: The Employer will contact the preferred Training Provider with a written request for services detailing the Apprentice(s) needs and any Employer specific requirements. The Employer will set the number of working days required for the Training Provider to respond to the request for services. Once, accepted the Employer will confirm the Call-off Contract award in writing with the successful Training Provider.

Option B: The Employer will follow the same procedure as outlined above in Option A when requesting services to be delivered by the preferred provider identified. In addition to this, the Employer will also contact all other Training Providers who submitted quotes to confirm their intention not to award to them.

Step 9: Award Call-off contract: The Employer will then establish the Call-off contract with the winning bidder, a copy of the signed contract will be sent to Nottingham City Council within 5 working days of contract completion, this will be accompanied by the reasons for the Call-off outcome.

Exclusions

The Employer can exclude any offer during the Call-off procedure under the following conditions:

- a) A Training Provider who matches the Apprentice needs has **insufficient availability to deliver at the time required, in the manner required.**
- b) The offer is considered to be **poor value for money** including if it is unaffordable, above budget limits set by the Employer or cannot be funded from the intended funding source.
- c) If the Employer considers the Training Providers' **performance to indicate an unacceptable quality delivery standard.** Employers may consider publicly available information published from an official source about the provider performance. This includes official sources such as Training Provider websites and any information published by Quality Regulators for Education Services, including but not limited to: Department for Education, Education and Skills Funding Agency, the Institute for Apprenticeships, Office of Qualifications and Examinations Regulation (Ofqual), Ofsted, QAA, HEFCE and the future Office for Students (OfS) from 2018.
- d) Where the Training Provider **does not respond** to the Employer request for services, or offer of contract (award) within the timescale required or otherwise indicates it does not wish to take up the offer.
- e) The Training Provider is **unwilling or unable to contract** with the Employer choice(s) of End Point Assessor or other awarding body or the Employer choice(s) of subcontractor(s).
- f) There is an **objectively justifiable reason for not contracting** with that Training Provider, or their proposed subcontractors. This may include but is not limited to; conflict of interest, unsatisfactory fit with organisational values, outstanding disputes, past failures to deliver to contract standards, risk of negative financial or reputational impact for the Employer, loss of registration to the UK Register of Apprenticeship Training Providers or loss of other regulated status, failure to maintain the **Minimum Standards for Quality Assurance** required for entry to, and suspension from The DAAP.

ANNEX 2

SERVICE SPECIFICATION

Overview

- 2.1. Training Providers must be approved on the Register of Apprenticeship Training Providers (RoATP)¹, be suitably qualified to cater for the job roles required, be able to deliver in locations required and to the quality standard required.
- 2.2. Training Providers, which will include colleges, universities and private training companies, are not required to deliver all courses, at all levels but instead can tailor their offer to their individual areas of expertise.
- 2.3. The training courses and assessment offered on The DAAP must be valid Apprenticeships courses for delivery in England, either live Standards or Frameworks as set by Government. Training Providers may also apply to deliver Apprenticeship Standards which are listed as 'Published' so that these are available for delivery as soon as they become 'Approved for Delivery'. The list of the relevant courses is available online via www.gov.uk and the information is signposted below:

- A. The 'A-Z List of Apprenticeships' currently available (Approved For Delivery): <https://www.gov.uk/government/publications/a-guide-to-Apprenticeships>
- B. Training Providers may also apply to deliver Apprenticeship Standards which are listed as 'Published': <https://www.gov.uk/government/publications/Apprenticeship-standards-list-of-occupations-available>
- C. The maximum funding available for each course is published here: <https://www.gov.uk/government/publications/Apprenticeship-funding-bands>.

- 2.4. It is not possible to predict all training needs for all public bodies across England for the life of The DAAP, however it is anticipated that a wide range of skills ranging from Level 2 to Level 7 will be needed across the public sector employers, to cater for a large variety of job roles across all business areas.
- 2.5. Training Providers may apply to deliver specific courses at a specific level or to deliver a range of courses and levels, in one location or multiple locations. Training Providers can also choose to deliver either standards, frameworks or a mixture of both.

Accessing Apprentice Education Services

- 2.6. Training Providers will deliver education services that allow Employers to train both existing employees and/or new recruits to their organisation.
- 2.7. Training and assessment will be provided to apprentices of a range of ages. The Employer may request that training is delivered to mixed age groups. All apprentices who access training will be aged 16+ and must be eligible to receive education services according to the ESFA rules on apprenticeships. There will be no cap on the age of apprentices.

¹ Register of Apprenticeship Training Providers: www.gov.uk/guidance/register-of-apprenticeship-training-providers

- 2.8. The service will be required to train apprentices from a wide diversity of experience and backgrounds, including but not limited to people with special educational needs and disabilities (SEND), young people who have recently been not in education, employment or training (NEETs), Care Leavers, and people at financial disadvantage. Apprentices may have no prior qualifications and limited prior work experience through to significant work experience, or equivalent or higher level qualifications in fields of work different from the apprenticeship required. Apprentices will be employed under contract of employment with a variety of working hours including but not limited to full or part time, regular or irregular hours (e.g. shift work or minimum hour contracts).

Selection, Recruitment and Assessment

- 2.9. Training Providers will be required to support the Apprentice selection and recruitment process when requested by the Employer. This may include but is not limited to: advertising, candidate and course selection, interview support and any other support as agreed between the Employer and Training Provider including supporting corporate induction events for new apprentices.
- 2.10. Once the Call-off procedure is complete, the Training Provider awarded the contract will complete an initial assessment of the Apprentice(s) to ensure candidate suitability. This will include confirming that each Apprentice is eligible prior to each 'Apprenticeship Agreement'² start date.
- 2.11. Training Providers must hold a 'sign up meeting' with the apprentice(s) and begin training delivery within 10 working days of the Apprenticeship Agreement start date. Training Providers will also be required to agree a 'Commitment Statement' with the employer and apprentice at the time of contract as set out in the UK Apprenticeship Funding Rules.
- 2.12. Each Apprentice should be placed on the correct course, based on the Employer and Apprentices needs, past qualifications, functional skill level, ability to complete, and any other minimum eligibility requirements that apply to the proposed course and funding stream. Training Providers are required to suggest alternative learning options to apprentices who are found to be ineligible for the proposed course and will communicate this to the Apprentice and Employer (or prospective Employer) as appropriate.
- 2.13. The Training Provider will ensure that each apprenticeship is valid for the status of an apprenticeship in England and intended funding stream(s)
- a.) at the time of entry into contract with any Employer;
 - b.) at the start of their apprenticeship training; and
 - c.) at the time of End Point Assessment, on programme assessment, accreditation, certification and qualification (as relevant).
- 2.14. Where possible, Training Providers should share learning materials with employers and give preparatory functional skills training or other taster opportunities to potential apprentices.

Delivery of Training and Assessment

- 2.15. The duration of training will be flexible depending upon the needs of the individual however; the duration for each course must be compliant with the minimum and maximum length of time allowed within UK Government Apprenticeships Funding Rules. No apprenticeship will take less than 12 months to complete. Training, End

² Apprenticeship Agreement: <https://www.gov.uk/take-on-an-apprentice/apprenticeship-agreement>

Point Assessment, qualification and certification (as relevant), are all expected to be delivered within the duration of each apprenticeship employment contract.

- 2.16. Training Providers are expected to use a range of appropriate methods to deliver training. Employers may require training to be delivered at various sites or using different options that best fit with the job role and apprentice needs (e.g. on site, off site, online and other blended learning). Training providers should offer at least one option of delivery method to employers; this can include a unilateral or mixed approach (e.g. off-site day release only or single/multiple block release mixed with some time embedded to the day job for on-site learning).
- 2.17. Unless otherwise agreed with the Apprentice and the Employer, the location for training or assessment delivery will be within 45 minutes travel time of the Apprentice's normal place of work or home address, and must be accessible by the Apprentice at minimal cost to them, by public transport.
- 2.18. Training will be delivered in a suitable venue for the delivery of learning, accounting for individual apprentice needs as appropriate. This includes ensuring that any venue is health and safety compliant, equality and diversity friendly and fit for purpose for the specific training (e.g. including necessary equipment to aid learning). Employers will have a reasonable right to access any venue or location of Apprenticeship training delivery to ensure that delivery in practice meets the expected standard. Where the location for learning delivery is the responsibility of the Employer or any other third party (e.g. because the Apprentice is being trained at their normal place of work), the Training Provider should take reasonable steps to confirm that the venue is suitable.
- 2.19. The health and safety of both Apprentices and staff must be maintained by the Training Provider, in particular when attending training or assessment off site from their normal place of work. All training venues should comply with relevant Health and Safety Executive policies, legislation and guidance.
- 2.20. All training should be provided in an anti-discriminatory manner, including (but not limited to) taking into account gender, race, age, culture, religion, belief, language spoken, sexual orientation or disability. At times Training Providers may be required to have the skills and experience to deliver Apprenticeships to particular target audiences. This may include but is not limited to; NEETs, Care Leavers, Financially Disadvantaged, BME, Ex-offenders, SEND, vulnerable groups, Apprentices with low or no Functional Skills in English, Maths and ICT.
- 2.21. Apprentices will be provided with clear guidance on work to be completed and be given clear, realistic timescales for this. Copies of all learning materials and equipment must be provided to learners at no additional cost. Training Providers should support learners to achieve their off the job training alongside their day job and will ensure learners are supported with time management and that the format of training is suitable for the Apprentice.
- 2.22. Apprentices should be supported to develop skills that will enable them to obtain both the maximum benefit from training and to achieve End Point Assessment, accreditation, certification and qualification (as relevant), on time. Where identified, appropriate support will be put in place to develop specific skills and learners should be challenged (where appropriate) to undertake optional higher level units for progression and encouraged to achieve more.
- 2.23. The Training Provider will inform the Employer within 3 hours if an Apprentice does not attend a scheduled session. Any changes to scheduled sessions must be made with a minimum of 24 hours' notice.

- 2.24. Training Providers are required to have progression plans in place and established methods for ensuring Apprentice success.
- 2.25. Training Providers are required to complete any due diligence procedures necessary to assure themselves and any Employers that any sub-contractors will meet the same or better standard as the Training Provider. Employers will reserve the right to accept or reject any subcontracting proposed by a Training Provider.

Apprentice Progression

- 2.26. Unless agreed otherwise, monthly progression review meetings will be held between each Apprentice and the Training Provider. The Employer will be informed about review meetings and the Apprentice's line manager will be invited as and when required. Where appropriate, work supervisors and mentors should be included in informal reviews, to ensure that all are clear about targets set and action to address any potential or actual issues. The topics covered at the meetings will include but not be limited to: learning, progress, attendance, attitude and support from managers.
- 2.27. Apprentices who have not completed training within the duration of their Apprenticeship employment contract and Apprentices who move into a new job before the end of the Apprenticeship will be supported by the Training Provider to complete their studies. This is inclusive of any training, End Point Assessment, certification and qualifications as relevant to the individual Apprenticeship.
- 2.28. Where Apprentices lose their employment contract, the Training Provider will offer support to assist Apprentices in finding a new offer of employment to enable them to continue to complete their Apprenticeship where possible. A process must be in place to support any unsuccessful candidates into other learning/other vacancies where possible.
- 2.29. The Training Provider will be responsible for identifying and securing a suitable End Point Assessment, or other certification and qualification as relevant. Information about proposed assessment and certification organisations must be provided upon request. The Training Provider must gain the Employer's agreement for the End Point Assessment Organisation or awarding body or bodies to be used, in accordance with the Funding Rules for Apprenticeships.
- 2.30. Training Providers will be responsible for confirming that any End Point Assessment Organisation agreed with the Employer remains on the Register of Apprentice Assessment Organisations at the time the assessment is undertaken³. Where this is not the case the Training Provider will be required to agree an alternative with the Employer at no additional cost to the Employer.
- 2.31. Exit interviews will be completed with all Apprentices, with the exception of those who have been dismissed before they leave their Apprenticeship position. Details of exit interviews with Apprentices must be provided to the Employer within 7 days of the interview date.

Quality Assurance

- 2.32. Training Providers should be technically and professionally capable of delivering the required training to Apprentices. Training Providers will be expected to

³ The Register of Apprentice Assessment Organisations and the list of which organisations may apply to the register to undertake end-point assessments for each standard is available online at the time of publishing at: <https://www.gov.uk/government/publications/using-the-register-of-apprentice-assessment-organisations>

maintain any relevant quality ratings and/ or statuses, and ensure that they are compliant with any relevant rules and regulations as they are updated⁴.

- 2.33. Training Providers and any subcontractors are required to maintain relevant registration with the RoATP.
- 2.34. Training Providers are ineligible to be part of The DAAP if any of the following apply:
- A. Your organisation holds an Office for Standards in Education, Children's Services and Skills (Ofsted) grade for 'overall effectiveness', that has been judged as grade 4 (inadequate) or grade 3 (requires improvement);
 - B. Your organisation holds a Quality Assurance Agency for Higher Education (QAA) rating lower than the standard for 'meets UK expectations';
 - C. Your organisation holds a Higher Education Funding Council for England rating that is lower than 'meets requirements' assessment at Annual Provider Review⁵;
 - D. Your organisation has not had an inspection in the relevant time period (3 years for OFSTED, 5 years for QAA, annually for HEFCE assessment) and is unable to provide evidence of an equivalent standard of quality for their delivery and robust processes for quality assurance.
 - E. Your organisation is subject to intervention or enforcement action being taken by the UK Government or any of its agencies or UK regulators. For example, intervention by the Education and Skills Funding Agency or prosecution by HM Revenue and Customs, or enforcement action by the Information Commissioner's Office.
- 2.35. Training Providers who have not been inspected within the relevant time period must demonstrate sufficient capability to meet the equivalent standards, in line with relevant regulatory body outlined above. This may apply to new Training Providers to the market.
- 2.36. Should the quality status of any Training Provider on the approved list change as outlined above, the Training Provider is required to contact Nottingham City Council within 5 working days to advise what the change relates to and provide details of any appeal/remedy period relevant to information about non-compliance.
- 2.37. Training Providers will ensure that any subcontractors used to deliver education services meet the eligibility criteria for The DAAP. Lead Training Providers may not use subcontractors who hold quality ratings below the minimum required by the Main Training Provider.
- 2.38. All Training Providers including their staff and subcontractors as relevant, should be familiar and comply with the minimum legal requirements for all relevant industry legislation and requirements including but not limited to:
- a) UK Government Tax and Apprenticeships Funding Rules;
 - b) UK Government guidance relevant to Education Services and any standards or best practice set by the Training Providers' Quality Regulators for Education Services ⁶;

⁴ This document will be updated in accordance with any significant changes to regulatory bodies, e.g. changes to OFSTED Grade or changes to Regulator responsible for overseeing training provider quality standards.

⁵ This document will be updated in accordance with any significant changes to oversight bodies, e.g. changes to relevant inspection regimes or changes by UK Government (including its agencies) or UK Quality Regulators for Education Services to Apprenticeships.

⁶ Including but not limited to: Department for Education, Education and Skills Funding Agency, the Institute for Apprenticeships, Office of Qualifications and Examinations Regulation (Ofqual), Ofsted, QAA, HEFCE and the

- c) Anti-discrimination legislation including the Equality Act 2010;
 - d) The Data Protection Act 1998 (as amended), or its successors; and any associated legislation;
 - e) Safeguarding, (including PREVENT, whistleblowing and health and safety).
 - f) The Competition Act 1998;
 - g) The Freedom of Information Act 2000;
- 2.39. Training will be delivered in accordance with relevant Employer policies set by the Apprentices' Employer, including but not limited to Safeguarding (including PREVENT, Whistleblowing and Health and Safety) and Equality and Diversity policies. For latest versions of policies, Training Providers should access Employer websites directly. For example: <http://www.nottinghamcity.gov.uk/community/equality-diversity-and-inclusion/equality-and-diversity-policy-and-resources/> The training will be delivered in accordance with relevant legislation and best practice applicable to Apprenticeships training.
- 2.40. All Training Providers' are required to have business continuity provisions in place to prevent any detrimental impact on Apprenticeship Training and Assessment in the event of potential or actual delivery issues being identified.
- 2.41. Any change of subcontractor or staff contracted to deliver training to Apprentices during Apprenticeship delivery will be agreed with the Employer at least 28 days in advance of the change. The Training Provider will be responsible for due diligence and ensuring that any subcontractors perform to the quality standards as outlined in the specification.
- 2.42. Training Provider employees contracted to deliver education services must possess a relevant Disclosure and Barring Service (DBS) certificate for activities they offer to undertake see, where required: <https://www.gov.uk/guidance/dbs-check-requests-guidance-for-employers>.
- 2.43. Training Providers should be suitably qualified and experienced in the delivery of their chosen course subject and in training a range of individuals. For example, skills and experience delivering training for adults with additional learning needs. Employees are required to undertake the following training where relevant; equality and diversity training, training on disabilities and mental health (including hidden disabilities), and unconscious bias training.
- 2.44. An accessible complaints procedure will be available for Apprentices and Employers which offers a route to resolution within 8 weeks from receipt of complaint and includes an independent appeal process.
- 2.45. Training Providers must designate an authorised Contract Manager to act on behalf of the Training Provider for all purposes connected with The DAAP and any related Call-off Contracts. Training Providers are required to work in co-operation with the Employer, Nottingham City Council and any other appropriate agencies to implement best practice and continuously improve working practices so that apprentices are supported and have the best chance to succeed.
- 2.46. Where Training Providers process Personal Data as a Data Processor for the Employer, each Training Provider shall ensure that it has in place appropriate technical and contractual measures to ensure the security of the Personal Data (and to guard against unauthorised or unlawful Processing of the Personal Data and against accidental loss or destruction of, or damage to, the Personal Data),

as required under the Seventh Data Protection Principle in Schedule 1 to the Act; and will provide Nottingham City Council with such information as the Council may reasonably require to satisfy itself that the Training Provider is complying with its obligations under the Data Protection Legislation.

Reporting Requirements

- 2.47. Unless agreed otherwise, active Training Providers will be required to produce monthly progress reports for each Apprentice following the monthly progression review which will be sent to the Employer.
- 2.48. Unless agreed otherwise, active Training Providers will also be required to produce and submit quarterly monitoring reports to Employers that demonstrate the Call-off Contract Key Performance Indicators have been met.
- 2.49. In addition to this, to ensure that the quality of The DAAP can be monitored and maintained by Nottingham City Council, active Training Providers are required to submit quarterly monitoring and information reports to NCC on the monitoring template spreadsheet provided with the tender pack.

Social Value

- 2.50. The Public Services (Social Value) Act 2012 requires public bodies to consider how the services they procure might improve the economic, social and environmental well-being of the areas. As a result, Training Providers are required to support the following Social Values:
 - i. Maximise the benefits realised by the community;
 - ii. Increase quality standards;
 - iii. Realise savings;
 - iv. Support smaller organisations;
 - v. Provide added value.
- 2.51. Training Providers on The DAAP are required to implement the 'Local Apprenticeships Standard' outlined in Appendix 2.
- 2.52. Training Providers will be expected to adhere to and promote the Local Apprenticeships Standard to all Employers they work with. Employers may seek to work with Training Providers to agree appropriate examples of how these standards may be fulfilled.

ANNEX 3

PERFORMANCE AND CONTRACT MANAGEMENT

Data submissions required

3.1 Unless agreed otherwise, active Training Providers are required to complete and submit regular monitoring information regarding individual apprentice progression and the quality of training this includes;

| Type of monitoring: | Submit to: | Regularity: |
|---|-------------------|--------------------|
| Monthly Apprentice Progression Report | Employer | Monthly |
| Call-off KPI Monitoring | Employer | Quarterly |
| KPI Monitoring and Management Information | NCC | Quarterly |

3.2 All Approved Training Providers are required to ensure that Nottingham City Council and any Employers with whom they have active Call-off Contracts in place are kept informed about performance against published quality standards. This includes but is not limited to outcomes of inspection visits from OFSTED and/or HEFCE and published performance measures, where applicable.

Monthly Apprentice Progression Report

3.3 Individual Apprentice Progression Reports must be communicated to all Employers with an active Call-off Contract in place on a monthly basis, unless agreed otherwise.

3.4 The content of the Apprentice Progression Report will be agreed between the employer and the Training Provider but are likely to cover the following, as applicable:

- Learning progress
- Attendance
- Effort and attitude
- Support from managers
- Pace relative to other learners within cohort

Call-off Contract Key Performance Indicators

3.5 Training Providers with active Call-off Contracts are required to report on performance against the Call-off Contract KPIs. This information should be submitted to the Employer retrospectively on a quarterly basis. Training Providers may be required to attend review meetings if requested by the Employer to agree any improvements needed.

3.6 Training Provider performance will be assessed by the Employer, as falling into one of the three Performance Bands outlined in the table below:

| <u>Call-off Contract KPIs</u> | Performance Bands | | |
|---|--------------------------|--------------|------------|
| | Green | Amber | Red |
| Apprentice signed up and begins training within 10 working days of the start date outlined in the Apprenticeship Agreement. | 100% | 91%-99% | Up to 90% |
| Individual monthly reviews held between the apprentice and the assessor/tutors. | 100% | 91%- 99% | Up to 90% |

| <u>Call-off Contract KPIs</u> | Performance Bands | | |
|--|--------------------------|------------------------|--------------------------------|
| | Green | Amber | Red |
| Progress report is completed on each apprentice and submitted to the Employer every month. | 100% | 91%-99% | Up to 90% |
| Employer is informed of absence within 3 hours if any apprentice does not attend a scheduled session. | 100% | 91%-99% | Up to 90% |
| Minimum of 24 hours' notice is given to the Employer for cancellations/alterations to scheduled sessions. | 100% | Exceeded on 1 occasion | Exceeded on 2 occasions |
| Complete an exit interviews with each apprentice (with the exception of apprentices who have been dismissed) and provide details to the Employer within 7 days of the interview. | 100% | 91-99% | Up to 90% |
| Unless agreed otherwise with the employer, percentage of apprentices who complete their training within the agreed end date. | 100% - 96% | 95-99% | Up to 95% |
| Training Provider alignment with any additional delivery standards as agreed between the Training Provider and the Employer under a Service Level Agreement. | Meets delivery standards | 1 instance of failure | 2 or more instances of failure |

3.7 The following actions will apply to each Call-off Contract Key Performance Indicator depending on the banding it fall within:

| | |
|-------------------|--|
| GREEN BAND | No action will be taken, this is considered acceptable performance. |
| AMBER BAND | The Employer and the Training Provider will discuss and agree upon a performance improvement plan to be implemented, and any timescales for improvement. If performance against any Call-off Contract KPI falls within the Amber Performance Band in 2 consecutive months OR 3 times in any 12 month period during the Term of the Call-off Contract this will constitute performance falling within the Red Performance Band. |
| RED BAND | The Employer will issue a Default Notice. If the Training Provider fails to remedy the default to the standard set out in Green Performance Band within 30 calendar days, the Employer can terminate the Call-off Contract. |

Annex 4

CALL-OFF CONTRACT VARIATION PROCEDURE

INTRODUCTION

- 4.1 This Schedule details the scope of the variations permitted and the process to be followed where the Parties propose a variation to this Call off Contract.
- 4.2 The Parties may only propose a variation to the Call off Contract under this Schedule where the variation does not amount to a material change (within the meaning of Regulation 72 of the Regulations) and only in accordance with the Funding Rules.

PROCEDURE FOR PROPOSING VARIATION

- 4.3 In order to propose a variation, either Party may serve the other with a written notice of the proposal to vary the Call off Contract ("Variation Notice").
- 4.4 The Variation Notice shall contain details of the proposed variation providing sufficient information to allow the other Party to assess the variation and consider whether any change to the Price is necessary.
- 4.5 On receipt of the Variation Notice, each Party has 5 Working Days to respond in writing with a decision on the variation.
- 4.6 If the Variation is agreed, then the Party proposing the Variation shall prepare a written agreement detailing the variation and shall send it to the other Party for execution. The Variation Agreement may be executed in a number of counterparts, each of which when executed and delivered shall constitute an original of the Variation Notice, but all the counterparts shall together constitute the same agreement.
- 4.7 In the event that the Variation cannot be agreed by the Parties, the proposing Party may:
- withdraw the variation; or
 - propose an amendment to the variation.

Annex 5
COMMITMENT STATEMENT

[to be inserted]

A Template is available from the Education and Skills Funding Agency via
<https://www.gov.uk/government/publications/apprenticeship-commitment-statement-template>

