

## Arden University Provider & Employer Agreement Terms and Conditions

### 1. Definitions and Interpretation

1.1. The definitions and rules of interpretation in this clause apply to the Agreement:

**Accountability Statement** means the “Apprenticeship Accountability Statement” published by the Department for Education that sets out the roles and responsibilities of the various regulatory bodies responsible for regulating Apprenticeships;

**Additional Payment** means payments made available to the Employer and paid to the Training Provider on the Employer’s behalf by the ESFA such as the additional payment for 16 to 18 year olds and eligible 19 to 24 year olds;

**Affiliate** means in relation to a party, any person that directly or indirectly controls, is controlled by, or is under direct or indirect common control with, that party from time to time;

**Apprentice** means a person who works under an Apprenticeship Agreement entered into with the Employer;

**Apprenticeship** means the training and end-point assessment for an employee as part of a job with an accompanying skills development programme;

**Apprenticeship Agreement** means (a) an approved English apprenticeship agreement; or (b) an apprenticeship agreement within the meaning given in section 32 or section A1(4) of the Apprenticeship, Skills, Children and Learning Act 2009 as it applies in relation to England;

**Apprenticeship Programme** means a programme of training to be provided by or through the Training Provider as set out in the APC;

**Apprenticeship Programme Completion Date** means the date on which the last Apprentice provided with training under the relevant APC (a) successfully completes the relevant End-Point Assessment (including following any resits or retakes necessary for such successful completion) or (b) withdraws (or is withdrawn by the Training Provider) from the Apprenticeship or (c) is deemed to have failed the Apprenticeship as defined in the EPA Assessment Plan or Approved Apprenticeship Standard;

**Approved Apprenticeship Standard** has the meaning given in the Apprenticeships, Skills, Children and Learning Act 2009;

**Break in Learning** means a period of time during an Apprenticeship Programme in which the Apprentice is not participating in work with the Employer, nor undertaking any training or learning with the Training Provider and where at the time of notification the Apprentice intends to resume participation in the Apprenticeship at some point in the future. By way of example only, this may be due to illness, pregnancy or other reason which makes them temporarily unable to continue with the Apprenticeship;

**Bribery Act** means the Bribery Act 2010 and any subordinate legislation made under that Act, as updated from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation;

**Business Days** means any day from Monday to Friday excluding any public holiday when the banks of London are open for business;

**Charges** means the full cost of the Services, including the cost of any resits and retakes, as set out in the relevant APC, and any subsequent funding agreement in accordance with clause 6.9;

**Commencement Date** means the agreement date of the signed Arden University Provider & Employer Agreement between the parties;

**Contract of Service** has the meaning defined in clause 5.1.1 which shall constitute a “contract of service” as referred to in the Funding Rules;

**Data Controller** has the meaning set out under the Data Protection Legislation;

**Data Processor** has the meaning set out under the Data Protection Legislation;

**Data Protection Legislation** means (a) all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR and the Data Protection Act 2018 as amended from time to time, and (b) all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data and the guidance and codes of practice issued by the relevant data protection or supervisory authority applicable to a party;

**Data Subject** has the meaning set out in the Data Protection Legislation;

**Department** means the Secretary of State for Education acting through the Department for Education and/or Education and Skills Funding Agency (ESFA) as appropriate;

**Employer Charges** means the eligible, evidenced cost to the Employer of providing the part of the training allocated to it in an Apprenticeship Programme;

**Employer’s Apprenticeship Service Account** means the part of the ESFA’s Apprenticeship service which shows the amount of Funding available to the Employer to spend on the training of Apprentices and information associated with this spend;

**Employer’s Representative** means the person stated as the Employer’s representative in the Arden University Provider & Employer Agreement or notified to the Training Provider from time to time;

**End-Point Assessment (EPA)** means the assessment (and any resits of that assessment) of the Apprentice’s knowledge, skills and behaviours carried out by an End-Point Assessment Organisation at the end of the training to confirm that the Apprentice has met the requirements of any relevant Approved Apprenticeship Standard;

**End-Point Assessment Organisation (EPAO)** means any organisation on the Register of End-Point Assessment Organisations which is contracted by the Training Provider to carry out End-Point Assessment except where the Apprenticeship relates to an Integrated Degree Apprenticeship in which case the End-Point Assessment Organisation may be the Training Provider;

**EPA Assessment Plan** means the scheme of assessment approved by the Institute for Apprenticeships and Technical Education in relation to an Approved Apprenticeship Standard which EPAOs use to develop assessment tools and deliver EPAs;

**ESFA** means the Secretary of State for Education, acting through the Education and Skills Funding Agency, an executive agency of the Department for Education;

**Event of Insolvency** means, in respect of a party, where:

- (a) a party 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 or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- (b) a party 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;
  - (c) 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 a party (being a company);
  - (d) 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 a party (being a company);
  - (e) the holder of a qualifying floating charge over the assets of a party (being a company) has become entitled to appoint or has appointed an administrative receiver;
  - (f) a person becomes entitled to appoint a receiver over the assets of a party or a receiver is appointed over the assets of a party;
  - (g) a creditor or encumbrancer of a 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 a party's assets and such attachment or process is not discharged within 14 days;
  - (h) any event occurs, or proceeding is taken, with respect to a party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in (a) to (g) (inclusive);

**Force Majeure** means any circumstance not within a party's reasonable control including, without limitation, acts of God, flood, or other natural disaster; epidemic or pandemic; terrorist attack, civil war, civil commotion or riots, war; any law or any action taken by government or public authority; fire; and any labour or trade dispute, strikes, industrial action or lockouts (other than in each case by the party seeking to rely on clause 18, or companies in the same group as that party).

**Funding** means the funding paid to the Training Provider by the Department on behalf of the Employer towards the cost of training and End-Point Assessment in accordance with the Agreement;

**Funding Rules** means the Apprenticeship Funding rules for employers, employers-providers and main providers, as applicable to this Agreement and as published by the ESFA as revised and amended from time to time;

**Integrated Standard** is an Approved Apprenticeship Standard in which the End-Point Assessment is incorporated into the main learning aim (usually a degree or other full higher education qualification) as defined in the Funding Rules;

**Intellectual Property Rights** means any and all intellectual property rights of any nature anywhere in the world whether registered, registerable or otherwise, including patents, utility models, trademarks, registered designs and domain names, applications for any of the foregoing, trade or business names, goodwill, copyright and rights in the nature of copyright, design rights, rights in databases, moral rights, know-how and any other intellectual property rights which subsist in computer software, computer programs, websites, documents, information, techniques, business methods, drawings, logos, instruction manuals, lists and procedures and particulars of customers, marketing methods and procedures and advertising literature, including the "look and feel" of any websites;

**Mandatory Documents** means:

- (a) the Apprenticeship Training Plan;

- (b) the Apprenticeship Agreement;
- (c) the Contract of Service;
- (d) any documents required by the Training Provider to confirm eligibility for an Apprenticeship Programme;

**Mandatory Policies** means (a) the Safeguarding and Prevent Policy found at <https://arden.ac.uk/about-us/our-policies-standards>, and (b) the mandatory policies included within the Apprenticeship software system used by the Training Provider.

**OfS** means the Office for Students or such other statutory or non-statutory body responsible for regulating the higher education sector from time to time and all matters currently assigned to the OfS under the Accountability Statement;

**Ofsted** means the Office for Standards in Education, Children’s Services and Skills or such other statutory or non-statutory body responsible for carrying out its functions from time to time (including but not limited to the regulation of the further education sector, teacher training in the higher education sector and all matters assigned to it under the Accountability Statement);

**Personal Data** has the meaning set out the Data Protection Legislation;

**QAA UK Quality Code** means the code published by the QAA which sets out the expectations that all providers of UK higher education are required to meet;

**Quality Assurance Agency for Higher Education (QAA)** means the Quality Assurance Agency for Higher Education, with company number 03344784 or such other statutory or non-statutory body responsible for carrying out its functions from time to time (including but not limited to monitoring and improving quality in the higher education sector and all matters assigned to it under the Accountability Statement);

**Sanctions** means any sanction, including but not limited to, economic or financial sanctions or trade embargoes, that is imposed, administered or enforced from time to time by (a) the United States government (including, without limitation, OFAC), or (b) the United Nations Security Council, or (c) the European Union, or (d) His Majesty’s Treasury of the United Kingdom; or (e) any other governmental authority;;

**Sanctioned Person** means, at any time, (a) any person listed in any Sanctions-related list of designated persons maintained by the United States government (including, without limitation, OFAC), the United Nations Security Council, the European Union, His Majesty’s Treasury of the United Kingdom, or any other governmental authority, or (b) any person controlled by any such person;

**Services** means the provision of training and on-programme assessment to Apprentices in respect of the Apprenticeship Programmes, as further detailed in the APC;

**Subcontractor** means a person or organisation selected by the Employer and the Training Provider to deliver part of the training on behalf of the Training Provider under the Agreement (and where the Employer is selected to deliver some of the training on behalf of the Training Provider under the Agreement, they will also be considered to be a Subcontractor whilst undertaking that delivery);

**Training Provider’s Representative** means the person stated as the Training Provider’s representative in the Arden University Provider & Employer Agreement or notified to the Employer from time to time;

**Unfunded Charges** means such parts of the Charges that have not been recovered from the ESFA for any reason other than the default of the Training Provider;

**VAT** means value added tax at the rate prevailing at the time of the relevant supply charged in accordance with the provisions of the Value Added Tax Act 1994;

- 1.2. Clause and Schedule headings do not affect the interpretation of the Agreement.
- 1.3. References to clauses and Schedules are (unless otherwise provided) references to the clauses and Schedules of the Agreement.
- 1.4. Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.
- 1.5. A reference to a statute or statutory provision or the Funding Rules is a reference to it as amended, extended or re-enacted from time to time.
- 1.6. A reference to a statute or statutory provision shall include all subordinate legislation made from time to time.
- 1.7. 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.
- 1.8. Words or phrases defined in the Funding Rules shall have the same meaning in the Agreement.
- 1.9. A reference to a person includes firms, partnerships and corporations and their successors and permitted assignees or transferees.
- 1.10. If there is any conflict between the Training Provider's policies (including the Mandatory Policies), standards, and codes and the Employer's policies, standards, and codes, the Training Provider's policies, standards and codes shall prevail.
- 1.11. If there is any conflict between the Agreement and the Funding Rules, the Funding Rules shall prevail.

## **2. Commencement and Duration**

- 2.1. The Agreement shall commence on the Commencement Date and shall continue until the Apprenticeship Programme Completion Date, unless terminated earlier in accordance with clause 8.
- 2.2. The Employer may request provision of the Services from the Training Provider by agreeing an APC with the Employer pursuant to clause 3.
- 2.3. The Training Provider shall provide the Services from the date specified in the relevant APC.

## **3. Apprenticeship Programme Confirmation ("APC")**

- 3.1. Each APC shall be agreed in the following manner:
  - 3.1.1. the Employer shall ask, in writing, the Training Provider to provide the Services and provide the Training Provider with as much information as the Training Provider reasonably requests in order to prepare a draft APC;
  - 3.1.2. following receipt of the information requested from the Employer, the Training Provider shall, as soon as reasonably practicable either:
    - 3.1.2.1. inform the Employer that it declines to provide the requested Services;
    - or
    - 3.1.2.2. provide the Employer with a draft APC.
  - 3.1.3. if the Training Provider provides the Employer with a draft APC pursuant to clause 3.1.2.2 the Training Provider and the Employer shall discuss and agree that draft APC; and
  - 3.1.4. both parties shall sign the draft APC when it is agreed.
- 3.2. Once an APC has been agreed and signed in accordance with 3.1.4, no amendment shall be made to it except in accordance with clause 21.4.
- 3.3. Each APC shall be part of the Agreement and shall not form a separate contract to it.

## 4. Training Provider Obligations

- 4.1. The Training Provider shall deliver the Services to the Employer:
  - 4.1.1. in accordance with the Agreement and for the duration as set out in the relevant APC;
  - 4.1.2. using reasonable skill and care;
  - 4.1.3. in compliance with the Funding Rules;
  - 4.1.4. in compliance with applicable laws and associated codes and guidance from time to time in force;
  - 4.1.5. in compliance with the quality codes, guidance and requirements issued by the OfS, the QAA (including the QAA UK Quality Code) (where applicable) and/or Ofsted (as the case may be).
- 4.2. The Training Provider shall enter into written agreements with all relevant:
  - 4.2.1. Subcontractors; and
  - 4.2.2. End-Point Assessment Organisations (except where the Apprenticeship relates to an Integrated Standard and the Training Provider is the End-Point Assessment Organisation).
- 4.3. Where a Subcontractor is used by the Training Provider to deliver all or part of the Services, the Training Provider shall monitor the quality of the delivery of the Services by the Subcontractor through such means as it considers appropriate including regular meetings, audits and observations of teaching, learning and assessment.
- 4.4. Subject to the Employer fulfilling the obligations set out in clause 5, the Training Provider shall use its reasonable endeavours to recover sums in respect of the Charges from the ESFA.
- 4.5. The Training Provider reserves the right to:
  - 4.5.1. decline the provision of Services to the Employer if a prospective Apprentice is a Sanctioned Person; and
  - 4.5.2. stop the provision of Services to the Employer if a current Apprentice is found to be a Sanctioned Person.

### End-Point Assessments

- 4.6. For non-integrated degree Apprenticeships, the Training Provider shall not provide End-Point Assessment to Apprentices it has trained; an End-Point Assessment Organisation will be used. For integrated degree Apprenticeships, the Training Provider, in accordance with the Funding Rules, will provide the End-Point Assessment, using an independent assessor, to Apprentices it has trained.

## 5. Employer Obligations

- 5.1. The Employer shall:
  - 5.1.1. from the commencement of the relevant APC until completion of the relevant End-Point Assessment (including any resits or retakes necessary for such successful completion) or the Apprentice's withdrawal from the Apprenticeship Programme, employ and pay the Apprentice in accordance with applicable law, and agreed employment terms and conditions (a **Contract of Service**);
  - 5.1.2. promptly do all acts and not omit to do anything reasonably requested of the Employer by the Training Provider for the purposes of the Training Provider:
    - 5.1.2.1. complying with the Funding Rules;
    - 5.1.2.2. obtaining any payment to which it or the Employer may be entitled under the Funding Rules; and
    - 5.1.2.3. complying with the quality codes and guidance issued by OfS, QAA (where applicable) and/or Ofsted (as the case may be);
  - 5.1.3. enter into and procure that each Apprentice enters into:
    - 5.1.3.1. a Contract of Service;
    - 5.1.3.2. an Apprenticeship Agreement; and

- 5.1.3.3. an Apprenticeship training plan (previously known as the commitment statement) (“Apprenticeship Training Plan”),

each of which must be in place for the entire length of the Apprenticeship, must meet the requirements of the Funding Rules and a copy must be made available to the Training Provider promptly on request;

- 5.1.4. provide such training and/or carry out such actions as are assigned to the Employer with due skill, care and attention and in any event support each Apprentice in their learning and development to the reasonable satisfaction of the Training Provider;

- 5.1.5. promptly notify the Training Provider in writing of any Break in Learning;

- 5.1.6. confirm promptly on request by providing signed declarations and copies to the Training Provider of:

- 5.1.6.1. each Apprentice’s eligibility for Apprenticeship funding;

- 5.1.6.2. (if applicable) any eligibility for Additional Payments for an Apprentice who is between 16-18 years old;

- 5.1.6.3. (if applicable) any eligibility for Additional Payments for an Apprentice who is between 19-24 years old who has been a Child in Care or with an Education, Health and Care plan;

- 5.1.6.4. (if applicable) any eligibility for care leavers bursary Additional Payments;

- 5.1.6.5. the average number of employees employed by the Employer in the three hundred and sixty-five (365) days immediately preceding the first day of an Apprenticeship; and

- 5.1.6.6. (if applicable) the Employer’s eligibility for small employer Additional Payments;

- 5.1.6.7. any other matters on which the Training Provider requires written evidence that is in the possession of the Employer in order for the Training Provider to comply with the Funding Rules;

- 5.1.6.8. the address or addresses where the Apprentice shall be carrying out their working hours;

- 5.1.6.9. whether learning support is available to support Apprentices with additional learning needs;

- 5.1.6.10. compliance with state aid law;

- 5.1.6.11. the number of contracted working hours for which each Apprentice is employed;

- 5.1.7. ensure, and on request confirm in writing to the Training Provider, that:

- 5.1.7.1. 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 or where the Apprentice is employed for less than 30 hours per week the duration of the Apprenticeship has been extended proportionately in accordance with the Funding Rules;

- 5.1.7.2. the funding for the Apprenticeship is not used to pay the Apprentice’s wages;

- 5.1.7.3. the Apprentice is enabled to complete the Apprenticeship within their working hours and that time is made available to the Apprentice to be able to complete the Apprenticeship Programme including:

- (a) permitting a minimum of 6 hours per week to be used for off-the-job training (including permitting each Apprentice to attend any rearranged training). Such hours shall be adjusted in accordance with the Funding Rules for part time employees;

- (b) releasing the Apprentice to the Training Provider for undertaking such training and courses with the Training Provider as set out in the relevant APC including the Apprenticeship Programme;

- (c) providing the Apprentice with the use of equipment necessary to enable the Apprentice to fulfil training objectives; and

- (d) cooperating with the Training Provider to arrange for any necessary End-Point Assessment and allowing the Apprentice to attend the same;
- 5.1.8. comply with the terms of any agreement between the Employer and the ESFA;
- 5.1.9. comply with the Funding Rules;
- 5.1.10. comply with the Training Provider's policies as notified to the Employer including the Mandatory Policies;
- 5.1.11. provide the Apprentice with appropriate support and supervision on the job to carry out their job role;
- 5.1.12. work with the Training Provider to ensure each Apprentice who is on an Apprenticeship Programme achieves their minimum entitlement to 6 hours per week off-the-job training over the duration of their Apprenticeship, accepting that from time to time the agreed training schedule may be disrupted unintentionally by either party; and
- 5.1.13. return all completed and signed Mandatory Documents by the date notified by the Training Provider. Failure to provide the Mandatory Documents by this date may (at the Training Provider's discretion) result in the commencement date of the Apprenticeship being postponed.
- 5.2. To secure an efficient working relationship between the Training Provider and the Employer and to protect the interests of the Apprentice, the Employer shall:
  - 5.2.1. cooperate in good faith with the Training Provider and any Subcontractor and/or End-Point Assessment Organisation to enable the successful delivery and completion of each Apprenticeship, including (where applicable) entering into written agreement with the Training Provider and/or the Subcontractor where subcontracting is taking place;
  - 5.2.2. where the Employer requests, in writing, for the Training Provider to provide online administrative tasks in relation to the Employer's Apprenticeship Service Account, provide to the Training Provider on request all necessary permissions to enable the Training Provider to (a) confirm the Funding available in respect of an Apprentice and (b) upload, on behalf of the Employer, information required pursuant to the Funding Rules relating to the Apprentice, the Apprenticeship Programme and/or other relevant matters. The Employer shall ensure such information uploaded by the Training Provider is accurate and the Employer remains responsible for the provision and uploading of such information by the Training Provider to the Employer's Apprenticeship Service Account;
  - 5.2.3. allow the Training Provider, its staff, auditors, contractors or agents, including the Training Provider's Representative, access to the Apprentice, the Employer's premises and any relevant records or documents, including health and safety records, to allow the Training Provider to comply with the Training Provider's obligations under the Agreement. Such access shall be as reasonably agreed between the parties or on reasonable notice from the Training Provider;
  - 5.2.4. promptly notify the Training Provider in writing when it becomes aware or develops a reasonable suspicion that the Apprentice wishes to withdraw from the Apprenticeship;
  - 5.2.5. immediately notify the Training Provider if the Apprentice is made redundant and provide to the Training Provider a copy of the redundancy notice; and
  - 5.2.6. appoint an Employer's Representative and promptly notify the Training Provider of any change of the Employer's Representative from time to time.
- 5.3. In relation to End-Point Assessment:
  - 5.3.1. the Employer shall provide to the Training Provider all relevant information about the Apprentice to enable End-Point Assessment to occur;
  - 5.3.2. the Employer acknowledges that the Funding Rules require the Training Provider to arrange End-Point Assessments and the Employer shall not enter into any contract or other arrangement with an End-Point Assessment Organisation for the provision of the same.

- 5.4. The Employer warrants that the Employer Charges (where applicable) represent the actual cost of delivering the training allocated to it in the Apprenticeship Programme and no profit element is included the Employer Charges.
- 5.5. Where the Employer has identified the prospective Apprentices to be included in the Apprenticeship Programme, the Training Provider may assess each prospective Apprentice's ability to successfully complete their Apprenticeship, with particular regard to the academic requirements. Where the Training Provider, using their educational expertise, believes that a prospective Apprentice will be unable to successfully complete their Apprenticeship, the Training Provider may either suggest an alternative training programme or require the Employer to withdraw the Apprentice for selection for the Apprenticeship Programme.

## **6. Charges and Payments**

- 6.1. The Employer shall be responsible for the Charges and shall pay the Charges to the Training Provider, either directly or via the Employer's Apprenticeship Service Account.
- 6.2. The Training Provider shall send invoices in respect of the Unfunded Charges to the Employer on a monthly basis. The Employer shall pay such invoices within thirty (30) days of receipt or such longer period as may be agreed between the parties.
- 6.3. Subject to the Employer providing the bank account details of the company or other legal person that employs the relevant Apprentice, the Training Provider shall pay to the Employer any Additional Payments received from the ESFA on behalf of the Employer within sixty (60) days of receipt or such other timescale as may be specified in the Funding Rules.
- 6.4. Where for any reason the ESFA requires the Training Provider to return any Additional Payments or any other payment, the Employer shall pay to the Training Provider an amount equal to the sum required to be returned. The Training Provider shall notify the Employer of any requirement to return payments to the ESFA and the Employer shall pay such amount to the Training Provider within thirty (30) days of such notice.
- 6.5. All sums payable under the Agreement are exclusive of VAT.
- 6.6. Without prejudice to the rights of either party under the Agreement, any sums that remain unpaid after their due date shall bear interest at the rate of two per cent (2%) a year above the Bank of England base rate from time to time, or at two per cent (2%) a year for any period when the base rate is below 0%.
- 6.7. Without prejudice to any other rights of remedy available to it, the Training Provider may suspend delivery of the Services if payments are not received from the Employer in accordance with this clause 6. If sums due remain unpaid for more than 30 days after the Employer has been notified in writing to make such payment then the Training Provider may terminate the Agreement with immediate effect by giving written notice to the Employer.
- 6.8. Notwithstanding clause 5.2.2, both parties shall ensure it submits accurate information, to the Department, that is required for the Department to make payments of Funding.

### **Funding Agreement (or equivalent)**

- 6.9. Where required by the Funding Rules, and in addition to signing an APC, each party shall agree and sign a funding agreement (covering TNP1 and TNP2 costs) for each Apprentice that sets out the Charges for each Apprenticeship. Each funding agreement signed by the parties shall be governed by the terms of this Agreement. Where applicable, the funding agreement shall include any changes to the Charges as a result of a Recognised Prior Learning and Experiences ("RPLE") assessment conducted by the Training Provider. If there is a conflict in relation to the Charges between the relevant APC and the relevant funding agreement, the funding agreement shall prevail. Unless otherwise agreed by the parties, the funding agreement shall be signed within the Training Provider's virtual learning and management information system used for Apprenticeships.

## **Resits and Retakes for Integrated Degree Apprenticeships**

- 6.10. Unless otherwise agreed in writing with the Training Provider, the Training Provider's policies and processes shall apply in relation to resits and retake costs for End-Point Assessments for integrated degree Apprenticeships.

#### **Resits / Retakes for Non-Integrated Degree Apprenticeships**

- 6.11. Unless otherwise agreed in writing with the Training Provider, the Training Provider will pay for one (1) resit or retake of an End-Point Assessment per Apprentice, for non-integrated degree Apprenticeships.
- 6.12. The Employer shall be responsible for any costs set by the End-Point Assessment Organisation that the Training Provider incurs, arising from an Apprentice failing to show up to their End-Point Assessments, i.e. for 'no shows'.
- 6.13. The Employer shall be responsible for any costs set by the End-Point Assessment Organisation that the Training Provider incurs, arising from the Employer's failure to give the Training Provider and the End-Point Assessment Organisation, the required written notice (as notified by the Training Provider to the Employer from time to time), of a cancellation of, or a rescheduling of, an End-Point Assessment for non-integrated degree Apprenticeships.
- 6.14. In accordance with the Funding Rules, the Employer shall not use their ESFA levy funds to pay for any costs arising under clause 6.12 and clause 6.13.

#### **Resits / Retakes for Additional Mandatory Qualifications**

- 6.15. Where an Approved Apprenticeship Standards requires an Apprentice to obtain a mandatory qualification from an external third party as part of the Apprenticeship, the Training Provider will pay for one resit for the mandatory qualification only. Additional resit costs shall be paid by the Employer (and the Employer shall not use their ESFA levy funds to pay for such resits, in accordance with the Funding Rules).

### **7. ESFA Contingencies**

Not used.

### **8. Termination**

- 8.1. The Agreement may be terminated by mutual agreement in writing and signed by the parties.
- 8.2. The Agreement may be terminated by either party by giving the other party 3 months' written notice.
- 8.3. Without prejudice to any rights that have accrued under the Agreement or any of its rights or remedies, either party may at any time terminate the Agreement or any part of it with immediate effect by giving written notice to the other party if:
- 8.3.1. the other party commits a material breach of any term of the Agreement and (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
  - 8.3.2. the other party repeatedly breaches any of the terms of the Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Agreement;
  - 8.3.3. the other party suffers an Event of Insolvency;
  - 8.3.4. the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or
  - 8.3.5. the other party's funding agreement with the ESFA is terminated.
- 8.4. Without prejudice to any rights that have accrued under the Agreement or any of its rights or remedies available to it, the Training Provider may terminate the Agreement with immediate effect by giving written notice to the Employer if:
- 8.4.1. the circumstances described in clause 6.7 arise; or
  - 8.4.2. in the Training Provider's reasonable opinion, the Employer does anything which brings or could bring the Training Provider into disrepute, or does anything which

damages or could damage the reputation and goodwill of the Training Provider or acts in a way that is materially adverse to the interests of the Training Provider.

- 8.5. If the Training Provider ceases to be an ESFA approved training provider (so indicated at the date of the Arden University Provider & Employer Agreement by being listed on the Register of Apprenticeship Training Providers) then the provisions of clause 9.5 shall apply.

## **9. Consequences of Termination**

- 9.1. Other than as set out in the Agreement, neither party shall have any further obligation to the other under the Agreement after its termination or expiry.
- 9.2. Any provision of the Agreement which expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Agreement, including clause 1, clause 5.1.2, clause 5.2.3, clause 7, clause 9, clause 10 to clause 16 and clause 21, shall remain in full force and effect.
- 9.3. Termination or expiry of the Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiry.
- 9.4. On termination (for any reason) or expiry of the Agreement:
- 9.4.1. the Employer shall immediately pay to the Training Provider all Charges due at the date of termination or expiry pursuant to all APCs;
- 9.4.2. to the extent that the Employer has paid the Charges pursuant to clause 9.4.1 and the Training Provider recovers funding from the ESFA in respect of those Charges, the Training Provider shall, provided that the Employer does not owe any other sums to the Training Provider, reimburse the Employer those sums paid pursuant to clause 9.4.1;
- 9.4.3. each party shall promptly return to the other any equipment, documents, information or materials owned by the other party (or a third party) and used in connection with the Services; and
- 9.4.4. each party shall cooperate in good faith to ensure that no Apprentice is materially disadvantaged by the termination or expiry of the Agreement.
- 9.5. If the Training Provider ceases to be an ESFA approved training provider, then:
- 9.5.1. except where the Employer has identified a new provider to transfer its Apprentices to as an ESFA Contingency Event, the Agreement shall continue in full force and effect in respect of Apprentices who have started their Apprenticeship prior to the date on which the Training Provider ceased to be an ESFA approved training provider; and
- 9.5.2. the Agreement shall terminate in respect of any person who was due to become an Apprentice on or after the date on which the Training Provider ceased to be an ESFA approved training provider and the Training Provider shall, if requested by the Employer, use its reasonable endeavours to assist such persons in their transition to another training provider.

## **10. Liabilities**

- 10.1. Neither party excludes or limits liability to the other party for:
- 10.1.1. fraud or fraudulent misrepresentation;
- 10.1.2. death or personal injury caused by negligence;
- 10.1.3. a breach of any obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
- 10.1.4. any matter for which it would be unlawful for the parties to exclude liability.
- 10.2. Subject to clause 10.1, neither party shall in any circumstances be liable to the other whether in contract, tort (including for negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, for:
- 10.2.1. any loss (whether direct or indirect) of profits, business, business opportunities, revenue, turnover, reputation or goodwill; and

- 10.2.2. loss (whether direct or indirect) of anticipated savings or wasted expenditure (including management time).
- 10.3. Subject to clause 10.1 and 10.2, the parties' total aggregate liability (including the indemnities given by the parties under this Agreement) in contract, tort (including negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance of the Agreement shall be limited to £1,000,000 (one million pounds sterling).

## 11. Insurance

- 11.1. Each party shall at its own cost effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by that party, arising out of its performance of the Agreement, including death or personal injury, loss of or damage to property or any other loss.
- 11.2. The terms of any insurance or the amount of cover obtained by the Employer shall not relieve the Employer of any liabilities under the Agreement.

## 12. Confidentiality

- 12.1. Each party undertakes that it shall not at any time during the Agreement, and for a period of five years after termination or expiry of the Agreement, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by clause 12.2.
- 12.2. Each party may disclose the other party's confidential information:
- 12.2.1. to its employees, workers, contractors, officers, representatives, Affiliates or advisers who need to know such information for the purposes of carrying out the party's obligations under the Agreement. Each party shall procure that its employees, workers, contractors, officers, representatives, Affiliates or advisers to whom it discloses the other party's confidential information comply with this clause 12; and
- 12.2.2. as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 12.3. No party shall use any other party's confidential information for any purpose other than to perform its obligations under the Agreement.
- 12.4. Despite clauses 12.2.1 and 12.3, the Training Provider may disclose the Employer's confidential information to its Affiliates.

## 13. Intellectual Property

- 13.1. Each party shall retain ownership of all Intellectual Property Rights in any materials created by that party and used for the delivery of an Apprenticeship Programme (the **Project Materials**).
- 13.2. Each party hereby grants to the other party, for the duration of the Agreement, a non-exclusive, non-transferable, royalty free licence to use their Project Materials for the purpose of carrying out their obligations under the Agreement.
- 13.3. Each party (the indemnifying party) shall indemnify the other against all direct costs, expenses (including legal costs and disbursements on a solicitor and client basis), damages and losses ("Indemnified Losses") incurred by the indemnified party arising from any claim that the use of the indemnifying party's Project Materials infringes the Intellectual Property Rights of any third party, except to the extent that the Indemnified Losses have been caused by or contributed to by the indemnified party's acts or omissions.
- 13.4. For the avoidance of doubt, any intellectual property created by the Apprentice for their Apprenticeship Programme (including the Apprentice's project work) will be owned by the Apprentice.

## **14. Data Protection**

- 14.1. The Training Provider and the Employer acknowledge that each party is individually a Data Controller, and each party agrees to comply with its obligations under the Data Protection Legislation. Each party shall give each other all reasonable assistance as appropriate or necessary to enable each other to comply with such obligations under the Data Protection Legislation.

## **15. Environmental Information Regulations and Freedom of Information**

- 15.1. Where the Employer receives a request for information under the Environmental Information Regulations 2004 relating to the operation of the Agreement or the Training Provider, the Employer shall promptly, and in any event no later than one Business Day after receiving the request, pass the request to the Training Provider and shall not respond directly or indirectly to any such request without the Training Provider's prior written consent.
- 15.2. The parties acknowledge that the Training Provider is not subject to the Freedom of Information Act 2000. Where the Employer receives a request for information under the Freedom of Information Act 2000 relating to the operation of the Agreement or the Training Provider, the Employer shall promptly, and in any event no later than one Business Day after receiving the request, pass the request to the Training Provider and shall not respond directly or indirectly to any such request without the Training Provider's prior written consent.
- 15.3. Despite clause 12.2, and for the avoidance of doubt, if the Training Provider consents to the Employer responding to a request under clauses 15.1 and 15.2, the Employer must ensure, when responding to a request that it does not disclose any confidential information of the Training Provider, without the Training Provider's further prior written consent.
- 15.4. The Training Provider shall be entitled to review the Employer's response before it is submitted to the requestor and the Employer shall make amendments to its response as requested by the Training Provider.

## **16. Legislative Compliance**

- 16.1. In performing its obligations under the Agreement, the Employer shall:
  - 16.1.1. comply with all applicable laws, statutes, regulations and codes relating to its performance of this Agreement, including but not limited to the Bribery Act, and the Modern Slavery Act 2015; and (where applicable) the Counter-Terrorism and Security Act 2015 ("the Relevant Requirements");
  - 16.1.2. not engage in any activity, practice or conduct which would constitute an offence under the Modern Slavery Act 2015 or under sections 1, 2 or 6 of the Bribery Act 2010;
  - 16.1.3. have and shall maintain in place throughout the term of the Agreement its own policies and procedures, including adequate procedures under the Bribery Act 2010 and the Modern Slavery Act 2015, to ensure compliance with the Relevant Requirements and will enforce them where appropriate;
  - 16.1.4. promptly report to the Training Provider any request or demand for any undue financial or other advantage of any kind received by the Employer in connection with the performance of the Agreement;
  - 16.1.5. immediately notify the Training Provider in writing if a foreign public official becomes an officer or employee of the Employer or acquires a direct or indirect interest in the Employer, and the Employer warrants that it has no foreign public officials as direct or indirect owners, officers or employees at the date of the Arden University Provider & Employer Agreement;

- 16.1.6. immediately notify the Training Provider in writing if the Employer becomes aware of any use of forced, compulsory or trafficked labour, or anyone held in slavery or servitude in connection with the performance of the Agreement;
  - 16.1.7. immediately notify the Training Provider in writing if the Employer identifies an Apprentice is at risk of being drawn into terrorism;
  - 16.1.8. upon request from the Training Provider, certify to the Training Provider in writing signed by an officer of the Employer, and within thirty (30) days of the request, compliance with this clause 16 by the Employer and all persons associated with it under clause 16. The Employer shall provide such supporting evidence of compliance as the Training Provider may reasonably request.
- 16.2. The Employer shall ensure that any person associated with the Employer who is performing services in connection with the Agreement does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Employer in this clause 16 (Relevant Terms). The Employer shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to the Employer for any breach by such persons of any of the Relevant Terms.

## **17. Dispute Resolution**

- 17.1. In the event of a dispute arising between the parties in relation to the Agreement, either party may serve written notice on the other stating the nature of the dispute (a Dispute Notice).
- 17.2. After service of the Dispute Notice, the following procedure shall be followed by the parties (all periods specified in this clause 17.2 shall be extendable by mutual agreement):
- 17.2.1. within five (5) days, the Training Provider's Representative and the Employer's Representative shall meet to attempt to settle the dispute;
  - 17.2.2. if the Training Provider's Representative and the Employer's Representative are unable to reach a settlement within twenty one (21) days from the date of service of the Dispute Notice, the Chief Executive Officers of both parties or a nominated deputy shall meet within the following fourteen (14) days to attempt to settle the dispute; and
  - 17.2.3. if no settlement results from the meeting specified in clause 17.2.2, for the following fifty six (56) days the parties may attempt to settle the dispute by mediation, unless otherwise agreed between the parties. The parties shall bear their own legal costs of any mediation entered into under this Agreement, but the mediation costs and expenses set out in mediator's invoices shall be borne by the parties equally.
- 17.3. Despite clause 17.2, either party may commence or continue court proceedings in relation to a dispute at any time.

## **18. Force Majeure**

- 18.1. No party shall be responsible to the other party for any delay in performance or non-performance due to Force Majeure, but the affected party shall promptly upon occurrence of Force Majeure inform the other party, stating that, and providing details of, the Force Majeure has delayed or prevented its performance under the Agreement and thereafter such party shall take all action within its power to comply with the terms of the Agreement as fully and promptly as possible. If the Force Majeure in question prevails for a continuous period in excess of three (3) months, the party not affected may terminate the Agreement with immediate effect by giving written notice to the other party.

## **19. Safeguarding**

- 19.1. The Employer acknowledges that the Training Provider has a statutory duty to safeguard and promote the welfare of individuals under the age of 18 years old and vulnerable adults

- over the age of 18 years old pursuant to the Children Act 2004 and the Safeguarding Vulnerable Groups Act 2006.
- 19.2. The Employer shall and shall ensure that the Employer's employees, workers, contractors and agents:
- 19.2.1. comply with the requirements of the Children Act 2004 and the Safeguarding Vulnerable Groups Act 2006 to the extent that they apply to the Employer; and
  - 19.2.2. confidentially report to the Training Provider's Representative, any concerns relating to an Apprentice enrolled or to be enrolled with the Training Provider, or an employee, worker, agent or contractor of the Training Provider.
- 19.3. The Employer shall by signing the Agreement, be deemed to have read the Training Provider's policy and guidance relating to safeguarding and will comply with its contents at all times.

## **20. Health and Safety**

- 20.1. The parties shall perform their obligations under the Agreement (including those in relation to the Services) in accordance with:
- 20.1.1. all applicable law regarding health and safety; and
  - 20.1.2. the health and safety policy of the other party whilst at the other party's premises (to the extent it has been made known by the other party to the party attending its premises).
- 20.2. Each party shall notify the other, as soon as practicable, of any health and safety incidents or material health and safety hazards at either party's premises of which it becomes aware and which relate to or arise in connection with the performance of the Agreement. Each party shall adopt any necessary associated safety measures in order to manage any such material health and safety hazards.
- 20.3. The Employer shall have and maintain, for the duration of this Agreement, a health and safety policy applicable to the Employer and its employees, including its Apprentices.

## **21. General**

### **21.1. Notices**

- 21.1.1. A notice given to a party under or in connection with the Agreement shall be in writing and shall be:
    - 21.1.1.1. delivered by hand or by pre-paid first-class post or other next Business Day delivery service at the party's registered company address; or
    - 21.1.1.2. sent by email to:
      - (a) legal@arden.ac.uk, for the Training Provider; and
      - (b) the Employer's Representative's email address, for the Employer.
  - 21.1.2. Any notice shall be deemed to have been received:
    - 21.1.2.1. if delivered by hand, at the time the notice is left at the proper address;
    - 21.1.2.2. if sent by pre-paid first-class post or other next working day delivery service, at 9:00 am (UK time) on the second Business Day after posting; or
    - 21.1.2.3. if sent by email, at 9:00 am on the next Business Day after the date of transmission.
- 21.2. 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.

### **21.3. Publicity**

21.3.1. For the avoidance of doubt, the Training Provider may make reference to the Employer (including but not limited to publishing and using the Employer's name and logo) on the Training Provider's marketing materials, including but not limited to its website ([www.arden.ac.uk](http://www.arden.ac.uk)) and social media channels.

21.3.2. The Employer shall not make any reference to the Training Provider in its marketing materials (including its website and social media channels), without obtaining the Training Provider's prior written consent.

#### 21.4. **Variation**

21.4.1. No variation of the Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

#### 21.5. **Assignment**

21.5.1. Subject to clause 21.5.2, no party shall otherwise novate, assign, transfer, subcontract, mortgage, charge, declare a trust over or deal in any other manner with any of its rights and obligation under the Agreement without the prior written consent of the other party, not to be unreasonably withheld or delayed.

21.5.2. Subject to clause 4.2 and clause 4.3, the Training Provider may subcontract any of its rights and obligation under the Agreement without the prior written consent of the Employer.

#### 21.6. **Severance**

21.6.1. If any provision or part-provision of the Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Agreement.

21.6.2. If any provision or part-provision of the Agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision

#### 21.7. **Entire Agreement**

21.7.1. The Agreement (and all documents referred to in it) constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

21.7.2. Each party acknowledges that in entering into the Agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Agreement.

21.7.3. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Agreement.

21.7.4. Nothing in this clause shall limit or exclude any liability for fraud.

#### 21.8. **Waiver**

21.8.1. No failure or delay by a party to exercise any right or remedy provided under the Agreement or by law shall constitute a waiver of that or any other right or remedy,

nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

**21.9. Third Party Rights**

21.9.1. No term of the Agreement is intended to give any entitlement as against any party to any person who is not a party to the Agreement and no term of the Agreement may be enforced by any person other than a party to the Agreement under the Contracts (Rights of Third Parties) Act 1999.

**21.10. No Agency**

21.10.1. Nothing in the Agreement shall be construed as creating a partnership or as a contract of employment between the parties and neither party shall be, or be deemed to be, an agent of the other party and neither party shall hold itself out as having authority or power to bind the other in any way.

**21.11. Further Assurance**

21.11.1. Each party shall do all things and execute all further documents necessary to give full effect to the Agreement.

**21.12. Governing Law and Jurisdiction**

21.12.1. The 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 laws of England and Wales.

21.12.2. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Agreement or its subject matter or formation (including non-contractual disputes or claims).