
**TERMS AND CONDITIONS
RELATING TO APPRENTICESHIP TRAINING
NON-LEVY FUNDED**

1. Interpretation

1.1. In these Terms and Conditions the following words and expressions shall have the following meanings unless the context demands otherwise:

“Additional Funding”	means either funding for Apprentices in need of Functional Skills or Learning Support;
“Agreed Services”	means the Training Services and any other services to be provided by CITB pursuant to clause 3, including unless the context otherwise requires services which are incidental or ancillary to the Training Services and ‘the Agreed Services’ shall mean all Agreed Services agreed pursuant to every Request for Services under this agreement as varied by any applicable Change Note or Mandatory Change Notice;
“Apprentice”	means an individual employed by the Employer under an Apprenticeship Agreement who is an Apprentice under the ESFA Rules and in relation to whom CITB is to provide any of the Agreed Services;
“Apprentice Assessment Organisation”	means an approved qualification-awarding organisation for the applicable Apprenticeship;
“Apprenticeship”	means the training and employment of an Apprentice in accordance with the ESFA Rules;
“Apprenticeship Agreement”	means a written contract of employment between the Apprentice and the Employer including a statement on the skill, trade or occupation in which the Apprentice is being trained;
“Apprenticeship Framework”	means a framework approved by the Skills Funding Agency and published by the Secretary of State and assessed through these Terms and Conditions;
“Apprenticeship Standard”	means a standard approved by the Skills Funding Agency and published by the Secretary of State, and assessed through a standardised exam, more particularly described in the ESFA Rules;
“Awarding Organisation”	means the approved qualification-awarding organisation for the applicable Apprenticeship;
“Business Day”	means a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business;
“Business Hours”	means the period from 9.00am to 5.00pm on any

	Business Day;
“Change Note”	means a Change Note pursuant to clause 4;
“Charges”	means the charges specified in a Request for Services for the Agreed Services together with any Mandatory Additional Cost Payment;
“CITB”	The Construction Industry Training Board, otherwise known as CITB (registered charity no. 264289) whose principal place of business is Bircham Newton, King’s Lynn, Norfolk, PE31 6RH
“CITB’s Equipment”	means any equipment, including tools, systems, cabling or facilities, provided by CITB to the Employer and used directly or indirectly in the supply of the Agreed Services, including any such items specified in a Request for Services but excluding any such items which are the subject of a separate agreement between the parties under which title passes to the Employer;
“Commitment Statement”	means the statement agreed between the Parties attached to these Terms and Conditions;
“Control”	shall be as defined in section 1124 of the Corporation Tax Act 2010, and the expression change of control shall be construed accordingly;
“Confidential Information”	means any information that a Party has or acquires before, on or after the date of these Terms and Conditions that is confidential in nature concerning the other Party including, without limitation, its business, affairs, customers, clients, suppliers, plans or strategy or that of any member of the group of companies to which the other Party belongs;
“Data Controller”	means the person or organisation who determines the purposes for which and the manner in which any Personal Data is processed;
“Data Protection Legislation”	the Data Protection Act 1998, the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic

	Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner.
“Employer”	means the named employer who is a party to and has signed the Commitment Statement;
“Employer’s Equipment”	means any equipment, including tools, systems, cabling or facilities, provided by the Employer, its agents, subcontractors or consultants which is used directly or indirectly in the supply of the Agreed Services including any such items specified in a Request for Services;
“Employer Materials”	means all documents, information, items and materials in any form, whether owned by the Employer or a third party, which are provided by the Employer to CITB in connection with the Agreed Services, including the items provided pursuant to clause 10;
“ESFA”	means the Education and Skills Fund Agency;
“ESFA Rules”	means the ESFA’s funding rules as contained in: <i>Apprenticeship funding and performance-management rules for training providers May 2017 to March 2018 (Version 1)</i> dated February 2017 as amended from time to time;
“Functional Skills”	means Functional Skills for the purposes of the ESFA Rules;
“Good Industry Practice”	means standards, practice methods and procedures conforming to applicable legal requirements and that degree of care and skill diligence and prudence which would be reasonably expected of an experienced person engaged in providing services similar in nature to the Training Services in a similar type and size of undertaking and under the same or similar circumstances as anticipated by these Terms and Conditions;
“Government-Employer Co-investment Funding”	means funding provided via government-employer co-investment in accordance with the ESFA Rules;
“ILR”	means the individualised learner record which

“Individual Learning Plan”	CITB submits to the ESFA; means in relation to each Apprentice a plan agreed between the Employer, CITB and the Apprentice setting out how the Apprentice will develop the skills required under the Apprenticeship Standard or Apprenticeship Framework;
“Intellectual Property Rights (IPRs)”	means patents, rights to inventions, copyright and moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;
“Law”	any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of section 2 of the European Communities Act 1972, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Supplier is bound to comply;
“Learning Support”	means support available for Apprentices with learning difficulties or disabilities;
“Mandatory Change Notice”	shall have the meaning given in clause 4.2;
“Mandatory Policies”	means the Employer's business policies (if any and as required by CITB) that are required to be emailed to contract.compliance@citb.co.uk.
“Personal Data”	means data relating to a living individual who can be identified from that data (or from that data and other information in the Data Controller's possession or likely to come into the Data

“Qualifying Charges”	Controller’s possession); such of the Charges as qualify for Government-Employer Co-investment Funding by the ESFA;
“Request for Information”	a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations;
“Request for Services”	means a request for services made in accordance with clause 3 and included within the Commitment Statement;
“Termination Conditions”	means the conditions specified in clause 21;
“Training Materials”	means all documents, information, items and materials in any form, whether owned by CITB or a third party, which are used by CITB in connection with the Agreed Services;
“VAT”	means value added tax chargeable under the Value Added Tax Act 1994.

- 1.2. A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.3. A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.4. Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.5. Unless the context otherwise requires, a reference to one gender shall include a reference to each other gender.
- 1.6. These Terms and Conditions shall be binding on, and ensure to the benefit of, the Parties to these Terms and Conditions and their respective personal representatives, successors and permitted assigns, and references to any Party shall include that Party’s personal representatives, successors and permitted assigns.
- 1.7. A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.8. A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.9. A reference to writing or written does not include fax and email.
- 1.10. Any obligation on a Party not to do something includes an obligation not to allow that thing to be done.
- 1.11. A reference to these Terms and Conditions or to any other agreement or document referred to in these Terms and Conditions is a reference of these Terms and Conditions or such other agreement or document as varied or novated (in each case, other than in breach of the provisions of these Terms and Conditions) from time to time.

- 1.12. References to clauses are to the clauses of these Terms and.
- 1.13. 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.
- 1.14. Words or phrases defined in the ESFA Rules shall have the same meaning in this document.
- 1.15. The provisions of these Terms and Conditions which are stated to apply if the Agreed Services are Levy Funded shall be construed consistently with the ESFA Rules.

2. Commencement and Duration

- 2.1. These Terms and Conditions shall commence on the Commencement Date and shall continue, unless terminated either:
 - 2.1.1. by one Party serving on the other not less than 30 days' notice to terminate these Terms and Conditions, such notice to expire no earlier than the first anniversary of the commencement of these Terms and Conditions; or
 - 2.1.2. pursuant to clause 21.

3. Ordering Services

- 3.1. The Employer may order any of the Training Services by making a request ('a Request for Services') to CITB pursuant to this clause 3.
- 3.2. CITB shall provide the Agreed Services from the date specified in the Request for Services that relates to those services.
- 3.3. Each Request for Services shall state the matters set out in the Commitment Statement and as agreed between the parties.
- 3.4. CITB and the Employer shall negotiate in good faith each Request for Services and the Employer shall provide CITB with such information as it may reasonably require to enable it to assess the prior learning of any Apprentice or prospective Apprentice.
- 3.5. When a Request for Services has been agreed in accordance with clause 3.4 the services specified in that Request for Services shall be Agreed Services.
- 3.6. Each Request for Services shall form part of these Terms and Conditions and shall not form a separate contract.

4. Changes to Services

- 4.1. If the Employer or CITB wishes to change these Terms and Conditions or the Agreed Services, it may at any time request such change in accordance with the Change Procedure set out in clause 4.3 to 4.7 below.
- 4.2. Notwithstanding any other provisions of these Terms and Conditions, where CITB reasonably considers that a change to the Agreed Services is required in order to comply with any requirement of the ESFA taking effect after commencement of the Commitment Statement including any modification of the ESFA Rules CITB shall be entitled by notice in writing to the Employer ('a Mandatory Change Notice') to make such changes as it may reasonably decide are necessary to comply as specified in such Mandatory Change Notice with effect from a time specified in that notice and

the Employer shall pay CITB such amount as CITB may reasonably determine to be the additional cost (if any) of providing the Agreed Services as so varied ('the Mandatory Additional Cost Payment').

- 4.3. Any discussions which may take place between the Employer and CITB in connection with a possible change shall be without prejudice to the rights of either Party.
- 4.4. A request to amend these Terms and Conditions or the Agreed Services by either Party shall be made in writing to the other in the form of a note ('a Proposed Change Note').
- 4.5. Each Proposed Change Note shall state:
 - 4.5.1. the name of the Party requesting the change;
 - 4.5.2. the date of the request;
 - 4.5.3. the reason for the change;
 - 4.5.4. full details of the change;
 - 4.5.5. the price, if any, of the change;
 - 4.5.6. the likely impact of the change on other aspects of these Terms and Conditions including:
 - a. the timetable for the provision of the Agreed Services;
 - b. the effect on the Charges;
 - c. the training to be provided;
 - d. the use of third parties and/ or subcontractors;
 - e. working arrangements;
 - f. other contractual issues; and
 - g. a timetable for implementation of the change.
- 4.6. CITB and the Employer shall negotiate each Proposed Change Note in good faith and without any obligation on either Party to agree, both Parties shall sign the Proposed Change Note once it is agreed.
- 4.7. A Proposed Change Note when signed by the Employer and CITB shall thereupon become a Change Note and shall constitute an amendment to these Terms and Conditions.

5. Charges, invoicing and payment

- 5.1. CITB shall be entitled to invoice monthly or to request payments by direct debit from the Employer, or at such other interval CITB considers reasonable, the Employer for 10% of the Qualifying Charges and the whole of any other charges and the Employer shall pay such invoices within 30 days of receipt of such invoice.
- 5.2. The Employer is responsible for payment of the Charges.
- 5.3. CITB reserves the right to offset any sums due under these Terms and Conditions by the Employer against any other amounts held by CITB received from or due to the Employer.
- 5.4. Notwithstanding any other provisions of these Terms and Conditions to the extent that Charges are not actually paid by the ESFA out of the Government-Employer Co-

investment Funding the Training Provider shall be entitled to invoice the Employer for the Charges at any time for services rendered at any time before the end of the most recently ended month and the Employer shall pay such invoices within 30 days of receipt.

- 5.5. The Charges are stated exclusive of applicable VAT.
- 5.6. CITB shall promptly on request provide a VAT invoice to the Employer in respect of such of the Charges for the Agreed Services as are subject to VAT.
- 5.7. Without prejudice to the obligation on the Employer to pay the Charges the Employer shall provide such assistance to CITB as CITB may reasonably require to obtain any payment to which it may be entitled in respect of the Agreed Services or otherwise pursuant to these Terms and Conditions under the ESFA Rules.
- 5.8. If and to the extent that CITB receives a payment from the Government-Employer Co-investment Funding in respect of services for which the Employer has already paid CITB shall apply that payment first in satisfaction of any other sum which is or may become due owing or incurred by the Employer to CITB on any account and thereafter as to any balance in payment to the Employer.
- 5.9. Without prejudice to any other rights of CITB any invoice that is not paid when due shall bear interest at the rate of 3 per cent above the base rate for the time being of Barclays Bank plc.

6. CITB General Responsibilities

- 6.1. CITB shall:
 - 6.1.1. provide the Agreed Services in all material respects in accordance with the applicable Request for Services and Good Industry Practice;
 - 6.1.2. use all reasonable endeavours to meet any performance dates specified in a Request for Services;
 - 6.1.3. specify in the Request for Services a manager ('the Contract Manager'), to liaise with CITB in all matters relating to the Agreed Services and use reasonable endeavours to ensure that the same person acts as the Contract Manager for the duration of the Agreed Services; and
 - 6.1.4. observe all health and safety and security requirements that apply at any of the Employer's premises that have been communicated to it under clause 10.1.5, provided that it shall not be liable under these Terms and Conditions if, as a result of such observance, it is in breach of any of its obligations under these Terms and Conditions.
 - 6.1.5. CITB shall at all times for the duration of these Terms and Conditions have and maintain the following policies (as amended from time to time):
 - a. Data and Privacy Policy; and
 - b. Training Provider Complaints Policy.
- 6.2. If the Agreed Services are Government-Employer Co-investment Funded the provisions of clauses 7, 8 and 9 shall apply.

7. CITB ESFA Responsibilities

7.1. Subject to clause 6.2 CITB shall in accordance with the ESFA Rules:

- 7.1.1. prepare and redistribute the Individual Learning Plan and Commitment Statement at the outset of an Apprentice's programme;
- 7.1.2. extend the actual end-date of the Apprenticeship if the working hours of the Apprentice fall below 30 hours a week;
- 7.1.3. check the eligibility of the individual Apprentice at the start of their apprenticeship programme;
- 7.1.4. only use Government-Employer Co-investment Funding for those who are eligible;
- 7.1.5. retain evidence of each Apprentice's eligibility for as long as reasonably necessary;
- 7.1.6. carry out a thorough assessment to identify the additional learning support (Additional Funding) the Apprentice needs and if appropriate record in the ILR that an Apprentice has a learning support need;
- 7.1.7. agree and record the outcomes of the additional learning support assessment, deliver support in line with the identified needs, record all outcomes in the evidence pack, and retain evidence of the assessment;
- 7.1.8. conduct a thorough Functional Skills assessment based on the national literacy and numeracy standards if an Apprentice requires further training before being able to achieve a Level 2 Standard and CITB is seeking funding for this;
- 7.1.9. contract with an Apprentice Assessment Organisation of the Employer's choosing, and agree with it the arrangements for end-point assessments, re-takes and payments and for this purpose the Employer shall choose an Apprentice Assessment Organisation reasonably acceptable to CITB within 14 days of CITB requiring it to do so and if the Employer shall fail to do so CITB is hereby authorised in the name and on behalf of the Employer to choose such Apprentice Assessment Organisation as CITB thinks fit provided that no Apprentice Assessment Organisation shall be appointed pursuant to this clause which is connected with CITB or which is not on the Register of Apprentice Assessment Organisations;
- 7.1.10. make payment to the Apprentice Assessment Organisation for conducting the end-point assessment and keep records of all such payments;
- 7.1.11. collect employer co-investments at least every three months and report the value received on the ILR; and
- 7.1.12. apply for the apprenticeship completion certificate within three months of completion of learning if an Apprenticeship Framework is being used.

8. Commissioning Services by CITB

8.1. Subject to clause 6.2 if any third party is used by CITB to provide any of the Agreed Services CITB warrants that:

- 8.1.1. it has the knowledge, skills and experience of contracting with, and managing, delivery partners;
- 8.1.2. it has not assessed that a delivery partner as unsuitable;
- 8.1.3. it will directly deliver some of the Apprenticeship training and/or on-programme assessment associated with each Employer's Apprenticeship programme in accordance with the ESFA Rules;
- 8.1.4. it will not use a delivery partner for the delivery of the Agreed Services unless that delivery partner satisfies the criteria for using delivery partners specified in the ESFA Rules;
- 8.1.5. it will manage, monitor and regularly assess for quality its delivery partners through visits and face to face interviews to ensure high-quality delivery in accordance with the ESFA Rules; and
- 8.1.6. it will not permit any delivery partner to subcontract the performance of its obligations.

9. CITB assurances

- 9.1. Subject to clause 6.2 CITB warrants that it will not:
 - 9.1.1. use Employer or government account funds for an Apprentice's programme where they or another party claim funding from another government department or other agency for the same purpose; or
 - 9.1.2. claim funding for any part of any Apprentice's programme that duplicates training or assessments they have received from any other source.
 - 9.1.3. commence an Apprentice's programme if it there is no prospect of the Apprentice completing the programme within the amount of time available;
 - 9.1.4. enrol an Apprentice without confirmation that they are not enrolled on another Apprenticeship;
 - 9.1.5. enrol an Apprentice without ensuring that they meet the eligibility requirements or have permission to work in England;
 - 9.1.6. claim funding for individuals who do not meet the eligibility requirements set out in the ESFA Rules;
 - 9.1.7. claim funding from the ESFA other than for training or assessment in accordance with the ESFA Rules; and
 - 9.1.8. provide end-point assessment to a group of Apprentices it has trained.
- 9.2. Subject to clause 6.2 CITB warrants that off the job training will be directly relevant to the apprentice framework as standard and otherwise will comply with the ESFA Rules.

10. Employer General Responsibilities

- 10.1. The Employer shall:
 - 10.1.1. co-operate with CITB in all matters relating to the Agreed Services;
 - 10.1.2. specify in the Request for Services a manager or named contact person ('the Contract Manager') to act on behalf of the Employer in all matters relating to

- the Agreed Services;
- 10.1.3. provide CITB at no charge with such access to the Employer's premises, data and other facilities as CITB may reasonably require;
 - 10.1.4. provide CITB in a timely manner and within no later than 5 Business Days with all such documents, information and materials in any form as CITB may reasonably require;
 - 10.1.5. inform CITB of all health and safety and security requirements and Mandatory Policies that apply at the Employer's premises or otherwise for the purposes of these Terms and Conditions;
 - 10.1.6. ensure that all the Employer's Equipment is in good working order and suitable for the purposes for which it is used;
 - 10.1.7. obtain and maintain all necessary licences and consents and comply with all applicable laws as may be required to enable CITB to provide the Agreed Services, the installation of CITB's Equipment, the use of all Employer Materials and the use of the Employer's Equipment, in all cases before the date on which the Agreed Services are to start;
 - 10.1.8. keep, maintain and insure CITB's Equipment in accordance with CITB's instructions from time to time and not dispose of or use CITB's Equipment other than in accordance with CITB's written instructions or authorisation; and
 - 10.1.9. make any complaint to CITB only in accordance with CITB's Complaints Policy provided pursuant to clause 6.1.5.b.
- 10.2. If the Agreed Services are Government-Employer Co-investment Funded the provisions of clauses 12, 13 and 14 shall apply.

11. Employer Apprenticeship Responsibilities

- 11.1. The Employer shall:
- 11.1.1. enter into an Apprenticeship Agreement with each Apprentice in accordance with the ESFA Rules;
 - 11.1.2. work with CITB and each Apprentice to agree an Apprenticeship Standard or Framework, Commitment Statement and Individual Learning Plan for each Apprentice;
 - 11.1.3. pay Apprentices at least the minimum wage required by law;
 - 11.1.4. assist the Apprentice with his development as much as possible to the reasonable satisfaction of CITB;
 - 11.1.5. permit CITB to apply for Additional Funding for the benefit of Apprentices; and
 - 11.1.6. compensate CITB for all costs and expenses reasonably incurred by CITB:
 - a. if it is prevented by the Employer from attending and inspecting the Employer's premises; or
 - b. if the Apprentice fails to keep an appointment with CITB owing to any act or omission of the Employer.

12. Employer ESFA Responsibilities

12.1. Subject to clause 10.2 the Employer undertakes that in accordance with the ESFA Rules it shall:

- 12.1.1. promptly provide accurate and up to date information to the reasonable satisfaction of CITB;
- 12.1.2. provide CITB with all reasonable support and information it requires in relation to the Apprentice and the Apprenticeship;
- 12.1.3. at all times provide CITB with up to date information on the Apprentice's employment status or breaks in learning;
- 12.1.4. immediately notify CITB of any changes to the Apprentice's employment status;
- 12.1.5. promptly provide CITB with such information as it may reasonably require for it to obtain Government-Employer Co-investment Funding, including but not limited to evidence:
 - a. of the Apprentice's eligibility to receive funding at the start of the Apprenticeship programme;
 - b. of the Apprentice's employment by either the Employer or a connected company as defined by HM Revenue and Customs;
 - c. that the Apprentice is spending at least 20% of their time on off-the-job training directly relevant to the Apprenticeship Framework or Apprenticeship Standard;
 - d. of the Apprentice's average weekly hours;
 - e. that the job allows the Apprentice to gain wider employment experience;
 - f. that the total amount of time spent on an Apprenticeship meets the ESFA's minimum duration funding rule if an Apprentice is changing their Apprenticeship Framework/Standard, transfers between providers, or takes a break in learning; and
 - g. that the Employer employs an average of 49 or fewer employees if the Employer is relying on funding from the government.
- 12.1.6. involve the Apprentice in active learning or monitored workplace practice throughout the Apprenticeship programme to the reasonable satisfaction of CITB;
- 12.1.7. subject to the Apprenticeship Agreement ensure that the Apprentice works a minimum of 30 hours a week, including any off-the-job training;
- 12.1.8. ensure that the Apprentice works such number of hours per week to undertake sufficient, regular training and on the job activity as CITB may reasonably require;
- 12.1.9. permit the Apprentice to complete the Apprenticeship within their working hours (including for English and maths) and provide such evidence of doing so or having done so as CITB may reasonably require;
- 12.1.10. extend the working hours of the Apprentice or the duration of the

Apprenticeship in accordance with the ESFA Rules as CITB may reasonably require if CITB determines that the Apprentice has worked below the minimum number of hours required to complete the Apprenticeship or where a part-time working pattern is needed and in that case provide CITB with such evidence as it may reasonably require to show why this working pattern is needed;

- 12.1.11. disclose any reason why the Apprentice may not have enough time to complete the Apprenticeship;
 - 12.1.12. ensure that the Apprentice will spend at least 50% of his working hours in England over the duration of the Apprenticeship;
 - 12.1.13. ensure that the Apprentice is not already enrolled on any other Apprenticeship programme;
 - 12.1.14. ensure that each Apprentice is eligible to work in England;
 - 12.1.15. promptly provide CITB with any information it may reasonably require in relation to previous Apprenticeship training or qualifications that any Apprentice may have received;
 - 12.1.16. promptly pay all sums owed to CITB in relation to the Apprenticeship including the full difference between band maximums and agreed prices, or for any mandatory co-investment; and
 - 12.1.17. select an Apprentice Assessment Organisation to deliver end-point assessment from the Register of Apprentice Assessment Organisations.
- 12.2. Unless otherwise agreed the Employer hereby appoints CITB to record the required details of the Apprenticeship with the ESFA.
- 12.3. The Employer warrants to CITB that each Apprenticeship under these Terms and Conditions is a genuine apprenticeship within the meaning of the ESFA Rules.

13. Employer additional Apprentice Responsibilities

- 13.1. Subject to clause 10.2 the Employer undertakes that in accordance with the ESFA Rules, it shall not:
- 13.1.1. require Apprentice (including former Apprentices) to make financial contributions towards the cost of the Apprenticeship programme (including their former Apprenticeship programme);
 - 13.1.2. require CITB to seek Additional Funding in relation to Learning Support if in CITB's reasonable opinion the Additional Funding is being used to support the Apprentice with everyday difficulties not directly related to the Apprenticeship; and
 - 13.1.3. withdraw Apprentices and re-start Apprenticeships that originally commenced before 1 May 2017 when the ESFA Rules came into force.

14. Employer Training Provider Responsibilities

- 14.1. The Employer shall observe and perform any ESFA Apprenticeship Agreement for Employers entered into between the Employer and the ESFA that applies to any

Apprenticeship under these Terms and Conditions.

- 14.2. Without prejudice to clause 14.1 the Employee shall:
 - 14.2.1. promptly and whenever reasonably required by CITB provide such information as the ESFA may require to pay the Charges; and
 - 14.2.2. authorise and direct the ESFA to make payments to CITB for the Agreed Services and the assessment by the Apprentice Assessment Organisation; in each case to the extent permissible under the ESFA Rules.
- 14.3. The Employer shall not be entitled to stop or suspend payments by the ESFA to CITB unless one of the Termination Conditions applies.
- 14.4. Subject to clause 10.2 the Employer shall indemnify CITB against all loss damages costs claims and expenses suffered or incurred by CITB as a result of:
 - 14.4.1. the Employer failing to disclose any information to CITB that was reasonably required by CITB, including but not limited to:
 - a. where a Training Provider is unable to claim Additional Funding due to the employer's failure to provide sufficient information within a reasonable period of time;
 - b. any change of circumstance relating to the Employer or the Apprentice;
 - 14.4.2. any action which the ESFA may take if the Employer's recruitment practice is detrimental either to the Apprentice or the apprenticeship brand; or
 - 14.4.3. as a result of the ESFA taking action to recover funding from CITB owing to any breach of the ESFA Rules by the Employer or any breach of these Terms and Conditions by the Employer which results in a breach of or failure to comply with the ESFA Rules.

15. Positive obligations

- 15.1. If the Agreed Services are Government-Employer Co-investment Funded each of CITB and the Employer undertakes with the other that it shall in accordance with the ESFA rules:
 - 15.1.1. enter into a written Apprenticeship Agreement and Commitment Statement in relation to each Apprentice at the start of and for the entire length of the Apprenticeship;
 - 15.1.2. agree when the Apprentice has obtained sufficient skills, knowledge and behaviours to sit their end-point assessment and for this purpose the Employer shall agree a time proposed by CITB within 14 days of CITB requiring it to do so and if the Employer shall fail to do so CITB is hereby authorised in the name and on behalf of the Employer and CITB to decide that time as CITB thinks fit;
 - 15.1.3. take the costs of the end-point assessment and any re-takes into account when agreeing the Charges;
 - 15.1.4. include the contact details and website for CITB on the written agreement with the Apprentice and on the Commitment Statement; and

- 15.1.5. if the Apprenticeship is achieved and the Apprentice does not stay with the Employer cooperate with the other to support the Apprentice and seek alternative opportunities.

16. Negative obligations

- 16.1. If the Agreed Services are Government-Employer Co-investment each of CITB and the Employer undertakes to the other that in accordance with the ESFA Rules it shall not:

- 16.1.1. use Government-Employer Co-investment Funding for any of the following:
- a. enrolment, induction, prior assessment, initial diagnostic testing or similar activity;
 - b. travel costs for apprentices under any circumstances;
 - c. Apprentice wages;
 - d. personal protective clothing and safety equipment required by the Apprentice to carry out their day-to-day work;
 - e. off-the-job training delivered only by distance learning, not including online and other blended learning activities; or
 - f. any training or optional modules in excess of those required, educational trips or trips to professional events not specified in the Apprenticeship Standard or needed to achieve the Apprenticeship Framework;
 - g. registration and examination (including certification) costs associated with a licence to practise;
 - h. registration and examination (including certification) costs for non-mandatory qualifications (qualifications that are not specifically listed in the Apprenticeship Standard or Framework);
 - i. end-point assessment costs incurred by CITB but not included in the price agreed between the Employer and any Apprentice Assessment Organisation;
 - j. English and Maths up to Level 2;
 - k. repeating the same regulated qualification where the Apprentice has previously achieved it unless it is a requirement of the Apprenticeship or for any GCSE;
 - l. re-sits for mandatory qualifications or the end-point assessment needed for the Apprenticeship where no additional learning is required;
 - m. accommodation costs (including residential costs associated with non-mandatory qualifications) where the Apprentice is resident away from their home base, because of the requirements of their day-to-day work or because this is convenient for the Employer or CITB;
 - n. capital purchases (and the maintenance of capital purchases), including lease agreements, which would have a lifespan beyond the Apprenticeship being funded;

- o. time spent by employees/managers supporting Apprentices, mentoring or time arranging training support except where this is directly linked to the training assessment, including end-point assessment;
- p. specific services not related to the delivery and administration of the Apprenticeship;

17. Intellectual Property Rights

- 17.1. In this clause 17 'its Materials' means in relation to CITB the Training Materials and in relation to the Employer the Employer Materials.
- 17.2. Each Party (or its licensors, as applicable) shall retain ownership of all IPRs in its Materials.
- 17.3. Each Party hereby grants to the other a non-exclusive, non-transferable, royalty free licence to use its Materials to the extent reasonably necessary for CITB to provide the Agreed Services;
- 17.4. Each Party:
 - 17.4.1. warrants that the receipt and use in the performance of these Terms and Conditions by the other, its agents, subcontractors, delivery partners or consultants of its Materials will not infringe the rights, including any Intellectual Property Rights, of any third party; and
 - 17.4.2. shall keep the other indemnified against all damages, costs, claims and expenses suffered or incurred by it as a result of any actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the receipt or use in the performance of these Terms and Conditions of its Materials.
- 17.5. The Employer is not entitled to use any logo or trademark belonging to CITB for any purpose unless specifically consented to in writing by CITB.

18. Data Protection and Data Processing

- 18.1. CITB shall be the Data Controller of all Personal Data obtained by it from each Apprentice or the Employer for the purpose of the Agreed Services.
- 18.2. Each Party shall process Personal Data only in accordance with the Data Protection Legislation and where necessary on the other Party's instructions from time to time and shall not process the Personal Data for any purposes other than those expressly authorised.
- 18.3. The Employer shall (and shall procure that any of its staff involved in the provision of the agreement) comply with any notification requirements under the Data Protection Legislation and both parties will duly observe all their obligations under the Data Protection Legislation, which arise in connection with the agreement.
- 18.4. Notwithstanding the general obligation in clause 18.3, where the Employer is processing Personal Data as a Data Processor for CITB, the Employer shall ensure that it has in place appropriate technical and contractual measures to ensure the security of the Personal Data (and to guard against unauthorised or unlawful

processing of the Personal Data and against accidental loss or destruction of, or damage to, the Personal Data), as required under the Seventh Data Protection Principle in Schedule 1 to the Data Protection Act 1998; and

- 18.4.1. provide CITB with such information as CITB may reasonably require to satisfy itself that the Employer is complying with its obligations under the Data Protection Legislation;
 - 18.4.2. promptly notify CITB of any breach of the security measures required to be put in place pursuant to clause 18.4; and
 - 18.4.3. ensure it does not knowingly or negligently do or omit to do anything which places CITB in breach of CITB's obligations under the Data Protection Legislation.
- 18.5. The provisions of this clause shall apply during the continuance of the agreement and indefinitely after its expiry or termination.

19. Confidentiality

- 19.1. Each Party undertakes that it shall not at any time during these Terms and Conditions, and for a period of five years after termination of these Terms and Conditions, disclose to any person any Confidential Information of the other Party or of any member of the group of companies to which the other Party belongs, except as permitted by clause 19.2 and 19.3.
- 19.2. Each Party may disclose the other Party's Confidential Information:
- 19.2.1. to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the Party's rights or carrying out its obligations under or in connection with these Terms and Conditions provided that such Party shall procure that its employees, officers, representatives or advisers to whom it discloses the other Party's Confidential Information comply with this clause 19; and
 - 19.2.2. as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 19.3. Each Party may disclose the other Party's Confidential Information if, to the extent to which either Party can prove to the other's reasonable satisfaction that the Confidential Information:
- 19.3.1. is, or has become, generally available to the public other than as a direct or indirect result of the information being disclosed by a Party or its representatives in breach of these Terms and Conditions;
 - 19.3.2. was available on a non-confidential basis to a Party prior to disclosure to it by the other Party;
 - 19.3.3. is developed by or for a Party independently of the information disclosed by the other Party; or
 - 19.3.4. the Parties agree in writing that the information is not confidential.

20. Limitation of Liability

- 20.1. Nothing in these Terms and Conditions shall limit or exclude either Party's liability for:
 - 20.1.1. death or personal injury caused by its negligence;
 - 20.1.2. fraud or fraudulent misrepresentation; or
 - 20.1.3. breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession) or any other liability which cannot be limited or excluded by applicable law.
- 20.2. Subject to clause 20.1, CITB shall not be liable to the Employer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with these Terms and Conditions for:
 - 20.2.1. loss of profits; sales or business; anticipated savings; goodwill;
 - 20.2.2. loss of use or corruption of software, data or information; or
 - 20.2.3. any indirect or consequential loss.
- 20.3. Subject to clause 20.3, CITB's total liability to the Employer, whether in contract, tort (including negligence), for breach of statutory duty, misrepresentation or otherwise, arising under or in connection with the performance or contemplated performance of these Terms and Conditions shall be limited to the total Charges paid during the 12 months immediately preceding the date on which the claim arose.
- 20.4. The terms implied by section 3, 4 and 13 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from these Terms and Conditions.

21. Termination

- 21.1. Without affecting any other right or remedy available to it, either Party may terminate these Terms and Conditions in its entirety or only in relation to the Agreed Services agreed pursuant to any Request for Services with immediate effect by giving written notice to the other Party if:
 - 21.1.1. the other Party commits a material breach of any term of these Terms and Conditions and such breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;
 - 21.1.2. the other Party repeatedly breaches any of the terms of these Terms and Conditions 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 these Terms and Conditions;
 - 21.1.3. the other 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;
- 21.2. Without affecting any other right or remedy available to it, CITB may terminate these Terms and Conditions with immediate effect by giving written notice to the Employer if:

- 21.2.1. the Employer fails to pay any amount due under these Terms and Conditions on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment; or
- 21.2.2. there is a change of Control of the Employer.

22. Consequences of Termination

- 22.1. On termination or expiry of these Terms and Conditions:
 - 22.1.1. unless expressly stated otherwise in the termination notice these Terms and Conditions shall continue in relation to any uncompleted Agreed Services agreed pursuant to every Request for Services until those services are completed, provided that CITB shall be entitled to cease to perform these Agreed Services on notice in writing;
 - 22.1.2. the Employer shall immediately pay to CITB all Charges due in respect of the Agreed Services or otherwise and whether or not CITB is entitled to be paid any of those charges out of the Levy Funding;
 - 22.1.3. the Employer shall promptly return all of CITB's Equipment and if the Employer fails to do so, CITB may enter the Employer's premises and take possession of CITB's Equipment;
 - 22.1.4. until CITB's Equipment has been returned or repossessed, the Employer shall be solely responsible for its safe keeping; and
 - 22.1.5. CITB shall on request return any of the Employer Materials not used up in the provision of the Agreed Services.
- 22.2. Termination or expiry of these Terms and Conditions 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.

23. Employer Delay and Force Majeure

- 23.1. If a Party ('the Affected Party') is prevented, hindered or delayed in or from performing any of its obligations under these Terms and Conditions by a Force Majeure Event, the Affected Party shall not be in breach of these Terms and Conditions or otherwise liable for any such failure or delay in the performance of such obligations. Without prejudice to clause 23.3 the time for performance of such obligations shall be extended while the effects of Force Majeure Event prevails.
- 23.2. The corresponding obligations of the other Party shall be suspended, and it's time for performance of such obligations extended, to the same extent as those of the Affected Party.
- 23.3. If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than 3 months, the Party not affected by the Force Majeure Event may terminate these Terms and Conditions by giving 1 month written notice to the Affected Party and clause 22 shall apply.

- 23.4. Notwithstanding the other provisions of this clause 23.4 if CITB's performance of its obligations under these Terms and Conditions is prevented or delayed by any act or omission of the Employer, its agents, subcontractors, delivery partners consultants or employees then, without prejudice to any other right or remedy it may have, CITB shall be allowed an extension of time to perform its obligations equal to the delay caused by the Employer or further if reasonably required by CITB.

24. Freedom of Information

- 24.1. The Employer acknowledges that CITB is subject to the requirements of the FOIA. The Employer shall:
- 24.1.1. provide all necessary assistance and cooperation as reasonably requested by CITB to enable CITB to comply with its obligations under the FOIA;
 - 24.1.2. transfer to CITB all Requests for Information relating to these Terms and Conditions that it receives as soon as practicable and in any event within 2 Working Days of receipt;
 - 24.1.3. provide CITB with a copy of all information belonging to CITB requested in the Request For Information which is in its possession or control in the form that CITB requires within 5 Working Days (or such other period as CITB may reasonably specify) of CITB's request for such information; and
 - 24.1.4. not respond directly to a Request For Information unless authorised in writing to do so by CITB.
- 24.2. The Employer acknowledges that CITB may be required under the FOIA to disclose information (including Commercially Sensitive Information) without consulting or obtaining consent from the Employer. CITB shall take reasonable steps to notify the Employer of a Request For Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in these Terms and Conditions) CITB shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA.

25. Equality and Diversity

- 25.1. The Employer shall:
- 25.1.1. perform its obligations under these Terms and Conditions in accordance with:
 - a. all applicable equality Law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);
 - b. CITB's equality and diversity policy as provided to the Employer from time to time; and

- c. any other requirements and instructions which CITB reasonably imposes in connection with any equality obligations imposed on CITB at any time under applicable equality Law; and
 - 25.1.2. take all necessary steps, and inform CITB of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation).
- 26. Prevention of Fraud and Bribery**
- 26.1. For the purposes of this clause a Prohibited Act means and act:
 - 26.1.1. to directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage to:
 - a. induce that person to perform improperly a relevant function or activity; or
 - b. reward that person for improper performance of a relevant function or activity;
 - 26.1.2. to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with these Terms and Conditions;
 - 26.1.3. committing any offence:
 - a. under the Bribery Act 2010 (or any legislation repealed or revoked by such Act);
 - b. under legislation or common law concerning fraudulent acts;
 - c. defrauding, attempting to defraud or conspiring to defraud the Authority.
 - 26.1.4. any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct had been carried out in the UK.
 - 26.2. The Employer represents and warrants that neither it, nor to the best of its knowledge any staff, have at any time prior to the date of these Terms and Conditions:
 - 26.2.1. committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
 - 26.2.2. been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.
 - 26.3. The Employer shall not during the term of these Terms and Conditions:
 - 26.3.1. commit a Prohibited Act; and/or
 - 26.3.2. do or suffer anything to be done which would cause CITB or any of CITB's employees, consultants, contractors, sub-contractors or agents to contravene any of the Bribery Act or otherwise incur any liability in relation to the Bribery Act.
 - 26.4. The Employer shall keep appropriate records of its compliance with its obligations under clause 26 and make such records available to CITB on request during the term of these Terms and Conditions.

27. State Aid

- 27.1. The Employer should satisfy itself if the European rules on State Aid apply to the Services delivered under these Terms and Conditions.
- 27.2. Where the rules on State Aid apply, CITB shall obtain details of the records that the Employer will need to collect and retain and shall collect and retain such records accordingly.
- 27.3. In the event that any funding paid under or pursuant to these Terms and Conditions is deemed to constitute unlawful State Aid, CITB reserves the right to require the immediate repayment of any such funding.
- 27.4. The Employer warrants and undertakes that it has satisfied itself as to the application or otherwise of the European rules relating to State Aid to these Terms and Conditions or any Call-Off Contract. CITB makes no representations in this regard and shall bear no liability in the event that the Employer suffers any loss as a result of failure to comply with such rules.

28. Assignment and Other Dealings

- 28.1. Subject to clause 28.2, neither Party may assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under these Terms and Conditions without the consent of the other Party.
- 28.2. CITB may in accordance with the other provisions of these Terms and Conditions commission performance of the Agreed Services to any delivery partners with the consent of the Employer such consent not to be unreasonably withheld and provided for the avoidance of doubt that CITB shall remain responsible for performance of the Agreed Services by that delivery partners and if the Apprenticeship is Levy Funded CITB shall remain responsible for complying with its responsibilities under these Terms and Conditions.
- 28.3. If any delivery partner undergoes a change of circumstances that affects its ability to continue to deliver any of the Agreed Services, CITB shall be entitled to make such alternative delivery arrangements for each affected Apprentice as it may reasonably decide.

29. Variation

- 29.1. Subject to clause 4, no variation of these Terms and Conditions shall be effective unless it is in writing and signed by the Parties (or their authorised representatives).

30. Waiver

- 30.1. The failure of either Party to insist upon strict performance of any provision of the Agreement, or the failure of either Party to exercise, or any delay in exercising, any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by the Agreement.

- 30.2. No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with Clause 35.
- 30.3. A waiver of any right or remedy arising from a breach of the Agreement shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Agreement.

31. Severance

- 31.1. If any provision or part-provision of these Terms and Conditions 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.

32. Entire Agreement

- 32.1. These Terms and Conditions and the Commitment Statement constitute 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.
- 32.2. Each of the Parties acknowledges and agrees that in entering into these Terms and Conditions it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in these Terms and Conditions. The only remedy available to either Party of such statements, representation, warranty or understanding shall be for breach of contract under the terms of these Terms and Conditions.
- 32.3. Nothing in this Clause 32 shall operate to exclude a Party's liability for fraud or fraudulent misrepresentation.
- 32.4. These Terms and Conditions may be executed in counterparts each of which when executed and delivered shall constitute an original but all counterparts together shall constitute one and the same instrument.

33. Partnership and Agency

- 33.1. Nothing in these Terms and Conditions is intended to, or shall be deemed to, establish any partnership or joint venture between either of the Parties, constitute either Party the agent of the other, or save as otherwise expressly provided authorise either Party to make or enter into any commitments for or on behalf of the other.
- 33.2. Each Party confirms it is acting on its own behalf and not for the benefit of any other person.
- 33.3. For the purpose of obtaining any payment to which CITB may be entitled in respect of the Agreed Services or otherwise pursuant to these Terms and Conditions under the ESFA Rules and by way of security the Employer hereby irrevocably appoints CITB to be its attorney in its name and on its behalf to do anything necessary or desirable to obtain such payment.

34. Third Party Rights

- 34.1. Subject always to clause 34.2, a person who is not a Party to these Terms and Conditions has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of the Parties.
- 34.2. The parties hereby agree that the Skills Funding Agency shall have the right at any time and at its absolute discretion to enforce against either party any one or more of the provisions set out in these Terms and Conditions.

35. Notices

- 35.1. Any notice given to a Party under or in connection with these Terms and Conditions shall be in writing and shall be delivered by hand or by pre-paid first-class recorded or other next Business Day signed for delivery service at its registered office (if a company) or its principal place of business (in any other case); or
- 35.2. Any notice shall be deemed to have been received: on signature of a delivery receipt;
- 35.3. This clause does not apply to the service of any proceedings or any documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

36. Dispute Resolution

- 36.1. The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Agreement within twenty (20) Working Days after either Party notifying the other of the dispute.
- 36.2. Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.
- 36.3. The obligations of the Parties under the Agreement shall not be suspended, cease or be delayed by the reference of a dispute to mediation and the Employer and its employees, personnel and associates shall comply fully with the requirements of the Agreement at all times.
- 36.4. The procedure for mediation and consequential provisions relating to mediation are as follows:
 - 36.4.1. a neutral adviser or mediator ("**the Mediator**") shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within ten (10) Working Days after a request by one Party to the other to appoint a Mediator or if the Mediator agreed upon is unable or unwilling to act, either Party shall within ten (10) Working Days from the date of the proposal to appoint a Mediator or within ten (10) Working Days after any notice given by the Mediation to either Party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution (CEDR) to appoint a Mediator; and

36.4.2. if the Parties fail to reach agreement in the structured negotiations within sixty (60) Working Days after the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the courts.

36.4.3. Without prejudice to the procedure set out in this clause 36, the Employer shall provide such assistance as CITB may require in connection with any dispute arising between CITB and the Skills Funding Agency under or in connection with the any other agreement connected to these Terms and Conditions.

37. Law and Jurisdiction

37.1. Subject to the provisions of Clause 36, CITB and the Employer accept the exclusive jurisdiction of the English courts and agree that the Terms and Conditions are to be governed by and construed according to English Law.