



European Union

European
Social Fund



BIRMINGHAM METROPOLITAN COLLEGE

- and -

**APPRENTICESHIP FRAMEWORK
AGREEMENT**

- relating to -

APPRENTICESHIP PROGRAMMES

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This Agreement is made on the _____ day of _____ 202

BETWEEN

- (1) **BIRMINGHAM METROPOLITAN COLLEGE** of Matthew Boulton Campus, Jennens Road, Birmingham, West Midlands, B4 7PS (the **College**)
- (2)

Employer Details (the Employer)	
Employer name:	
Company number:	
Employer's address: (Registered Office Address if PLC\ Limited Company or Business Address for Sole Trader/ Partnership)	

Whereas

- (A) The Employer has offered to provide an Apprenticeship Scheme which has been approved by the Education and Skills Funding Agency.
- (B) The College has been appointed as a Main Provider by the Employer in connection with the provision of an apprenticeship framework or standard and other Apprenticeship schemes.
- (C) The College is a corporation concerned with the provision of education/training to students
- (D) The College is in a position to assist the Employer in providing training to students as part of the Apprenticeship Programme or other associated programmes originated by the Education and Skills Funding Agency.
- (E) The parties wish to ensure that the Funding Rules imposed by the Education and Skills Funding Agency are followed in the provision of Apprenticeship schemes, including by the entering into of this Agreement.
- (F) The College and the Employer have agreed that their relationship should be governed by a legally binding contract and the agreed terms of the contract are those set out in this Agreement.

Now the Parties Agree as follows

1. **Definitions**

1.1 In this Agreement the following words and expressions shall have the following meanings:

Agency means the Education and Skills Funding Agency (ESFA) or any successor body as may be notified by the College to the Employer from time to time;

Agreement means all parts of this Agreement and includes the Schedules and the Appendices incorporated into it;

Apprentice means an individual apprentice as indicated in a Commitment Statement;

Apprenticeship An apprenticeship framework or standard or other form of apprenticeship as further detailed within Schedule 1 as may be promoted by the College from time to time;

Apprenticeship Assessment Organisation An organisation on the Register of Apprentice Assessment Organisations which is selected by the Employer to carry out the End Point Assessment;

Apprenticeship Programme / Programme the programme of Tuition related to the Apprenticeships delivered pursuant to this Agreement under the framework of standard or other associated programmes as detailed in Schedule 2, Part A, as amended, supplemented and replaced from time to time over the duration of the Agreement and described as "Supplementary / Replacement Schedule 2";

Attendance means the attendance of an Apprentice on Tuition as evidenced by the provision of the Register;

Code means the Department of Constitutional Affairs' Code of Practice on the discharge of public authorities' functions under Part 1 of the Freedom of Information Act 2000 as may be updated or re-issued from time to time and any other relevant codes of practice published by the Department of Constitutional Affairs or its successor bodies;

College Representative means the person nominated by the College in Schedule 5 responsible for the operational relationship of the parties (or such other person as notified by the College to the Employer from time to time) who may be the Account Manager or Lead Member within the Faculty Team;

College's Requirements means the instructions, requirements, policies, codes of conduct, guidelines, forms and other documents notified to the Employer in writing or set out on the College's website or such other web address as may be notified to the Employer from time to time including the College's Charter, Enrolment Guidelines, Procedures, Quality Manual and Quality Standards (as such documents may be amended, updated or supplemented from time to time

during the term of this Agreement);

Commencement Date	means [REDACTED]
Commercially Sensitive Information	the information of a commercially sensitive nature relating to the Employer or the College (as the case may be), its intellectual property rights or its business which either party has notified in writing to the other that, if disclosed, would cause the significant commercial disadvantage or material financial loss;
Commitment Statement	the statement completed by the Apprentice in the form contained in Schedule 1;
Confidential Information	any information that relates to the business, affairs, developments, trade secrets, know-how (including the Know-How), personnel and suppliers of the Employer or the College (as the case may be), including intellectual property rights, together with all information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential;
Data Protection Laws	means the GDPR and the Privacy and Electronic Communication Regulations 2003, any amendment, consolidation or re-enactment thereof, any legislation of equivalent purpose or effect enacted in the United Kingdom, or, where relevant, the European Union, and any orders, guidelines and instructions issued under any of the above by relevant national authorities, a judicial authority in England and Wales or, where relevant, a European Union judicial authority;
Data Subject	shall have the same meaning as set out in the GDPR;
Employer Contribution	the sums payable by the Employer to the College as set out within Part C of Schedule 3 including any element of the Employer Contribution payable through the Employer's digital account, and any sum payable by the Employer but which cannot be funded through the Employer's digital account.
Employer Incentive Payment	the payments due to the Employer in respect of each Apprentice as set out in Part D of Schedule 3 payable by the College on behalf of the Agency;
Employer's Representative	means the person nominated by the Employer in Schedule 3 as being responsible for liaising with the College in connection with arrangements made pursuant to this Agreement;
End Point Assessment	means the independent assessment of the Apprentice's knowledge, skills and behaviour carried out by an Apprentice Assessment Organisation to confirm that the Apprentice has met the requirements of the relevant

	approved apprenticeship standard;
Enrolled	means, in relation to an Apprentice, a person who has been enrolled in accordance with the terms of this Agreement and in respect of whom the College has notified the Employer that such Apprentice has been enrolled with the College, and 'Enrol', 'Enrolment' and 'Enrolling' will be construed accordingly;
Environmental Information Regulations	the Environmental Information Regulations 2004;
FOIA	means the Freedom of Information Act 2000;
Funding	means the funding provided to the Employer or the College by the Agency in accordance with the Funding Agreement and Funding Rules in relation to the Tuition and the provisions of this Agreement;
Funding Agreement	has the same meaning as defined in the Apprenticeship funding and performance management rules for training providers as produced by the Agency;
Funding Rules	means the Apprenticeship funding and performance management rules for training providers, Apprenticeship Funding: Rules for Employer Providers, and the Agency Apprenticeship Agreement for employers (as such documents may be amended, updated or supplemented from time to time during the term of this Agreement);
GDPR	means the General Data Protection Regulation (EU) 2016/679 as in force from time to time;
Information Disclosure Requirements	means the requirements to disclose information under the Code, the FOIA and the Environmental Information Regulations;
Intellectual Property	means any intellectual property owned or licensed by the College including, by way of illustration only, copyright in forms, course materials, marketing materials and unregistered trade and service marks made available by the College to the Employer in connection with the provision or promotion of the Tuition and also including the Trade Marks;
Main Provider	has the same meaning as in the Funding Rules
Month	means a calendar month;
Personal Data	has the meaning given to it by the GDPR, but shall only include personal data to the extent that such personal data, or any part of such personal data, is processed in relation to the services provided under this agreement;

Premises	means the premises listed in the Agreement or such other premises as are agreed between the parties from time to time from where the Apprenticeship is delivered;
Procedures	means the College's procedures for contracting (including audit requirements, due diligence processes, contract management processes) provided to Employers and as updated by the College from time to time;
Quality Manual	shall mean the College's statement of quality standards and procedures to be adopted to ensure quality in education delivered to Apprentices;
Quality Standards	shall mean the College's statement of the quality expected in education delivered as set out in the College's Quality Manual, quality procedures and the awarding organisations set requirements governed by OFQUAL. In the absence of any such statement, 'Quality Standards' shall mean the standard expected of a skilled and competent provider of the kind of education which makes up the Tuition;
Regulated Activity	in relation to children shall have the same meaning as set out in the Safeguarding Vulnerable Groups Act 2006 and in relation to vulnerable adults shall have the same meaning as set out in the Safeguarding Vulnerable Groups Act 2006;
Regulated Activity Provider	shall have the same meaning as set out in section 6 of the Safeguarding Vulnerable Groups Act 2006;
Replacement National Legislation	means legislation in the United Kingdom which is enacted to cover, in whole or part, the same subject matter as the GDPR.
Request for Information	a request for information or an apparent request under the Code, FOIA or the Environmental Information Regulations;
Register	means a register which records (hard copy or electronically), in relation to each Apprentice, that Apprentice's attendance on or absence from the relevant Tuition or that Apprentice's withdrawal from the Tuition (as the case may be);
Services	means the services to be provided by the Employer as specified in this Agreement;
Trade Marks	means the registered trademarks belonging to the College or otherwise made available for use by the Employer pursuant to this Agreement as notified by the College to the Employer from time to time;
Tuition	means the provision of Apprenticeship and/ or associated training related to a specific qualification, independent end-point assessment, teaching / learning or competence

assessment connected to an Apprenticeship which is delivered by or on behalf of the College, as further detailed in Schedule 2 Part E;

Working Day means any day other than a Saturday, Sunday or English Bank Holiday.

- 1.2 In this Agreement, unless the context otherwise requires, references to the singular include the plural and vice versa; any reference to a person includes a body corporate and words importing one gender include both genders.
- 1.3 The headings in this Agreement are for ease of reference only but do not form part of the Agreement and will not be taken into account when construing it.
- 1.4 References to Schedules, Clauses, Appendices or Conditions are references to schedules, clauses, appendices or conditions of this Agreement.
- 1.5 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time and shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.6 Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.7 If there is an inconsistency between any of the provisions of this Agreement and the provisions of the Funding Rules, the provisions of the Funding Rules shall prevail.

2. **Principal Obligations of the Employer and the College**

- 2.1 The parties will provide the Apprenticeship Programme and the College will provide the Tuition to the Apprentices on behalf of the Employer in accordance with the terms and conditions of this Agreement.
- 2.2 The parties will be deemed to have read and understood all requirements of the Agency in connection with the Apprenticeship and both commit to comply with the Funding Agreement and all Funding Rules.
- 2.3 The Tuition will be as set out in the attached Schedules, in particular Part A of Schedule 2.
- 2.4 The College will pay the Employer the Employer Incentive Payment and any other sums due in accordance with the terms and conditions of this Agreement in relation to each Apprentice.
- 2.5 The parties shall comply with all provisions of the Funding Agreement and Funding Rules as they apply to them and shall do nothing to put themselves or the other party in breach of their obligations under the Funding Agreement or Funding Rules.
- 2.6 The Employer shall comply with, and complete and return any forms or reports from time to time required by, the College Requirements.

- 2.7 The Employer shall notify the College in writing of any amount of other funding including other public sector funding (if any) and/or guarantees secured by or offered to it in relation to the Services as soon as it is approved.
- 2.8 The College will be responsible for creating the Individualised Learner Record and registering this with the Agency.
- 2.9 The Employer will ensure that with respect to any individual Apprentice, the Claim Form and Commitment Statement is entered into prior to the start date of the relevant Apprenticeship.
- 2.10 The parties will comply with any Special Conditions as set out in Schedule 5.
- 2.11 The Employer shall be liable to pay agreed Employer Contributions and fees to the College as indicated in clause 4 below and Schedule 2 Part C and comply with their responsibilities towards each Apprentice as set out in Schedule 4.
- 2.12 The Employer shall issue a contract of employment or letter of engagement to each Apprentice complying with the requirements of Section 1 of the Employment Rights Act 1996 and shall make a copy available to the College upon request.
- 2.13 The Employer shall comply with all National Minimum Wage requirements to the extent that these are relevant.
- 2.14 The Employer shall provide such training and/or carry out such actions as are assigned to the Employer in the Apprenticeship Agreement and in any event support each Apprentice in their learning and development to the reasonable satisfaction of the College.
- 2.15 The Employer shall notify the College in writing of any break in learning by an Apprentice.
- 2.16 The Employer shall confirm to the College promptly on request by providing signed declarations to the College of:
- (a) Each Apprentice's eligibility for apprenticeship funding;
 - (b) Any eligibility for incentive payments (if applicable);
 - (c) The average number of employees employed by the Employer in the three years immediately preceding the first day of an Apprenticeship and (if applicable) the Employer's eligibility for the small employer incentive payment);
 - (d) Any other matters on which the College requires written evidence that is in the possession of the Employer in order for the College to comply with Funding Rules;
 - (e) The address or addresses where the Apprentice shall be working;
- 2.17 The Employer shall ensure, and on request confirm, that:
- (a) The Apprentice is employed for a minimum of 30 hours per week and that training both on and off the job is included in those hours of employment;

- (b) The funding for the Apprenticeship is not used to pay the apprentice's wages;
- (c) The Apprentice is enabled to complete the Apprenticeship within their working hours and make available time for the Apprentice to be able to complete the Apprenticeship Programme including:
 - (i) Permitting 20% of each Apprentices' employed hours to be used for off the job training;
 - (ii) Releasing the Apprentice to the College to undertake the Tuition;
 - (iii) Providing the Apprentice with the use of equipment necessary to enable the Apprentice to fulfil training objectives;
 - (iv) Co-operating with the College to arrange for any necessary End Point Assessment and allowing the Apprentice to attend the same.

3. **Duration of the Agreement**

- 3.1 This Agreement shall commence on the Commencement Date and continue for the duration of the Apprenticeship Programme unless terminated before that time in accordance with the terms and conditions set out in this Agreement.
- 3.2 Following expiry or termination of this Agreement the parties will continue to be subject to the specific obligations contained within clause 4 (Payment), clause 7 (Provision of Records and Information), clause 8 (Freedom of Information), clause 9 (Data Protection), clause 24 (Confidentiality), clause 33 (Dispute Resolution), clause 37 (Intellectual Property and Trade Marks) and clause 39 (Anti-Bribery).

4. **Payments by Employer to College**

- 4.1 The College shall invoice the Employer in respect of Tuition related to each Apprentice subject to provision by the College, if requested, of all relevant achievement evidence relating to that Tuition as part of the Employer Contribution. Each invoice must be accompanied by all written evidence that the Employer may reasonably require in support of such invoice.
- 4.2 All invoices shall comply with the Employer's invoicing guidelines and the Funding Rules. All invoices must be sent to the Employer at such address as may be notified to the College.
- 4.3 The Employer Contribution will be calculated in accordance with Schedule 2:
 - 4.3.1 no variations to the Employer Contribution or additional costs will be accepted unless agreed in writing by the parties, save those reasonably incurred by the College in order to comply with any change to the Funding Rules or instructions of the Agency.
- 4.4 Where there is no dispute between the College and the Employer about an invoice and its supporting written evidence, the Employer will pay the Employer Contribution to the College within 30 days after receipt of the invoice by the College. If there is any dispute in respect of an invoice or its supporting written

evidence, the College and the Employer shall work together in good faith to resolve the dispute as soon as possible and the College shall provide to the Employer any additional supporting evidence as the Employer may reasonably require. If the parties are unable to resolve such a dispute, it may be referred for resolution in accordance with Clause 33. Within 30 Working Days after resolution of the dispute, the College shall pay such sums (if any) in respect of the disputed invoice as the parties may agree are properly payable.

4.5 All payments made by the Employer to the College are subject to clauses 4.6 to 4.12 below and the College acknowledges, in particular, the provisions set out in clauses 4.8, 4.9, 4.10 and 4.11 below.

4.6 No payment will be made in relation to the participation in Tuition of any Apprentice who:

4.6.1 has not been Enrolled in accordance with the provisions relating to Enrolment contained in this Agreement;

4.6.2 is a person who is ineligible for funding under the Funding Agreement or Funding Rules and the Employer has not agreed to fund the person outside of the employer's digital account;

unless and to the extent that either case arises as a result of the Employer having breached its obligations under this Agreement.

4.7 In addition to the conditions specified in clause 4.6, all sums payable by the Employer for each Apprentice enrolled on an Apprenticeship Programme is calculated on the basis of the number of Apprentices Enrolling on, attending and, where appropriate, attaining Achievement in respect of the Tuition.

4.7.1 In relation to any Apprentice who is subsequently demonstrated by the College or the Agency (whether as the result of an audit or otherwise) not to be eligible for payment of the Funding by the Agency, the Employer shall reimburse the College for any Funding recovered from the College by the Agency unless arising as a result of a breach by the College of this Agreement or any of its obligations under the Funding Rules.

4.8 The College and the Employer acknowledge that the independent audit of the Funding payable by the Agency to the College or Employer in respect of any Tuition provided pursuant to this Agreement shall be conclusive and binding on the parties.

4.9 Notwithstanding the submission of any invoice by the College, the Employer shall only be obliged to pay the Employer Contribution in respect of Apprentices who are recorded on the College's information system, at the relevant Census Dates, in a manner which complies with the Agency's audit requirements. The College undertakes to record Apprentices on its information system and to update records on the information system as soon as is reasonably practicable after receipt of the relevant information from the Employer.

4.10 The Employer shall make any payments due to the College without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise.

4.11 If an Apprentice leaves an Apprenticeship Programme, the College may, at its absolute discretion and in accordance with the Funding Rules, waive its claim for future instalments of the Employer's Contribution.

4A Payments by the College to the Employer

4A1 The College, as Main Provider will pay all Employer Incentive Payments due to the Employer as approved by the Agency with respect to each Apprentice as detailed on Part D of Schedule 2, subject to the provision of any information by the Employer to the College as is required to satisfy the Funding Rules.

4A2 All invoices shall comply with the College's invoicing guidelines and Funding Rules. All invoices should be sent to the College at such address as may be notified to the Employer.

4A3 The sums payable to the Employer will be calculated in accordance with Schedule 2 Part C. No variations or additional costs will be accepted unless agreed in writing by the parties.

4A4 Where there is no dispute between the Employer and the College about an invoice and its supporting written evidence, the College will pay the Employer Incentive Payments and any other relevant sum within 30 days following receipt of the relevant invoice. If there is any dispute in respect of the sums due, the College and the Employer shall work together in good faith to resolve the dispute as soon as possible and the Employer shall provide any supporting evidence to the College as the College may reasonably require. If the parties are unable to resolve such dispute, it may be referred for resolution in accordance with clause 33. Within 30 Working Days after resolution of the dispute, the College shall pay such sums (if any) in respect of any disputed amount as the parties may agree are properly payable, subject to being in receipt of funds by the Agency.

4A5 All payments made by the College are subject to clauses 4A6 to 4A9 below and the Employer acknowledges, in particular the provisions set out in clauses 4A6, 4A7 and 4A8 below.

4A6 No payment will be made in relation to the participation of any Apprentice who:

4A6.1 has not been enrolled in accordance with the provisions related to enrolment contained within this Agreement; or

4A6.2 is a person who is ineligible for funding under the Funding Agreement or Funding Rules.

4A7 In relation to any Apprentice who is subsequently demonstrated by the Agency (whether as the result of an audit or otherwise) not to be eligible for payment of the Funding by the Agency, the College shall reimburse the Employer for any Funding recovered from the Employer by the Agency as a result of a breach by the College of either this Agreement or any of its obligations under the Funding Rules.

4A8 The Employer and the College acknowledge that an independent audit of funding payable by the Agency to the College in respect of any Apprenticeship shall be conclusive and binding on the parties.

4A9 Subject to 4A7 above, the College will make payments due to the Employer without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise.

5. Funding

- 5.1 In order for the College to comply with its obligations to the Agency, the Employer agrees that it will co-operate fully with the College to enable the College to comply with any requirements of the Agency and, in particular, the Employer will procure that all relevant forms, agreements, applications or other documents which are required to be sent to the Agency are, if necessary, completed and signed by the relevant authorised officer of the Employer.
- 5.2 Neither party will do anything which will cause the other to be in breach of its obligations under the Funding Agreement or the Funding Rules.
- 5.3 The Agency's decision as to the Funding payable by the Agency and the Price payable by the Employer to the College in respect of any Tuition shall be final and shall be binding on both the College and the Employer.

6. Raising Standards

- 6.1 The College shall deliver the Tuition to an acceptable standard of quality including any standards prescribed by the Agency and shall seek at all times to:
 - 6.1.1 minimise dropout rates and deliver high completion and achievement rates and appropriate progression;
 - 6.1.2 ensure that Apprentices are aware that they are Enrolled as Apprentices of the College;
 - 6.1.3 follow College procedures for gaining Apprentice feedback;
 - 6.1.4 ensure competent and appropriately qualified staff deliver and assess learning;
 - 6.1.5 offer equality of access to learning opportunities and close equality gaps in learning and outcomes;
 - 6.1.6 provide a safe, healthy and supportive environment, which meets the needs of Apprentices;
 - 6.1.7 provide good management and leadership of the learning process;
 - 6.1.8 deliver value for money and financial regularity and probity;
 - 6.1.9 comply with the terms of this Agreement;
 - 6.1.10 make no material change to the Services and/or the Tuition(s) without the Employer's consent; and
 - 6.1.11 continuously seek to improve the Tuition which it delivers and raise standards to benefit both the Apprentice and the Employer.
- 6.2 The parties shall both:
 - 6.2.1 continuously seek to improve the provision they deliver;
 - 6.2.2 raise standards to benefit the Apprentice;

- 6.2.3 inform the other party of any suggested improvements to the Apprenticeship Programme under clause 25; and

Failure to demonstrate improvement in the quality of provision may result in the parties being at serious risk of failing to deliver the provision. Where risks are identified, either party may be issued with a notice to improve by the other party and that party will, following consultation with the other party, issue an action plan for improving provision setting out performance targets and deadlines. No new Apprentices may be recruited to an Apprentice Programme until the other party's performance has been approved to the reasonable satisfaction of the party which has served a notice in these circumstances.

- 6.3 If either party assesses the other to be at serious risk of failure to deliver its part of the Apprentice Programme, either party may, in its absolute discretion:

- 6.3.1 issue a notice on the other party to improve;
- 6.3.2 issue a detailed improvement plan and measures that set out clearly the expected timescales for improvement;
- 6.3.3 agree arrangements for quality monitoring;
- 6.3.4 cease funding for all or part of the Apprenticeship Programme; and/or
- 6.3.5 take action under clause 22 to terminate the Agreement.

7. **Provision of Records and Information.**

- 7.1 Each Party shall retain original invoices and all other documents necessary to verify the provision of the Apprenticeship Programmes in accordance with all statutory and other legal requirements.
- 7.2 Throughout the term of this Agreement both parties will keep the following records and information:
 - 7.2.1 any information required to be kept pursuant to the Funding Rules;
 - 7.2.2 any other records and information specified elsewhere in this Agreement;
 - 7.2.3 any other records and information as the Employer or College may, from time to time reasonably require the other party to keep, such requirements to be notified in writing.
- 7.3 Each party further warrants that all information regarding its past experience and other matters which were disclosed to the other party in order to enable the Party to assess whether to enter into this Agreement (all of which information was relied upon) was true and accurate in all material respects and that nothing which would reasonably be likely to alter the Employer or the College's decision to enter into this Agreement was withheld or misrepresented.

8. **Freedom of Information (FOIA)**

- 8.1 The Employer acknowledges that the College is subject to the requirements of FOIA and the Environmental Information Regulations and shall assist and co-operate with the College to enable the College to comply with the Information Disclosure Requirements.

8.2 In relation to any information held by the Employer and which is subject to the College's Information Disclosure Requirements the Employer shall:

8.2.1 provide the College with a copy of all Information in its possession or power in the form that the College reasonably requires as soon as practicable and in any event within seven days (or such other period as the College may specify) of the College requesting that Information;

provide all necessary assistance as reasonably requested by the College to enable the College to respond to a Request for Information within the time for compliance set out in section 10 of FOIA or regulation 5 of the Environmental Information Regulations, as applicable.

8.3 The College shall be responsible for determining at its absolute discretion whether the Confidential Information or Commercially Sensitive Information and/or any other Information of the Employer in relation to the Services:

8.3.1 is exempt from disclosure in accordance with the provisions of FOIA or the Environmental Information Regulations as the case may be; or

8.3.2 is to be disclosed in response to a Request for Information, and in no event shall the Employer respond directly to a Request for Information unless expressly authorised to do so by the College.

8.4 The Employer acknowledges that the College may, acting in accordance with the Code, be obliged under FOIA or the Environmental Information Regulations to disclose Information:

8.4.1 without consulting with the Employer, or

8.4.2 following consultation with the Employer and having taken its views into account;

provided always that where clause 8.4.2 applies the College shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Employer advanced notice, or failing that, to draw the disclosure to the Employer's attention after any such disclosure.

8.5 The Employer shall ensure that all Information produced in the course of the Agreement or relating to the Agreement is retained for disclosure and shall permit the College to inspect such records as requested from time to time.

8.6 The Employer acknowledges that any lists or schedules provided by it outlining Confidential Information are of indicative value only and that the College may nevertheless be obliged to disclose Confidential Information in accordance with clause 8.4.

8.7 The College reserves the right to share information about the Employer's performance under this agreement with the Departments of Education, Business Energy and Industrial Strategy and any other government department, government agency or other public body.

9. Data Protection and Protection of Personal Data

Details of Processing

9.1 The following details apply to the processing being carried out under this agreement:

9.1.1 The Personal Data will be processed for the provision of Services and Tuition as set out in the agreement.

9.1.2 The Personal Data will be processed for the period of time required by the Funding Rules

9.1.3 The specific processing activities will be: Provision of Services and Tuition under this Agreement and to satisfy regulatory and audit requirements.

9.1.4 The Personal Data processed concern the following categories of data subjects: Employees (internal), apprentices and prospective apprentices, employees of the Employer.

9.1.5 The Personal Data processed concern the following categories of data:

Personal identifiers such name, date of birth, national insurance number, personal learner record, and unique learner number, Contact information such as address, phone number, and e-mail address, training and educational achievements, attainment and progress, assessed learning and support needs, biographical information relevant to study or work, financial information including bank details, and any public funded financial support.

The sensitive personal data (special category data) processed concerns the following categories of data:

Criminal record information, details of health conditions, race, ethnicity, religion and sexuality. (information related to protected characteristics is collected for monitoring purposes only)

9.1.6 The following third parties will have access to the Personal Data:

Employers, regulators, internal and external audit, any sub-contractor involved in the delivery or support of the Tuition, qualification bodies, and end point assessor (for apprenticeships), European Social Fund

Obligations

9.2 Each party shall comply with the Data Protection Laws applicable to it in connection with this agreement, and shall not cause the other party to breach any of its obligations under Data Protection Laws.

9.3 Where a party, or a sub-contractor of a party, processes Personal Data (that party being the "**Processor**") on behalf of the other party or a member of its group (that party being the "**Controller**") in connection with this agreement, the Processor shall, or shall ensure that its sub-contractor shall:

9.3.1 process the Personal Data only on behalf of the Controller, only for the purposes of performing its obligations under this agreement, and only in accordance with instructions contained in this agreement or instructions received in writing from the Controller from time to time. The Processor shall notify the Controller if, in its opinion, any instruction given by the Controller breaches Data Protection Laws or other applicable law;

- 9.3.2 not publish, disclose or divulge any of the Personal Data to any third party (including for the avoidance of doubt the data subject itself), unless directed to do so in writing by the Controller;
- 9.3.3 document all processing in accordance with Article 30 of the GDPR;
- 9.3.4 only grant access to the Personal Data to persons who need to have access to it for the purposes of performing this agreement and, to the extent such persons are granted access, that they are only granted access to the part or parts of the Personal Data necessary for carrying out their role in performance of this agreement;
- 9.3.5 ensure that all persons with access to the Personal Data are:
- (a) reliable, trustworthy and suitably trained on Data Protection Laws and as a result are aware of the Processor's duties as a processor and their personal obligations with regards to this agreement and Data Protection Laws;
 - (b) subject to an obligation of confidentiality or are under an appropriate statutory obligation of confidentiality; and
 - (c) notified of the confidential nature of the Personal Data;
- 9.3.6 as a minimum, take all measures required pursuant to Article 32 of the GDPR in accordance with best practice and provide a written description of, and rationale for each of the technical and organisational measures implemented, or to be implemented, to:
- (a) protect the Personal Data against unauthorised or unlawful processing and accidental loss, destruction, damage, alteration or disclosure; and
 - (b) detect and report Personal Data breaches within good time;
- 9.3.7 not engage another processor (a "**Sub-Processor**") to process the Personal Data on its behalf without specific written consent of the Controller, approving a named Sub-Processor, such consent always subject to:
- (a) the Processor binding any Sub-Processor by written agreement, imposing on the Sub-Processor obligations in relation to the Personal Data equivalent to those set out in this agreement, and a right to procure that the Sub-Processor ceases processing without delay on termination of this agreement; and
 - (b) the Processor remaining liable to the Controller for the acts and omissions of any Sub-Processor, as if they were the acts and omissions of the Processor;
- 9.3.8 notify the Controller within five business days if it receives any communication from a third party relating directly or indirectly to the processing of the Personal Data, including but not limited to requests to exercise rights under Data Protection Laws, complaints or general correspondence and shall provide the Controller with a copy of any such

communication. The Processor shall not take action in relation to such communication, unless compelled by law, without the Controller's prior approval, and shall comply with any instructions the Controller gives in relation to such communication;

- 9.3.9 taking into account the nature of the processing and so far as is possible, assist the Controller with the fulfilment of the Controller's obligation to respond to requests for exercising data subject's rights under the Data Protection Laws and in responding to any other request, complaint or communication by, but not limited to, providing information requested by the Controller and relevant Personal Data within a reasonable time and in a commonly used electronic format, taking into account the timescales for the Controller complying with the data subject's request under Data Protection Laws;
- 9.3.10 taking into account the nature of the processing and the information available to the Processor, assist the Controller in ensuring compliance with its obligations pursuant to Articles 32 to 36 of the GDPR inclusive. Such assistance shall include, but shall not be limited to:
- (a) notifying the Controller immediately upon discovering a Personal Data breach, providing all information it has, or reasonably should have, in relation to the Personal Data breach, so that the Controller is able to satisfy its obligations under Articles 33 and 34 of the GDPR and is able to properly investigate the Personal Data breach;
 - (b) assisting in the risk assessment of the processing of the Personal Data which the Processor carries out under this agreement in order that the Controller is able to complete a data protection impact assessment in compliance with Article 35 of the GDPR, and consult with a relevant supervisory authority if necessary in compliance with Article 36 of the GDPR, including providing information about the Processor's current technical and organisational measures, and what further measures it could put in place to mitigate any risks to the rights and freedoms of data subjects, and the risks of Personal Data breach in relation to the Personal Data, as identified by it or the Controller;
- 9.3.11 at the Controller's option, delete or return to the Controller the Personal Data, and procure that any party to whom the Processor has disclosed the Personal Data does the same:
- (a) when the Controller instructs the Processor to do so, in which case the Processor shall be excused from its obligations under this agreement to the extent that such action prevents it from complying with those obligations; or
 - (b) after the termination of Services under this agreement which involve processing the Personal Data,

such obligation to include deleting or returning all copies of the Personal Data, unless applicable law requires the Processor to retain the Personal Data. Where the Controller requests the return of Personal Data, the Processor shall use all reasonable endeavours to ensure it is in the format and on the media specified by the Controller;

- 9.3.12 comply with any instructions of the Controller to modify the Personal Data, or restrict its processing, and procure that any party to whom the Processor has disclosed the Personal Data does the same;
- 9.3.13 where reasonably possible, store the Personal Data in a structured, commonly used and machine readable format;
- 9.3.14 not transfer Personal Data outside of the European Economic Area without the prior written consent of the Controller. Where the Controller consents to the transfer of Personal Data outside the European Economic Area, the Processor shall comply with:
- (a) the obligations of a controller under Articles 44 to 50 of the GDPR inclusive by providing an adequate level of protection to any Personal Data transferred; and
 - (b) any reasonable instructions of the Controller in relation to such transfer;
- 9.3.15 have a data protection officer where required by the GDPR, and where a data protection officer is not required, have a named individual that is responsible and available to deal with data protection issues as and when they arise in conjunction with the Controller;
- 9.3.16 make available to the Controller all information necessary to demonstrate compliance with this agreement insofar as it relates to data protection; and
- 9.3.17 allow the Controller, or its external advisers (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit the Processor's data processing activities and those of its relevant agents, group companies and sub-contractors, and comply with all reasonable requests or directions by the Controller, to enable the Controller to verify and procure that the Processor is in full compliance with its obligations under this agreement insofar as it relates to data protection.
- 9.4 Notwithstanding anything in this agreement, information provided by a Processor to a Controller, whether through audit or otherwise, may be disclosed by the Controller if requested or required generally or specifically by applicable law, a court of competent jurisdiction, a supervisory authority, a certification body (as referred to by Article 43 of the GDPR) or a monitoring body (as referred to by Article 41 of the GDPR) for the purposes of responding to a claim, request for information, inquiry or investigation.
- 9.5 Both parties must permit the other or the Agency to inspect and audit their data processing activities.

10. Branding and Logos

- 10.1 The parties shall comply with any requirements of the Agency in relation to any promotional materials or activities concerning the Services. This shall include but not be limited to prospectuses, direct mail advertising, TV and radio advertising, merchandising or any other literature or products.
- 10.1.1 The Employer shall be given access to any logos and statements, which it is required to use. The Employer will be required to use logos and

statements in accordance with the terms of use and should not alter or amend such logos or statements. Logos and statements are only to be used in relation to the Services under this Contract. Any breach of this clause 10 or the requirements or terms of use of which the Employer is made aware shall constitute a material breach under clause 22.1 of this Agreement.

- 10.1.2 The Employer may also be required to use logos from other co-branding or co-funding participants and must comply with any terms which apply to the use of such logos.
- 10.2 The provisions of clause 10.3 shall apply unless specifically varied by the College or the Funding Rules.
- 10.3 The Employer shall:
- 10.3.1 obtain the College's prior written consent to all promotional activity, public statements or press releases issued by the Employer or on the Employer's behalf in relation to the Services or any aspect of them;
 - 10.3.2 where requested to do so by the College, acknowledge the award of the Funding by the College (and, where applicable, the Agency) in any publicity about the Services; and
 - 10.3.3 incorporate the College's logo in all marketing materials in accordance with the College's visual identity guidelines for the Services (being such guidelines as shall be notified in advance to the Employer) and will not use the College's logo for any other purpose whatsoever.
- 11. Feedback and Complaints**
- 11.1 The primary responsibility for receiving feedback and investigating complaints promptly and thoroughly in respect of the Apprenticeship Programmes shall rest with the College. The College shall have procedures in place to gather and act upon feedback and complaints from Apprentices and/or their representatives and employers and the wider community.
- 11.2 The College shall ensure that Apprentices are made aware of its procedure for dealing with complaints and that the procedure is clear and accessible to Apprentices who wish to complain.
- 11.3 The College shall be responsible for resolving complaints in accordance with its procedures and any guidance issued by the Agency, including in respect of complaints received by the College which are referred to the Employer where they relate to areas of Apprenticeship Programmes within the control of the Employer.
- 11.4 Complaints shall initially be raised with the College's Representative whose details are contained in Schedule 5. Neither the operation of the College's complaints procedure nor the Dispute Resolution provisions set out at clause 33 of this Agreement shall preclude an Employer or an Apprentice from contacting the Agency's apprenticeship helpline for advice and support: nationalhelpdesk@apprenticeships.gov.uk; Tel 0800 015 0400.

12. **Control of the Programme**

- 12.1 Each party shall comply with the reasonable requests of the other in respect of any aspect of any Apprenticeship Programme. Without prejudice to the generality of the foregoing, the parties shall comply with the obligations contained in clauses 13 to 14.

13. **Enrolment**

- 13.1 The Apprentices will be Enrolled as students of the College. The College and the Employer will agree who is to be Enrolled on to an Apprenticeship Programme. The Employer is responsible for ensuring the eligibility of each candidate to be an Apprentice, and the eligibility rules shall be detailed in the learner file maintained by the College.
- 13.2 The initial guidance and assessment of Apprentices and potential Apprentices shall be carried out by the Employer. The College shall specify the form which the initial guidance and assessment shall take, including but not limited to the form of any learning agreement which shall be entered into at that time. The terms of the learning agreement shall form part of the specification of the Tuition(s).
- 13.3 The Employer shall send to the College Enrolment forms for all Apprentices Enrolled on Tuition no later than 10 Working Days after commencement of that Tuition.
- 13.4 The data the College and the Employer supply will be used to issue the Apprentices with a Unique Learner Number (ULN) and for sharing information about their learning with the Agency.

14. **Assessment**

- 14.1 The Employer shall determine its requirement for the independent end assessment provider in respect of each Apprenticeship in discussion with the College in its role as Main Provider.
- 14.2 The College as Main Provider shall be responsible for all qualification and assessment of Apprentices in accordance with the awarding body organisation requirements and quality manual.

15. **Monitoring and Compliance**

- 15.1 Each party will at all times allow the other party and the Agency or any authorised representative appointed by it:
- 15.1.1 to attend during the provision of any part of a Programme, or during any activity relating to the provision of a Programme; and
- 15.1.2 to be permitted access to Premises and every part of such Premises where Tuition or work based training is or has been provided by the other party (subject to allowing reasonable terms for such access); and
- 15.1.3 access to facilities used in or for the provision of or in connection with any part of a Programme; and

- 15.1.4 to visit all or any Premises and view operations relating to the provision and to inspect relevant documents and interview Apprentices and the other party's staff in order to:
- (a) examine, audit or take copies of any original or copy documentation, accounts, books and records that relate to the Agreement;
 - (b) visit, view or assess the design, management and delivery relating to the Agreement at any Premises where those operations are carried out and conduct relevant interviews, including interviews with Apprentices, during these visits at any reasonable time;

for the purposes of ensuring compliance with this Agreement, monitoring the standard of any part of the Programme(s) and the way in which it is provided.

16. **Apprentice Health, Safety and Welfare**

- 16.1 The College may undertake a health and safety assessment of the Employer's premises and equipment relevant to the Apprentices before commencement of each Apprenticeship, and the Employer shall permit such assessment and further periodic inspections from time to time.
- 16.2 The Employer shall cooperate with and provide information to the College, as requested, to give assurance that adequate arrangements exist for Apprentice health and safety and will comply with the Special Conditions set out in Schedule 5.
- 16.3 The Employer will implement a safeguarding policy to demonstrate their commitments to safeguarding any Apprentices that are aged under 18 or vulnerable adults. The welfare of the Apprentices is paramount, all Apprentices have the right to protection from abuse or harm regardless of gender, ethnicity, disability, sexuality or belief.
- 16.4 It is a requirement that all staff working with Apprentices or vulnerable adults within the College or the Employer are trained to Level 1 standard in safeguarding. The safeguarding policy should include:
- 16.4.1 safe recruitment in checking the suitability of staff, employers, work experience providers and volunteers to work with Apprentices;
 - 16.4.2 the raising of awareness of child protection issues for staff and associates;
 - 16.4.3 the equipping of Apprentices with the skills needed to make them safe;
 - 16.4.4 the implementation of procedures identifying and reporting cases or suspected cases of abuse;
 - 16.4.5 supporting Apprentices who have been abused in accordance with his/her protection plan;
 - 16.4.6 the establishment of a safe environment in which Apprentices can learn and develop;

16.5 The College shall ensure that learning and assessment takes place in safe, healthy and supportive environments, which meet the needs of the Apprentices;

16.6 Each party shall:

- (a) operate an effective health and safety management system, which continually seeks to raise standards. Where the Employer is required to carry out self-assessment of quality of learning provided, Apprentices safety shall be included in accordance with the requirements of the College and the Common Inspection Framework;
- (b) promote good practice, and where learning takes place on an employer premises make an informed judgement about health and safety suitability prior to learning and assessment being delivered;
- (c) ensure that it has access to persons sufficiently competent in health and safety and the occupational area to meet its obligations in respect of Apprentices health, safety and welfare;
- (d) maintain adequate records in relation to Apprentices health and safety including; assessments of employer/environment suitability; agreements or commitments on health and safety with employers and Apprentices information relating to harm to Apprentices, and records of assessments, monitoring and review of Apprentices health and safety understanding/capabilities;
- (e) ensuring that Apprentices receive effective and timely information, instruction and training and effective supervision based on assessment of risk;
- (f) ensure that Apprentices health and safety understanding and practical capabilities are periodically assessed based on an assessment of risk.

17. **Safeguarding Children and Vulnerable Adults**

- 17.1 The parties acknowledge that the College is a Regulated Activity Provider with ultimate responsibility for the management and control of the Regulated Activity provided under this Agreement and for the purposes of the Safeguarding Vulnerable Groups Act 2006 (“**SVGA**”) and that it will comply in all respects with the SVGA and any regulations or orders made thereunder to the extent relevant to the Apprentice.
- 17.2 The College shall ensure that, if required, all individuals engaged in the provision of Tuition are subject to a valid enhanced disclosure check undertaken through the UK Disclosure and Barring Service, or the equivalent local service, including a check against the adults' barred list or the children's barred list, as appropriate.
- 17.3 The Employer warrants that at all times for the purposes of this Agreement it has no reason to believe that any person who is or will be employed or engaged by the Employer in the provision of the Apprenticeship Programme where the SVGA applies is barred from the activity in accordance with the provisions of the SVGA and any regulations made thereunder, as amended from time to time.

- 17.4 The Employer shall immediately notify the College of any information that the College reasonably requests to enable it to be satisfied that the obligations of this clause 17 have been met.
- 17.5 The Employer shall not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that they would not be suitable to carry out Regulated Activity or who may otherwise present a risk to service users.

18. Equal Opportunities

The parties shall not unlawfully discriminate within the meaning and scope of the provisions of the Equality Act 2010 or any statutory modification or re-enactment thereof or any other statutory provision relating to discrimination in employment or the provision of the Services and shall take all reasonable steps to ensure the observance of this clause 18 by all of their servants, employees or agents and all suppliers employed in performance of this Agreement.

19. Insurance

- 19.1 The Employer will effect and maintain with a reputable insurance company professional indemnity policy (where applicable), adequate third party and occupier's liability insurance and/or other policies of insurance providing full and reasonable cover in respect of all liabilities which may be incurred by the Employer under this Agreement.
- 19.2 The Employer will, upon request by the College, immediately produce to the College a certified copy of all the insurance policies which it is required under this Agreement to take out and satisfactory evidence that all premiums under such policies are paid to date.

20. Co-operation and Reputation

- 20.1 The College and the Employer agree to use their respective endeavours to meet at least once every 8 weeks on the date and at the place specified in the Procedures or on such other dates and/or at such other place as are agreed between them (provided that in the absence of agreement the date and place specified in the Procedures will continue to apply) in order to discuss any matters arising from this Agreement and the provision of the Programme(s).
- 20.2 The Employer acknowledges that as Apprentices will be Enrolled with the College. Each party commits to the other that:
- 20.2.1 it will not do anything which brings the reputation of the other party into disrepute or which is calculated or is reasonably likely to bring such party into disrepute;
 - 20.2.2 it will co-operate to ensure that the Tuition is provided in accordance with current best working practice and in accordance with the Funding Rules;
 - 20.2.3 it will do everything it reasonably can to promote the name and reputation of the other party;
 - 20.2.4 it will comply with all reasonable requirements of the other party notified to it from time to time in relation to the provision of the Tuition or any part of it;

20.2.5 it will not assign or purport to assign any of its rights under this Agreement nor sub-contract to any third party any part of the provision of the Tuition, except as agreed;

20.2.6 it will not do or fail to do anything which materially prejudices or is likely materially to prejudice the ability of the other party to comply with the terms of this Agreement.

20.3 The Employer shall co-operate with the College to ensure that there is continuity of learning for Apprentices if this Agreement comes to an end for any reason.

21. **Apprentices with Additional Support Requirements**

21.1 In order to apply for further funding for Apprentices who may have additional support requirements, as part of the funding requirements the College shall, in relation to each Apprentice submit an additional support assessment form, which will be available upon request signed by the parties as otherwise notified from time to time.

22. **Termination**

22.1 Without prejudice to any other rights or remedies which the parties may have, either party may terminate this Agreement without liability to the other immediately by giving written notice if the other shall admit:

22.1.1 the Funding Agreement is terminated for any reason or is likely to be breached or the Funding Rules are not being met by the other parties;

22.1.2 the Employer uses the funding or any part of it other than for the Services;

22.1.3 there is a material adverse change in the amount or nature of the Agency's funding or funding is no longer available in respect of Tuition; or

22.1.4 there is a material breach by the other of the terms of this Agreement which breach is not capable of remedy; or

22.1.5 there is a material breach by the other party of the terms of this Agreement which breach is capable of remedy but which is not remedied to the reasonable satisfaction of the other party within 14 days after each party has given written notice of the breach to the other requiring it to be remedied (provided that the notice terminating this Agreement is given by the College within one Month after the expiry of the period during which the breach should have been remedied); or

22.1.6 the Employer suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) is a Partner to whom any of the foregoing apply; or

- 22.1.7 the Employer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of the Employer with one or more other companies or the solvent reconstruction of the Employer; or
- 22.1.8 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Employer (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the Employer with one or more other companies or the solvent reconstruction of the Employer; or
- 22.1.9 an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Employer (being a company); or
- 22.1.10 the holder of a qualifying floating charge over the assets of the Employer (being a company) has become entitled to appoint or has appointed an administrative receiver; or
- 22.1.11 a person becomes entitled to appoint a receiver over the assets of the Employer or a receiver is appointed over the assets of the Employer; or
- 22.1.12 the Employer (being an individual) is the subject of a bankruptcy petition or order; or
- 22.1.13 a creditor or encumbrance of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Employer's assets and such attachment or process is not discharged within 14 days; or
- 22.1.14 any event occurs, or proceeding is taken, with respect to the Employer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 22.1.6 to clause 22.1.13 (inclusive); or
- 22.1.15 the Employer suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
- 22.1.16 the Employer (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation; or
- 22.1.17 the Employer is a company and a notice relating to the striking off of the company is published pursuant to sections 1000 to 1001 of the Companies Act 2006, such termination may take effect either immediately or at the end of the Academic Year in which the event entitling the College to terminate this Agreement occurs, as the College shall in its discretion determine. In the latter case this Agreement shall remain in full force and effect until the end of the said Academic Year.

- 22.2 Any termination of this Agreement will be without prejudice to any right of either party against the other in respect of any antecedent breach of this Agreement.

Consequences of termination

- 22.3 Termination of this Agreement, however it arises, shall not affect or prejudice the accrued rights of the parties as at termination or the continuation of any provision expressly stated to survive, or implicitly surviving, termination.
- 22.4 The College must not recruit new Apprentices after notice of termination of the Agreement has been given under this clause 22. The Employer will not be liable to make payments in respect of any Apprentices recruited in breach of this clause.
- 22.5 The Parties agree that on termination or expiry of this Agreement for any reason, the continuity of the Services is of paramount importance. The Parties shall do their utmost to minimise disruption caused to Apprentices and to assist the implementation of any contingency plan agreed between them, either prior to or after the termination or expiry of this Agreement, to deal with the effects of such termination or expiry in so far as it is practicable to do so.
- 22.6 On termination or expiry of this Agreement for any reason the learner files will become the property of the College. The Employer shall allow the College and the Agency their servants or agent to have access to its premises to remove learner files or otherwise comply with a request by College and/or Agency to transfer learner files to any third party.
- 22.7 The Parties shall promptly provide such assistance and comply with such timetable as is necessary for the purpose of ensuring an orderly transfer of responsibility for provision of the Services (or its equivalent) upon the expiry or other termination of this Agreement. The Parties shall use all reasonable endeavours to ensure that their employees are under a similar obligation.
- 22.8 The Parties undertake that they shall not knowingly do or omit to do anything which may adversely affect their ability to ensure an orderly transfer of responsibility for provision of the Services.
- 22.9 The College acknowledges that, for the avoidance of doubt, all Tutors are the responsibility of the College and are employed by it and that it is responsible, inter alia, for the payment of all wages and the making of national insurance contribution payments in respect of each Tutor.
- 22.10 The Employer shall indemnify the College against any claims made against the College by any of the employees of the Employer, including but not limited to claims that their employment has transferred to the College by virtue of the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("the TUPE Regulations"), or any other claims which may be made against the College under the TUPE Regulations. This indemnity from the Employer to the College includes any claim which relates to circumstances which arose on or before the termination of this Agreement.
- 22.11 Upon termination of this Agreement for any reason all licences granted by the College to the Employer shall terminate, subject to any extensions of licences granted by the College.

23. **Taxation and Other Payments**

- 23.1 All payments to be made by the Employer to the College under the terms of this Agreement are inclusive of Value Added Tax.

24. **Confidentiality**

- 24.1 For the purposes of this clause 24:

24.1.1 the “**Disclosing Party**” is the party which discloses Confidential Information to, or in respect of which Confidential Information comes to the knowledge of, the other party; and

24.1.2 the “**Receiving Party**” is the party which receives Confidential Information relating to the other party.

- 24.2 The Receiving Party shall take all necessary precautions to ensure that all Confidential Information it receives under or in connection with this Agreement:

24.2.1 is given only to such of its staff and professional advisors or consultants engaged to advise it in connection with this Agreement as is strictly necessary for the performance of this Agreement and only to the extent necessary for the performance of this Agreement; and

24.2.2 is treated as confidential and not disclosed (without the prior written consent of the Disclosing Party) or used by the Receiving Party or any member of its staff or its professional advisors or consultants otherwise than for the purposes of this Agreement.

- 24.3 The provisions of clause 24.2 shall not apply to any Confidential Information which:

24.3.1 is or becomes public knowledge (otherwise than by breach of this clause;

24.3.2 was in the possession of the Receiving Party, without restriction as to its disclosure, before receiving it from the Disclosing Party;

24.3.3 is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;

24.3.4 is independently developed without access to the Confidential Information; or

24.3.5 must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the Receiving Party.

- 24.4 Nothing in this clause 24 shall prevent the Employer from using any techniques, ideas or know-how gained during the performance of this Agreement in the course of its normal business, to the extent that it does not result in a disclosure of Confidential Information or an infringement of Intellectual Property Rights.

- 24.5 In the event that the Employer fails to comply with this clause 24, the College reserves the right to terminate this Agreement by notice in writing with immediate effect.

24.6 Neither party will (save as required by this Agreement) without the written consent of the other disclose to any third party any of the contents of this Agreement or any information relating to the commercial arrangements between the parties save:

24.6.1 (in the case of both parties) for any necessary disclosure to professional advisers of that party; and

24.6.2 (in the case of the College) to the Agency and any other organisation or person having jurisdiction over the College.

24.7 This clause 24 shall survive expiry or termination of this Agreement, however arising.

25. **Improvements**

25.1 Further to the objective to raise standards under clause 6 above, the Employer will seek to inform the College of any suggestions for improvements or enhancements to the Apprenticeship Programme (or the way in which it is provided), the curriculum and the Tuition material.

25.2 The College will use its reasonable endeavours to improve and develop the Tuition curriculum and the Tuition material unless such curriculum or such Tuition materials were not originally developed by or in conjunction with the College. The Employer agrees to implement any changes to the Programme(s), the way it is provided and its material which may be necessary or desirable as a result of any improvement, enhancement or developments as soon as possible after receiving written notice from the College specifying the changes to be made.

26. **Force Majeure**

26.1 If the College or the Employer is unable to perform any or all of their respective obligations under the terms of this Agreement because of any of the events set out below ("**Affected Party**"), then that party will be relieved of its obligations to continue to perform under this Agreement for as long as their fulfilment is prevented or delayed as a consequence of any such event. The events referred to in this paragraph are:

26.1.1 fire, explosion, flood, unavailability of power, riot, war, national emergency, act of God, malicious damage, theft, or any other act, omission, or state of affairs of a similar nature beyond the reasonable control of the party so affected ("**Force Majeure Event**").

26.2 If the Force Majeure Event hinders or delays the Affected Party's performance of its obligations for a continuous period of more than eight weeks, the party not affected by the Force Majeure Event may terminate this agreement forthwith by giving 14 days' written notice to the Affected Party.

27. **Variation**

27.1 No variation of this Agreement shall be valid unless it is in writing and signed by, or on behalf of, each of the parties.

28. Waiver

- 28.1 Failure to exercise, or any delay in exercising, any right or remedy provided under this Agreement or by law shall not constitute a waiver of that (or any other) right or remedy, nor shall it preclude or restrict any further exercise of that (or any other) right or remedy.
- 28.2 No single or partial exercise of any right or remedy provided under this Agreement or by law shall preclude or restrict the further exercise of that right or remedy.
- 28.3 A waiver (which may be given subject to conditions) of any right or remedy provided under this Agreement or by law shall only be effective if it is in writing. It shall apply only to the party to whom it is addressed and for the specific circumstances for which it is given. It shall not prevent the party who has given the waiver from subsequently relying on the right or remedy in other circumstances.
- 28.4 Unless specifically provided otherwise, rights arising under this Agreement are cumulative and do not exclude rights provided by law.

29. Severance

- 29.1 If any court or competent authority finds that any provision of this Agreement (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of this Agreement shall not be affected.
- 29.2 If any invalid, unenforceable or illegal provision of this Agreement would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

30. Entire Agreement

- 30.1 This Agreement and any documents referred to in it constitutes the entire agreement between the parties and supersedes and extinguishes all previous drafts, arrangements, understandings or agreements between them, whether written or oral, relating to the subject matter of this Agreement.
- 30.2 Each party acknowledges that, in entering into this Agreement and the documents referred to in it, it does not rely on, and shall have no remedies in respect of, any representation warranty (whether made innocently or negligently) that is not set out in this Agreement or those documents.
- 30.3 Nothing in this clause shall limit or exclude any liability for fraud.

31. Assignment and Sub-contracting

- 31.1 The Employer shall not, without the prior written consent of the College, assign, transfer, charge, mortgage, sub-contract, declare a trust of or deal in any other manner with all or any of its rights or obligations under this Agreement, except with the agreement of the College and subject to clause 31.3.
- 31.2 The College may, at any time, assign, transfer, charge, mortgage, subcontract, declare a trust of or deal in any other manner with all or any of its rights or obligations under this Agreement.

- 31.3 The College may sub-contract particular aspects of the Tuition under the Apprenticeship Programme to the extent and subject to the conditions specified in schedule 2 Part E “Sub-Contracting”.

32. **Rights of Third Parties**

- 32.1 Pursuant to the terms of the Funding Agreement, the Agency shall have the right to enforce the provisions of this Agreement against the Employer, including, where necessary, as if it were the College.
- 32.2 Except as expressly provided in clause 32.21 a person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.
- 32.3 The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this Agreement are not subject to the consent of any other person.

33. **Dispute Resolution**

- 33.1 If any dispute arises in connection with this Agreement, the College’s Representative and the Employer’s Representative shall, within 10 Working Days of a written request from one party to the other, meet in a good faith effort to resolve the dispute.
- 33.2 If the dispute is not resolved at that meeting, 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 (the **Mediator**). To initiate the mediation, a party must give notice in writing (**ADR notice**) to the other party requesting a mediation. A copy of the request shall be sent to CEDR Solve. The mediation shall start not later than 10 Working Days after the date of the ADR notice.
- 33.3 Unless agreed otherwise, the costs of the Mediator shall be borne equally between the parties.
- 33.4 The commencement of a mediation shall not prevent the parties commencing or continuing court proceedings.

34. **Conflicts, Governing Law and Jurisdiction**

- 34.1 This Agreement, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, the law of England and Wales.
- 34.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).
- 34.3 In the event of any conflict of terms between this Agreement, the Funding Agreement and the Funding Rules, the Funding Agreement will take precedence, followed by the Funding Rules and this Agreement.

35. No partnership or Agency

- 35.1 Nothing in this Agreement is intended to, or shall operate to, create a partnership, contract of employment or joint venture between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power) and neither party shall incur any expenditure in the name of or for the account of the other.
- 35.2 The Employer will make no statements representations or claims and will give no warranties to any Apprentice or prospective Apprentice in respect of any Tuition save such as may have been specifically authorised by the College, such authority to be given in writing. The Employer will keep the College fully and effectively indemnified against all claims demands losses expenses and costs which the College may incur as a result of any breach by the Employer of this provision or of any other provision contained in this Agreement.
- 35.3 Each party that has rights under this Agreement is acting on its own behalf and not for the benefit of another person.
- 35.4 The Employer (if an individual) represents that he is regarded by both the Inland Revenue and the Department for Work and Pensions as self-employed and accordingly shall indemnify the College against tax, national insurance contributions or similar imposed for which the College may be liable in respect of the Employer by reason of this Agreement.

36. Counterparts

- 36.1 This Agreement may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

37. Intellectual Property and Trade Marks

- 37.1 Where any Intellectual Property is required to be used in connection with the delivery of the Services, the Employer acknowledges that it shall have no right to use the same except to the extent necessary for the delivery of the Services and subject to such consents and restrictions as may be specified by the College.
- 37.2 The Employer agrees not to infringe any Intellectual Property made available pursuant to this Agreement.
- 37.3 The Employer warrants that the delivery of the Services and the Tuition and all works carried out under this Agreement does not and will not, in whole or in part, infringe any third party's intellectual property rights. The Employer agrees to indemnify the College against any and all claims, demands, proceedings, expenses and losses, including any of a consequential nature, arising directly or indirectly out of any act of the foregoing in relation to any works, where such an act is, or is alleged to be, an infringement of a third party's copyright or other intellectual property right. This warranty and indemnity shall survive the termination of this Agreement and shall exist for the life of the copyright or other intellectual property right.

- 37.4 In order to obtain the necessary authority to use any Trade Marks, the Employer undertakes that it will enter into a formal trade mark licence or other necessary agreements if it is asked to do so by the College.
- 37.5 The Employer will not use the Intellectual Property or anything confusingly similar to any part of it for anything other than the promotion of the Tuition in accordance with this Agreement.
- 37.6 The Employer will immediately notify the College if, during the term of this Agreement or any renewal of it, it becomes aware of any breach of the Intellectual Property or other intellectual property rights made available to it or of the unauthorised disclosure of any Know-How.
- 37.7 During the term of this Agreement, the Employer must use the name of the College, and any other name, mark, device or logo identifying or associated with the College which the College may from time to time specify, on:
- 37.7.1 any advertisements or prospectuses relating to the provision of the Tuition; and
- 37.7.2 all Tuition materials.

38. **Liability**

- 38.1 Nothing in this Agreement shall exclude or restrict the liability of either party to the other for death or personal injury resulting from negligence or for fraudulent misrepresentation or in any other circumstances where liability may not be so limited under any applicable law.
- 38.2 Subject to the provisions of clause 38.1 and 38.3, the total liability of each party in respect of any claim whether in contract, tort, negligence, breach of statutory duty or otherwise for any loss or damage, costs or expenses arising under or in connection with this Agreement shall in no circumstances exceed the sums properly payable by one party to the other under this Agreement as at the date when the relevant claim arises. The parties acknowledge that the assessment of the Agency's independent auditor as to the sums properly payable under clauses 4 and 4A shall be conclusive and binding on both the College and the Employer.
- 38.3 Subject to the provisions of clause 38.1, neither party shall be liable to the other whether in contract, tort, negligence, breach of statutory duty or otherwise for loss of profit, revenue, use, anticipated savings, goodwill, reputation or opportunity, financial or other economic loss or any indirect or consequential loss or damage, costs or expenses whatsoever or howsoever arising out of or in connection with this Agreement.
- 38.4 The provisions of this clause 38 shall survive termination of this Agreement however arising.

39. **Anti-Bribery**

- 39.1 The parties shall:
- 39.1.1 comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (**Relevant Requirements**);

- 39.1.2 not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
- 39.1.3 comply with their respective ethics and anti-bribery policy, as may be updated by them from time to time (**Relevant Policies**);
- 39.1.4 have and shall maintain in place throughout the term of this Agreement its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements and the Relevant Policies, and will comply with them and enforce them where appropriate;
- 39.1.5 promptly report to the other party any request or demand for any undue financial or other advantage of any kind received by the Employer in connection with the performance of this Agreement.

40. **Notices**

- 40.1 Any notice served pursuant to this Agreement shall be in writing and sent by recorded delivery post to:
 - 40.1.1 (in the case of the College) the College at the address shown at the start of this Agreement and marked for the attention of the College's Representative;
 - 40.1.2 (in the case of the Employer) the Employer at the address shown at the start of this Agreement and marked for the attention of the Employer's Representative.
- 40.2 Any notice shall be deemed to have been received, if sent by recorded delivery post, at 9.00 am on the second Working Day after posting.
- 40.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
- 40.4 A notice given under this Agreement is not valid if sent by email.

41. **Further Assurance**

- 41.1 The Employer shall and shall use all reasonable endeavours to ensure that any necessary third party shall (at their own expense) promptly execute and deliver all such documents, and perform such acts, as the College may, from time to time, reasonably require for the purpose of giving full effect to this Agreement.

PART 1: Approval of BMet Apprenticeship Framework Terms and Conditions

By signing below you are agreeing to the BMet Apprenticeship Framework Terms and Conditions set out in the previous pages. You are also confirming that you have read and agree to the the terms and conditions in Schedule 1 Commitment Statement and Schedule 5 Special Conditions.

SIGNED on behalf of Birmingham Metropolitan College

Signature: _____

Print Name: _____

SIGNED on behalf of the Employer

Signature: _____

Print Name: _____

READ ONLY

SCHEDULE 1: COMMITMENT STATEMENT

1. Set out below is BMet's Commitment Statement.
2. It complies with the ESFA funding rules
3. It is a "Tripartite agreement" between employer, apprentice and BMet setting out each parties commitment, main roles and responsibilities required to enable the apprentice to successful achieve their apprenticeship programme

The employer, apprentice and the college commit to working positively together to support the timely achievement of the apprenticeship as guided by the main roles and responsibilities.

4. This commitment statement includes an Individual Learning Plan (ILP) and when this document is completed at enrolment, it will provide a summary of the elements and activities to be completed on the apprenticeship programme. It will need to be revisited, reviewed and updated as the need arises during the apprenticeship programme.

READ ONLY

COMMITMENT STATEMENT 2020-21

Learner Details	
Learner Name:	
Date of Birth:	
Address:	
Telephone Number:	
Email:	
Apprenticeship title:	

Employer/Organisation Details	
Company Name:	
Address:	
EDRS Number:	
Telephone Number:	
Contact Name:	
Contact Email Address:	
Mentor Name: (if applicable)	
Mentor Contact Details:	

Main Provider Details	
Name:	BIRMINGHAM METROPOLITAN COLLEGE
Address:	
Telephone Number:	
Contact Name:	
41.2 Partnership Details	
Partner Name:	
Partner Address:	

Apprenticeship Type & Referral Price & Duration					
Levy	<input type="checkbox"/>	Non-levy	<input type="checkbox"/>	Small Employer	<input type="checkbox"/>
Standard	<input type="checkbox"/>	Framework	<input type="checkbox"/>	Full Cost	<input type="checkbox"/>
Referral Price and Duration of Apprenticeship:				£ <input style="width: 80px;" type="text"/>	Months: <input style="width: 80px;" type="text"/>

Employer, Apprentice & Birmingham Metropolitan College Tripartite Agreement

The aim of this declaration is to state the main roles & responsibility for the employer, apprentice and Birmingham Metropolitan College (BMet) - main provider – and how they will support the successful achievement of the apprenticeship.

The employer, apprentice and the college commit to working positively together to support the timely achievement of the apprenticeship as guided by the main roles and responsibilities below:

Roles and responsibilities of the Employer

The employer agrees to:

1. Meet the “Employer declaration of contract” details as below.
2. Uphold the conditions of the “Apprenticeship Agreement”.
3. Ensure that the apprentice’s job allows them to gain the wider employment experience required by the apprenticeship standard/framework, and that the apprentice is able to complete all elements of the apprenticeship within their contracted working hours.
4. Provide the apprentice with paid time (at least 20% of their contracted hours) to attend off-the-job training. This will include the teaching of theory, practical training and any additional support, including support accessed by the provider to support apprentices with learning difficulties and/or disabilities. This does not include training for English and maths, progress reviews or on-programme assessment. Off-the-job training must be included in the apprentice’s usual hours of work.
5. Provide access to the apprentice and employer(s) to enable BMet to support the apprenticeship programme.
6. Keep the apprentice and BMet informed of changes in circumstance that could impact on the success outcome of the apprentice for example an apprentice’s non-attendance of on-the-job training, changes in employer work patterns that affect the apprenticeship programme.
7. Not request any financial contribution from the apprentice towards the cost of their apprenticeship (including where an apprentice leaves before completion).

Roles and responsibilities of the apprentice

The apprentice agrees to:

1. Work co-operatively with your employer and work colleagues, BMet staff and their agents and fellow students, behaving in a way that ensures everyone can learn productively.
2. Take responsibility for your learning by bringing all you need to training and assessment activities, participating fully in all learning activities and review processes, attending all study support sessions arranged for you and completing work to the best of your ability by agreed deadlines.
3. Comply with BMet’s rules (Ready, respectful, safe) and to attend all activities punctually and account for any absenteeism or lateness.
4. Agree to comply with your contract of service.
5. That during all stages of the application and enrolment process that accurate and complete information disclosures to BMet have been made for example:
 - Any special learning needs
 - Any medical or health issues
 - Prior qualifications and experience
 - Anything that may be highlighted on DBS check. Some employers and jobs debar an individual from holding a position for example Early Years.

If you have any doubt, please speak in confidence to a member of the curriculum enrolment team as incorrect and inaccurate information may render this agreement invalid.

Roles and responsibilities of Birmingham Metropolitan College (Main Provider)

The college agrees to work co-operatively with the apprentice and employer to:

1. Provide information and guidance appropriate to the apprenticeship, including for example: entry requirements; the suitability of the apprenticeship to meet the apprentice and employer needs; funding rules.
2. Ensure that the commitment statement is completed and that the employer and apprentice have access to copies and referenced documents.
3. Monitor and review the progress and performance of the apprentice(s) against the apprenticeship programme, providing timely feedback and identifying actions required.
4. Ensure that the employer understands their role and responsibilities towards the apprentice.
5. Ensure that the apprentice understands their role and responsibilities.
6. Provide support to all our students, ensuring that they are helped to achieve their full potential.

Data Sharing

The progress and attendance of the apprentice is shared with their employer and this data sharing is part of this agreement that the apprentice, the employer and the main provider sign together at the outset of training.

We, BMet, will share the apprentice's personal information including attendance, punctuality, academic progress or any issues arising during the programme, with the Employer that we work with to deliver our apprenticeship programmes. We do this as we have entered into this tri party agreement with the apprentice and their employer. We share information as part of our public interest task of providing education, providing students with the most appropriate learning opportunities and the best possible education, training and pastoral support to meet their goals.

The apprentice also agrees that we may share information with the Education and Skills Funding Agency ("ESFA" - the "Funder") (who may transfer your information to other government agencies or to bodies or agencies of the European Commission). The apprentice acknowledges that the ESFA or their delegate may contact them directly in relation to the Apprenticeship. BMet will always process any personal information provided in accordance with its registration with the Information Commissioner's Office.

We will also process details of medical conditions which do not directly impact on learning if they are needed to protect the vital interests of the apprentice or other learners.

The Apprentice accepts that the College and the Employer may share the Apprentice's Personal Data with professional bodies if the Apprenticeship involves professional accreditation, but only to the extent necessary for such professional accreditation.

The College and the Employer will not share the Apprentice's Personal Data with any other third party unless they have the Apprentice's express consent, are under a statutory obligation to do so or are otherwise permitted to do so under the Data Protection Legislation.

In accordance with GDPR, we have updated our Privacy Notice, which provides full details on how we use your data and our legal basis for doing so. You can view our Privacy Notice by visiting www.bmet.ac.uk/privacy-notice/

Resolving queries and complaints regarding the apprenticeship

All complaints should be dealt with informally in the first instance. The first point of contact should be the Employer Accounts Managers.

Where complaints need to be escalated this can be done through the College's "Complaints and Compliments Policy and Procedure" that details the formal complaints procedure, timeframe and escalation process for apprentices, employers and other customers.

Escalation is also possible via the ESFA Apprenticeship Helpline which is open 7 days a week, 8am to 10pm on 0800 015 0400, or email: nationalhelpdesk@apprenticeships.gov.uk

To Be Completed By Employer

Employer Declaration			Tick
<ul style="list-style-type: none"> The apprentice has a contract of service which is <u>at least</u> long enough to complete all elements of the apprenticeship including end point assessment. The apprentice will spend at least 50% of their working hours within England. The apprentice will not be asked to contribute towards the cost of training. The learner is to be paid £ <input style="width: 50px;" type="text"/> per hour and contracted to work <input style="width: 50px;" type="text"/> hours per week (normal paid working hours, not including overtime). That all off-the-job training will be completed during working hours. Should the Learner be required to study Maths and/or English the learning must take place during the contracted working hours and will not contribute to the 20% off the job hours. An apprenticeship agreement has been completed and a copy provided to the main provider. 	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Apprenticeship Contract Details:			
Job title/occupation:			
Brief description of job role:			
Employer size			
Number of employees:	1 – 49 <input type="checkbox"/>	50+ <input type="checkbox"/>	
If less than 50 employees , please confirm the average number of employees with a contract of service in the 365 days before the apprentice started:			
<i>Please note that we use this information to assess whether you are eligible for full funding. If you are unable to provide this information, we will be unable to waive your contribution towards the cost of the apprenticeship. Please sign below to confirm this information is correct.</i>			
I confirm that if the apprentice is 16-18 years old, I have been made aware of my <input type="checkbox"/> entitlement to incentive payments after 90 and 365 days. (tick if applicable)			
Employer signature:			

To Be Completed by Apprentice

Learner Declaration of Eligibility:

Tick

- I am **not** currently studying any programme funded by the Department for Education.
- I am normally and lawfully resident in the UK/EU and have been for the last 3 years.
- I am paid £ **per hour** and am contracted to work **hours per week** (normal paid working hours, not including overtime).
- I have been made aware of the financial value of the apprenticeship programme I am undertaking, including the contribution made by Her Majesty's Government and the employer where applicable.

Additional Support: *Please identify whether you have any specific needs and/or barriers which may have an impact on any aspect of your programme and would benefit from support*

Prior Qualifications, Experience & Skills:

Qualifications	Level	Grade	Date Achieved

Other relevant learning / experience / skills: *Including hobbies and interests.*

Personal Career & Progression Objectives: *Record the employment objectives and any further career/progression aspirations including entry into full/part time education following the programme.*

Workplace Assessment: Record assessment arrangements for each component.						
Qualification	Assessor Name	Location	Methods	IQA	Delivery Organisation	Delivery Dates
English and Maths Delivery:						
Delivery Organisation	Person Responsible	Component Delivered	Location	Delivery Dates		
Progress Reviews: These will generally take place every <input type="text"/> weeks. Record planned dates below						
Date	Format	Date	Format	Date	Format	
1		4		7		
2		5		8		
3		6		9		
STANDARDS: Phase/End Assessment						
EPA Organisation		Training Fee	Assessment Fee	Total EPA Fee		
Person Responsible		Delivery Organisation	Target Start Date of EPA			
Gateway (college)						
Gateway (employer)						
End Point Assessment						

Maths & English Initial Assessment/Diagnostic details: *Note: Diagnostic must take place even if Maths/English have been achieved*

Type of Assessment	Date Completed	Result	Recommendations
(IA Maths)			
(IA English)			
(Diagnostic Maths)			
(Diagnostic English)			

Functional Skills Offer:

All students who have not yet attained L2 English and/or maths prior to starting the apprenticeship **must** be enrolled onto Functional Skills in maths and/or English:

- Students can only enrol at L1 where assessment shows that L1 is required in order to gain L2 – evidence of initial assessment will need to be provided.
- ALL students must study towards L2 and take the L2 assessment prior to end point assessment or claiming the framework.

FS Maths (tick one)	Already achieved L2 (exempt)	<input type="checkbox"/>	Achieved or working above L1, enrolled on L2	<input type="checkbox"/>	Enrolled on L1 (evidence required)	<input type="checkbox"/>
FS English (tick one)	Already achieved L2 (exempt)	<input type="checkbox"/>	Achieved or working above L1, enrolled on L2	<input type="checkbox"/>	Enrolled on L1 (evidence required)	<input type="checkbox"/>

Justification for learning at a lower/same level

Where a learner has already achieved qualifications at the same or higher level, please provide details on how this apprenticeship provides substantive new skills and is materially different from prior qualifications.

41.3 Skills Gap Analysis: *Provide details of the new skills required for this role or tick to indicate a Skills Scan is attached.*

A skills scan has been conducted and is attached

Accounting for Prior Learning:

STEP 1: Identify & List all existing knowledge/skills/behaviours that relate to new Apprenticeship training and qualification. (Note: Refer to skills scan, previous work experience, prior qualifications, units/modules, knowledge and skills training. Record any overlap in provision)

--

Source and evidence of Prior Learning Qualifications and Skills In addition to Learner's Self Declaration:

Which of the following have been checked? (* minimum required)

Personal Learner Record (PLR)*	<input type="checkbox"/>	Learner's PLR attached	<input type="checkbox"/>
Qualification Certificate(s)	<input type="checkbox"/>	Copies attached	<input type="checkbox"/>
No qualification evidence - Learner referred to Learner Registration Bodies (LRB) (awarding body)			<input type="checkbox"/>

Details of Learner job role:

How long has the learner been in post?	
How long ago was the training or skills learnt?	
Has the skills/knowledge been applied in last 3 years? (If No, then the learner may need to revisit training/knowledge)	YES/NO

STEP 2: Where "Accreditation of Prior Learning" has been identified in STEP 1 above, a decision is to be made by appropriate E.M. or ESA/ESOM to confirm how content (including OTJ training), price and duration are affected (also provide details where it is not possible to reduce price, content or duration). The decision is to be recorded here, including calculations.

--

Referral Price:	£	Final Negotiated Price:	£
Referral Duration:		Final Negotiated Duration:	

Following initial assessment, this individual requires an apprenticeship with a minimum duration of 12 months and at least 20% off the job training (tick box)

Support Arrangements: Record any planned support arrangements e.g. Tools & Equipment, PPE, childcare, lodgings, travel, etc.

--

College Induction Completed: *Please refer to induction checklist*

Basic Skills Training: *Outline details of specific induction and basic skills training.*

<i>E.g., workplace H&S, fire training induction courses, equipment usage etc.</i>	<i>Dates:</i>

Attendance: *Enter the learner hours of planned attendance for on & off the job learning*

Day	AM		PM		Paid Working Hrs Per Day	Location
	From	To	From	To		
Monday						
Tuesday						
Wednesday						
Thursday						
Friday						
Saturday						
Sunday						

TOTAL HOURS PER WEEK: confirm this adds up to the contracted weekly hours stated on the Commitment Statement (see pages 40 & 41 of the Commitment Statement)

Signatures: *We hereby confirm that we have read, understood and agree with the contents of the Commitment Statement.*

Learner Name:	Signature:	Date:
Employer Name:	Signature:	Date:
Provider Name:	Signature:	Date:

SCHEDULE 2: PROGRAMME CONTENT & ASSOCIATED FINANCIAL INFORMATION

Part A: Apprenticeship Programme Content [insert detail]

Number and Names of Apprentices	[Insert number and names of apprentices]
Apprenticeship Occupation	[Name of apprenticeship/job title and brief description of job role]
Apprenticeship Standard	[Insert name of apprenticeship Standard and ST No /Lars No]
Apprenticeship Standard – IoAFT Website link	[Insert IoAFT Website Link]
Entry requirements	[Insert requirements]
Qualification(s)	[Insert Awarding Body/Name & Level of qualification being delivered as part of Apprenticeship Programme and are part fo Apprenticeship Programme]
Start Date	[Insert start date]
Planned End Date of Practical Training	[Insert end date]
Duration of the Practical Training Period	[Insert duration in months and days]
Planned End Date of Apprenticeship Programme (Planned End Date of End Point Assessment)	[Insert apprenticeship programme end date]
Total Duration of Apprenticeship Programme (including end point assessment)	[Insert duration in months and days]
Name and address where apprentice is working	[Address where apprentice is working]
Location(s) practical training takes place	[State details of training location]
Off the job hours (as per commitment statement & apprenticeship agreement) These hours exclude English and mathematics functional skills delivery	<p>All the off the job practical training hours and activities must take place during paid working time</p> <p>The commitment statement shows the “off the job hours and activities” that the apprentice needs to complete their apprenticeship programme.</p> <p>For ESFA audit and compliance to the funding rules the Absolute Minimum of 20% Off the job hours is based on the “Practical Training Period” = XXX hours</p> <p>calculated on the following assumptions</p> <ul style="list-style-type: none"> • 37.5 hours per week – paid hours • 46.4 working weeks (adjusted for statutory holiday entitlement) • 21 months - Duration of the “Practical Training Period” • Minimum of 20% of total duration of apprenticeship

SUMMARY OF APPRENTICESHIP PROGRAMME CONTENT	
BMet Tuition/ Training & Actions	
Tuition and training or other actions to be delivered by BMet	[Insert details of training to be delivered by BMet]
BMet Equipment	[Insert details of BMet Equipment to be used in the training]
Employer Actions	
Training or other actions to be delivered by Employer	[Insert details of training or other action to be delivered by Employer]
Employer Equipment	[Insert details of Employer Equipment to be used in the training]
Sub-contracting	
Training to be delivered by Sub-contractor	[Yes or No] if Yes complete Part E: Sub-Contracting
Functional Skills Provision	
Maths Provision	[Insert details of maths provision to be provided]
English Provision	[Insert details of English provision to be provided]
Other functional skills	[Insert details of other functional skills provision]
Non-Funded Items	
Detail of items not eligible for SFA funding	Cost
Detail of items not eligible for SFA funding	Cost
Detail of items not eligible for SFA funding	Cost

Detailed Table of Apprenticeship Programme setting out programme content, who, where and when it is being delivered.

[insert table below and other information below]

READ ONLY

Part B: End Point Assessment

To comply with funding rules the End Point Assessment Organisation (EPAO) must be confirmed and agreed in principle at the start of the apprenticeship programme

Identity of End-Point Assessment Organisation	[insert details here]
EPAO Registration No	[insert details here]
End-Point Assessment Services to be provided by the Apprentice Assessment Organisation including Price	[insert details of EPA here plus Link to assessment plan and End Point Assessment Organisation EPA web link] [Insert Current price if known OR Price is subject to confirmation of proposal]
BMet additional contribution to Resits costs	Resits are ineligible costs and are not funded by the Education and Skills Funding Agency (ESFA). [Insert EITHER BMet Price exclude any resits/retakes costs. These are paid by the employer. OR BMet Price include the cost of the EPA first attempt and first resit. Additional resit or any retake costs are to be paid by the employer]

These are current EPA prices and if they are increased by EPAO, then the price at the time of the End Point Assessment will apply

Cancellation by the customer (employer or apprentice)

If the employer cancels the EPA, or if the apprentice fails to attend the EPA on the EPA Date(s), the employer shall pay Birmingham Metropolitan College any cancellation fees payable to the EPAO in line with the EPAO's terms or rules on cancellations.

Resits & Retakes

Apprentices who fail one or more assessment method will be offered the opportunity to take a re-sit or a re-take. A re-sit does not require further learning, whereas a retake does.

The apprentice's employer will need to agree that either a re-sit or re-take is an appropriate course of action.

In the event of a resit or retake being required, BMet will review the feedback from the EPAO with the employer and apprentice(s). BMet will provide a supportive action plan for the apprentice to prepare for the re-sit or a retake and agree any additional training and support required including any additional price for this work, EPAO resit costs and the date of the end point assessment resit.

A revised EPAO agreement between the employer and BMet will be put in place.

Additional notes relating to End-Point Assessment

All “Apprenticeship Standards” require the apprentice to undertake an End-Point Assessment (EPA) to complete their apprenticeship. The EPA differs depending on the standard. The EPA outcome will be graded Pass, Merit and Distinction.

BMet will help and support, along with the EPA Organisation. The key responsibilities of each party are shown below:

Employer’s responsibility	How BMet help and support you? As part of BMet apprenticeship delivery, provide account management and curriculum delivery service. We will:
<ul style="list-style-type: none"> ensuring that the Apprenticeship chosen for each Apprentice is suitable and that the EPA reflects the apprentice’s job role and learning plan; 	carry out this review with you at the start of the apprenticeship programme
<ul style="list-style-type: none"> registering Apprentices with EPA organisation. Apprentice(s) to be registered at the start of their apprenticeship programme) 	where required by the EPAO, complete and ask you to confirm and sign the EPAO registration form before we register apprentice.
<ul style="list-style-type: none"> notifying EPAO of the areas of job practice covered within the Apprentice’s job role; 	complete as part of the registration process.
<ul style="list-style-type: none"> confirm where the Timed Assessment will be sat, ensuring a suitable venue is available for EPA delivery; 	manage with you and your apprentice, the EPA process, including timing and suitable venue and location to meet EPAO requirements.
<ul style="list-style-type: none"> ensuring arrangements are in place to enable delivery of the EPA; 	Where possible use SMART assessor to collect evidence and portfolio files (or upload evidence files to the EPAO IT system)
<ul style="list-style-type: none"> ensuring you have the relevant software and hardware to deliver the EPA 	
<ul style="list-style-type: none"> ensuring Apprentices are ready to take the EPA; (Employer confirms that their apprentice has completed all the Gateway to EPA elements to move to the EPA process) 	carry out 8-10 weekly apprenticeship reviews, regarding progress and targets on our SMART assessor IT system - Apprentices upload evidence and employers have access their apprentices progress.
<ul style="list-style-type: none"> providing EPAO with feedback on the EPA process, as required by the ESFA 	discuss and review the EPAO process and support the employer with feedback to EPAO
<ul style="list-style-type: none"> providing EPAO with an assurance that the Apprentice gives permission for EPAO to apply to the ESFA for the certificate on their behalf. 	complete as part of the registration process. GDPR data sharing compliance when BMet contracting with EPAO
<ul style="list-style-type: none"> ensure that your apprentice is aware that confidentiality is an important consideration when presenting portfolio evidence to BMet and EPAO for assessment. Commercially sensitive or confidential information can be presented anonymously. Documents containing commercially sensitive or confidential information must be redacted (edited by the employer and their apprentice) but the substance of them must remain recognisable as evidence. 	BMet, with EPAO, can provide advice and guidance on the redacted portfolio evidence and whether it remains recognisable as evidence.

Additional EPA employer responsibilities to those shown above:

- Apprentices cannot undertake their end-point assessment if employer contributions have not be paid and/or the apprentice has not successfully completed the key elements of their apprenticeship programme – as listed in the appropriate assessment plan.

BMet’s responsibility

- must contract with the apprentice assessment organisation that has been selected by the employer and have a written agreement in place. The written agreement must set out the arrangements for sharing relevant information about the apprentice so that end-point assessment and certification can take place, including arrangements for any re-takes and payments.

Part C: Summary of Apprentice Prices, and Payments

Name of Apprentice		[Insert Name]
Total price per Apprentice (including end-point assessment)		[Insert £ Price]
Employer direct contribution for non-eligible or non-fundable provision	[Insert £ Price OR not applicable]	
Employer direct contribution at 5% for non-levy	[Insert £ Price OR not applicable]	
Total Payment for Employer direct contributions (The sum of non-eligible or non-fundable provision and contribution at 5% for non-levy) (following receipt of an invoice from the College payable on 30 day terms, in accord with the Payment Schedule below)		[Insert £ Price]
Total deduction to be made from the Employer's digital account		[Insert £ amount OR not applicable as non-levy employer]
ESFA Funding per Apprentice		[Insert £ Price]
End-point Assessment Cost per Apprentice (see part B – End-point Assessment)		[Insert £ Price]

NB: Add more table(s) if more than 1 apprentice

Payment Schedule

Apprentice Payment Schedule (NB Adjust table to suit the employer payment method)				
Month No's cover the practical training period	Cost of training (levy payment from employer DAS account)	Payment(s) for Employer direct contributions (The sum of non-eligible or non-fundable provision and contribution at 5% for non-levy)	Government share (95%) paid directly to BMet by ESFA	Date for payment
Month 1				
Month 2				
Month 3				
Month 4				
Month 5				
Month 6				
Month 7				
Month 8				
Month 9				
Month 10				
Month 11				
Month 12				
Final Payment (20%)				Post Gateway - After first attempt of end-point assessment
Total Payments				

This table can be adjusted depending on the employer payment schedule

Part D: Employer Incentive Payments & Payment Schedule

The Employer Incentive Payment to the Employer by the College (based on receipt of funds from the Agency)

Name of Apprentice	Employer Incentive shall be £ per apprentice
Insert name of apprentice	Payment either £1000 or £Nil

Employer Incentive Payment Schedule

The employer can claim the employer incentive payment as follows:

- £500 (50%) employer incentive payment is made 90 days from the apprentice's start date
- £500 (50%) 365 days from the apprentice's start date.

NOTES

Eligibility for additional employer incentive payment shown above.

Employers may be eligible to claim employer incentive payments when they contribute towards all or part of externally purchased training and/or end-point assessment.

16 to 18-year-old apprentice incentive

- To be eligible for the incentive payment for employing an apprentice aged 16 to 18, an apprentice must be aged 16, 17 or 18 at the start of their apprenticeship.
- The eligibility status for the 16 to 18-year-old apprentice incentive is set at the start of the apprenticeship and remains the same for the duration of that apprenticeship.
- 50% of the 16 to 18 incentive payment is made 90 days from the apprentice's start date and 50% 365 days from the apprentice's start date.

Part E: Sub-Contracting

Sub-contracting agreed	Yes or No
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If Yes, this section must be completed

Elements of the Apprenticeship Programme to be delivered by the College	[insert details here]
Price payable for Delivery by the College	[insert details here]
Identity of the Sub-contractor	[insert details here]
Elements of the Apprenticeship Programme to be delivered by the Sub-contractor	[insert details here]
Management fee payable to the College	[insert details here]
Services provided by the College to the Sub-contractor	[insert details here]
Price payable for delivery by the Sub-contractor	[insert details here]
Arrangements for monitoring quality/delivery of sub-contractor provision	[insert details here]

SCHEDULE 3: REPRESENTATIVES

College Representative	Name: Title: Account Manager Email: Telephone: Postal Address:
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Employer Representative	Name: Title: Email: Telephone: Postal Address:
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READ ONLY

SCHEDULE 4: RESPONSIBILITY FOR APPRENTICES

Issue	Responsibility
Payment of Government Apprenticeship Incentives by College to the Employer	In line with SFA funding rules (Target to pay in 30 days of receipt)
College refund process	College
College and Employer Responsibilities covering:	
<ul style="list-style-type: none"> Apprentices contract of employment 	Employer
<ul style="list-style-type: none"> Apprentice eligibility and consequences of non-eligibility 	College & Employer
<ul style="list-style-type: none"> Vetting of Apprentices prior learning and qualifications 	College
<ul style="list-style-type: none"> Fundable and non-fundable additional training, development and qualifications 	College
<ul style="list-style-type: none"> Employer staff policies and procedures (as per Host agreement) 	Employer
<ul style="list-style-type: none"> Release of Apprentice to undertake training and development 	Employer
<ul style="list-style-type: none"> Employer (in-company) training plan 	Employer
<ul style="list-style-type: none"> Audit and SFA Funding claw-back 	College
<ul style="list-style-type: none"> Tuition Management 	College
<ul style="list-style-type: none"> Health & Safety and Site Access, induction of College staff to Employer site H&S 	College and Employer
<ul style="list-style-type: none"> Quality of Delivery (including success rates) 	College
<ul style="list-style-type: none"> Management Meeting & Performance Reviews 	Shared
<ul style="list-style-type: none"> Compliance with SFA / EFA requirements 	Shared
<ul style="list-style-type: none"> Provision of records and information including data protection 	Shared
<ul style="list-style-type: none"> Equality of Opportunity, Safeguarding 	College and Employer

Issue	Responsibility
<ul style="list-style-type: none"> Apprentice absence or non-attendance processes 	College and Employer
<ul style="list-style-type: none"> Maths, English and additional learning support 	College and Employer
<ul style="list-style-type: none"> Independent End Assessment 	College and Employer

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SCHEDULE 5: SPECIAL CONDITIONS

1. **Apprentice Health, Safety and Welfare**

- 1.1 The Employer shall adopt recruitment processes that comply with the law and will ensure that children and vulnerable adult learners are protected. The Employer will take all necessary actions to comply with current legal safeguarding requirements. The Employer must make the necessary checks to ensure that employment that involves regular contact with young people under the age of 18 or other vulnerable learners is not offered to or held by anyone who has been convicted of certain specified offences, or whose name is included on lists of people considered unsuitable for such work held by the Department for Education and the Department of Health. Information should also be sought from the Disclosure and Barring Service. The Employer must undertake an adequate risk assessment to establish what action is required where their employees have regular contact with Apprentices under 18 or other vulnerable Apprentices.
- 1.2 In working with other organisations/bodies, the Employer shall make arrangements to co-ordinate and co-operate effectively for reasons of learner health, safety and welfare. In particular, respective responsibilities shall be clearly identified and documented as appropriate, to ensure understanding.
- 1.3 The Employer shall inform the Agency and the College of the death of any Apprentice which is a result of work undertaken whilst in employment and who is undertaking a related Tuition. This shall be done by informing the Agency's representative by telephone or email immediately upon the Employer becoming aware of the event.
- 1.4 The Employer shall report all RIDDOR reportable incidents in line with the Regulations, and shall investigate or assess the circumstances of all Apprentice incidents within the scope of RIDDOR and follow HSE guidance 'Investigating accidents and incidents: A workbook for employers, unions, safety representatives and safety professionals' (HSG245) ISBN 0717628272. The Employer shall only use persons competent to investigate/assess Apprentice incidents with a view to identifying the causes of any incident and lessons to be learned.
- 1.5 The Employer shall also monitor, and act on, any other harm to Apprentices to the extent that the Employer could reasonably be expected to do so and/or where the harm could affect the quality of the learning experience. Harm includes (but is not limited to) incidents that cause absence from learning, any loss to the Apprentice of any physical or mental faculty or any disfigurement and incidents of bullying and harassment.
- 1.6 The Employer shall co-operate with the Agency and Department for Work and Pensions for the purposes of the Industrial Injuries Disablement Benefit (IIDB) in respect to those Apprentices to which it applies.
- 1.7 The Employer will ensure that all Apprentices receive appropriate health and safety training and induction, together with instruction and guidance manuals.
- 1.8 The Employer will ensure that the Apprentice receives appropriate supervision from a specifically identified and suitably qualified or experienced employee. Arrangements must be made by the Employer to ensure alternative supervision in the case of planned or unplanned absence of the identified supervisor.

- 1.9 Where the Employer is a sole trader, the College must be informed when supervision is not available and the Apprentice should not attend the workplace. No one supervisor will be responsible for more than 5 Apprentices during workplace training. There will be at least one full-time employee to each Apprentice. The notified supervisors will participate in the induction of Apprentices, particularly in relation to safety issues when the Apprentices first join the Employer. Where practical, employees must be made aware of the Apprentices and the status of the Apprenticeship Programme.
- 1.10 During an induction period, the Employer Representative and College Representative will discuss with the Apprentice the contents of his / her individual learning plan and how that relates to his / her Apprenticeship and the provision of Tuition.
- 1.11 The College Representative or an individual delegated on his / her behalf will visit the Employer at regular intervals to monitor the progress of each Apprentice against their individual learning plan. This will involve meeting the Apprentice and the Employer Representative at appropriate times.

2. **Fraud and Irregularity**

- 2.1 Each party shall notify the other immediately where it becomes aware of any instance of suspected fraud or financial irregularity in the delivery of the Agreement including, but not limited to cases of:
- 2.1.1 collusion with members of the staff of the Agency, the College or employees of the Department for Business Innovation and Skills;
 - 2.1.2 the submission to the College and/or Agency of inaccurate, incomplete, misleading or falsified information for the purpose of a claim for funding;
 - 2.1.3 fraud involving awarding bodies;
 - 2.1.4 non-delivery of training where funds have been paid;
 - 2.1.5 sanctions imposed on the Employer by an awarding organisation;
 - 2.1.6 complaints or allegations by Apprentices, people working for the Employer or other relevant parties; and
 - 2.1.7 allegations of fraud;

provided that nothing in this paragraph 2 shall require either party to do anything, which may cause it to infringe any law.

3. **Employer Incentive Payments**

- 3.1 In order to be eligible to receive Employer Incentive Payments, the Employer will strictly comply with the requirements set out within the Funding Guidelines.

SCHEDULE 6: SPECIAL POLICIES AND PROCEDURES

[Insert any special policies or procedures agreed between the parties

OR

No special policies and procedures have been agreed]

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PART 2: Approval of Schedules 2 (A, B, C, D, E), 3, 4, 5 and 6

By signing below you are agreeing to the Schedules 2 (A, B, C, D, E), 3, 4, 5 and 6

SIGNED on behalf of Birmingham Metropolitan College

Signature: _____

Print Name: _____

SIGNED on behalf of the Employer

Signature: _____

Print Name: _____

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