

**DATED** \_\_\_\_\_

**2018**

**(1) EAST SURREY COLLEGE**

**and**

**(2)**

\_\_\_\_\_  
**SERVICES AGREEMENT**  
**relating to Apprenticeship Training (Levy Employer)**

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This AGREEMENT is dated

**BETWEEN:**

1. EAST SURREY COLLEGE, incorporated by statute 'The Further and Higher Education Act 1992, an exempt charity for the purposes of Part 3 of the Charities Act 2011 whose registered office is at Gatton Point London Road Redhill Surrey RH1 2JX ("**East Surrey College**")"; and
2. XXXXXXXXXX incorporated and registered in England and Wales with company number [XXXXXX] whose registered office is at XXXXXXXXX (the "**Employer**").

each a '**Party**' and together the '**Parties**'

**BACKGROUND**

- A) East Surrey College an independent Further Education Corporation on 1 April 1993 under the provisions of the Further and Higher Education Act 1992 providing, among other things, Apprenticeship training.
- B) The Employer is subject to the Apprenticeship Levy under Part 6 of the Finance Act 2016. The Employer wishes to appoint East Surrey College to provide Training Services to it under this Services Agreement in accordance with the ESFA Rules for Levy Funding (as defined in Schedule 1).

**COMMENCEMENT AND DURATION**

**1 Commencement and Duration**

- 1.1 This Agreement shall commence on the Commencement Date and shall continue, unless terminated either:
  - 1.1.1 by one Party serving on the other not less than 90 days' notice to terminate this Agreement, such notice to expire no earlier than the first anniversary of the commencement of this Agreement or (as the case may be) any subsequent anniversary; or
  - 1.1.2 pursuant to clause 5 of Schedule 2 (General Terms and Conditions, Termination).

**DEFINITIONS AND INTERPRETATIONS**

**2 Interpretation**

The definitions and rules of interpretation set out in Schedule 1 shall apply in this Agreement. The Schedules form part of this Agreement in accordance with paragraph 1.4 of Schedule 1 and rank equal in priority with any other terms and conditions of this Agreement.

## ORDERING INVOICING AND PAYMENT

### 3 Request for Training Services

- 3.1 The Employer may request provision of Training Services by serving on East Surrey College a completed Request for Services containing the information set out in Schedule 7 (Request for Services) so far as is known to it at the time of request.
- 3.2 East Surrey College will as soon as reasonably practicable following receipt of a Request of Services serve upon the Employer a draft Commitment Statement. Each Commitment Statement shall state the matters listed Schedule 5.
- 3.3 Without any obligation on either Party to agree, East Surrey College and the Employer shall negotiate in good faith each Request for Services and draft Commitment Statement and:
- 3.3.1 the Employer shall provide East Surrey College with such information as East Surrey College may reasonably require to enable it to assess the prior learning of any Apprentice or prospective Apprentice; and
- 3.3.2 if the draft Commitment Statement is agreed between the Parties, both Parties shall sign and date the draft Commitment Statement.
- 3.4 When a Commitment Statement has been signed and dated in accordance with clause 3.3, the services specified in that Commitment Statement shall be Agreed Services and East Surrey College shall provide the Agreed Services from the date specified in the Commitment Statement that relates to those services.
- 3.5 Each agreed and dated Commitment Statement shall form part of this Agreement and shall not form a separate contract.
- 3.6 Both Parties shall ensure any Commitment Statement is distributed to the relevant Apprentice in accordance with the ESFA Rules.

### 4 Changes to Services

- 4.1 If either Party wishes to change this Agreement or the Agreed Services, it may at any time request such change in accordance with the Change Procedure set out in Schedule 3.
- 4.2 Until such time as a change is made in accordance with the Change Procedure, the Employer and East Surrey College shall, unless otherwise agreed in writing, continue to perform this Agreement in compliance with its terms prior to such change.
- 4.3 Notwithstanding any other provisions of this Agreement, where East Surrey College reasonably considers that a change to the Agreed Services is required in order to comply with any requirement of the ESFA taking effect after the date of any Commitment Statement including any modification of the ESFA Rules East Surrey College 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 East Surrey College such amount as East Surrey College may reasonably determine to be the additional cost (if any) of providing the Agreed Services as so varied (the '**Mandatory Additional Cost Payment**').

- 4.4 Where a change to the Agreed Services results in an amendment to the Commitment Statement, East Surrey College will distribute an updated Commitment Statement to the relevant Apprentices.
- 4.5 Within 20 Business Days of the issue of a Mandatory Change Notice, the Employer may give notice to East Surrey College in writing that it wishes to terminate the Agreement in respect of any Apprentices which have not yet commenced their Apprenticeships and there will be no further rights or responsibilities of either party in respect of any such Apprentices. This Agreement shall remain in full force and effect in all other respects.

## **5 Charges, Invoicing and Payment**

- 5.1 The Employer is responsible for payment of the Charges.
- 5.2 To the extent that Charges are not actually paid by the ESFA from the Digital Account, or the Agreed Services are not Levy Funded, East Surrey College shall be entitled to invoice the Employer for the Charges in accordance with the Payment Schedule and otherwise 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 provided however that East Surrey College shall only be entitled to the Completion Payment once the Apprentice has sat his final assessment.
- 5.3 The Charges are stated exclusive of applicable VAT.
- 5.4 East Surrey College 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.
- 5.5 Without prejudice to the obligation on the Employer to pay the Charges the Employer shall provide such assistance to East Surrey College as East Surrey College may reasonably require to obtain any payment to which it may be entitled in respect of the Agreed Services or otherwise pursuant to this agreement under the ESFA Rules.
- 5.6 If and to the extent that East Surrey College receives a payment from the Levy Funding in respect of services for which the Employer has already paid East Surrey College shall apply that payment first in satisfaction of any other sum which is or may become due owing or incurred by the Employer to East Surrey College on any account and thereafter as to any balance in payment to the Employer.
- 5.7 Without prejudice to any other rights of East Surrey College, 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.
- 5.8 The Employer will provide all such information and take all such action as is required to enable East Surrey College to comply with the ESFA Rules to enable East Surrey College to draw down payment from the Employer's Digital Account with the Digital Apprenticeship Service within 7 days of the commencement of Agreed Services and thereafter a month in arrears in accordance with the ESFA rules for the duration of the Agreed Services.
- 5.9 If an Apprentice leaves a programme forming part of the Agreed Services ("**Leaver**"), the Employer will continue to be responsible for the Charges outlined in the Commitment Statement in respect of that Leaver. However, subject at all times to the ESFA Rules, if the Employer is able to provide a replacement for the Leaver who in the reasonable opinion of

East Surrey College is suitable to continue on the Leaver's Apprenticeship ("**Replacement Apprentice**"), and provided that the Replacement Apprentice can commence the Leaver's programme within 20 Business Days of the Leaver leaving the programme (or such other time as East Surrey College may agree in writing), the Leaver's Charges may be applied towards the Charges that would have been payable by the Replacement Apprentice. The Employer will remain liable for any Charges:

- 5.9.1 that cannot be applied towards a Replacement Apprentice; and
- 5.9.2 are incurred on behalf of a Replacement Apprentice to cover any missed period of training as a result of the Replacement Apprentice not starting a course on the usual start date.
- 5.10 The Employer agrees that it will be responsible for the Charges in full in respect of any Apprentices which are added to the List of Apprentices and for which a Commitment Statement is agreed between the Parties but who commence their Apprenticeship after the commencement of the academic year.
- 5.11 The Employer will be responsible for the costs of any Apprentice Assessment Organisation which exceed 20% of the Apprenticeship Framework or Apprenticeship Standard value.
- 5.12 If an Apprentice is required to resit or repeat any assessments, the costs of such resit or repeat shall be funded by the Employer or student upon Invoicing.

## **EAST SURREY COLLEGE RESPONSIBILITIES**

### **6 East Surrey College General Responsibilities**

- 6.1 East Surrey College shall:
  - 6.1.1 provide the Agreed Services in all material respects in accordance with the applicable Commitment Statement and Good Industry Practice;
  - 6.1.2 use all reasonable endeavours to meet any performance dates specified in the Commitment Statement;
  - 6.1.3 specify in the Commitment Statement a manager (the '**Services Manager**'), to act on behalf of East Surrey College in all matters relating to the Agreed Services) and use reasonable endeavours to ensure that the same person acts as the Services 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 provided that it shall not be liable under this Agreement if, as a result of such observance, it is in breach of any of its obligations under this Agreement.
- 6.2 East Surrey College shall for the duration of this Agreement have and maintain the following policies (as amended from time to time):
  - 6.2.1 Data and Privacy Policy; and
  - 6.2.2 East Surrey College Complaints Policy.

## **7 East Surrey College ESFA Responsibilities**

### **7.1 East Surrey College 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 pro rata as required under the ESFA Rules, 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 funds in the Employer's Digital Account or government-employer co-investment 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 an 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 as required in the ESFA Rules and where relevant claim for funding for Functional Skills English or maths at level 2 pursuant to the ESFA Rules;
- 7.1.9 direct the relevant Additional Funding to the Employer if, at the start of the Apprenticeship the Apprentice meets the criteria in Schedule 11 and East Surrey College receives Additional Funding on behalf of the Employer.
- 7.1.10 use reasonable endeavours to 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 East Surrey College within 14 days of East Surrey College requiring it to do so and if the Employer shall fail to do so East Surrey College is hereby authorised in the name and on behalf of the Employer to choose such Apprentice Assessment Organisation as East Surrey College thinks fit provided that no Apprentice Assessment Organisation shall be appointed pursuant to this clause which is connected with East Surrey College or which is not on the Register of Apprentice Assessment Organisations;
- 7.1.11 make payment to the Apprentice Assessment Organisation for conducting the end-point assessment and keep records of all such payments;
- 7.1.12 record all Apprenticeships in an ILR;
- 7.1.13 collect employer co-investments at least every three months and report the value received in the ILR; and



- 7.1.14 apply for the apprenticeship completion certificate within three months of completion of learning if an Apprenticeship Framework is being used.

## **8 Subcontracting by East Surrey College**

- 8.1 If any subcontractor is used by East Surrey College to provide any of the Agreed Services East Surrey College warrants that:
- 8.1.1 it has the knowledge, skills and experience of contracting with, and managing, delivery subcontractors;
  - 8.1.2 it has not assessed that subcontractor as unsuitable; and
  - 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 subcontractor for the delivery of the Agreed Services unless that subcontractor satisfies the criteria for using delivery subcontractors specified in the ESFA Rules;
  - 8.1.5 it will manage, monitor and regularly assess for quality its delivery subcontractors through visits and face to face interviews to ensure high-quality delivery in accordance with the ESFA Rules;
  - 8.1.6 it will obtain an annual report from an external auditor if the total Apprenticeship contracts with delivery subcontractors exceeds £100,000 in any one financial year; and
  - 8.1.7 it will not permit any subcontractor to subcontract the performance of its obligations.
  - 8.1.8 the contract with the subcontractor will specify the matters required to be specified in that subcontract by the ESFA Rules.

## **9 East Surrey College Assurances**

- 9.1 East Surrey College warrants that it will not knowingly:
- 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 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 Employer Digital Account other than for training or assessment in accordance with the ESFA Rules;
  - 9.1.8 request any employer contribution to the cost of an Apprenticeship up to the maximum value of the funding band if the Employer employs fewer than 50 people under a contract of employment in accordance with the ESFA Rules; and
  - 9.1.9 provide end-point assessment to a group of Apprentices it has trained.
- 9.2 East Surrey College warrants that off the job training will be directly relevant to the apprentice framework or standard and otherwise will comply with the ESFA Rules.

## **EMPLOYER RESPONSIBILITIES**

### **10 Employer General Responsibilities**

- 10.1 The Employer shall:
- 10.1.1 co-operate with East Surrey College in all matters relating to the Agreed Services;
  - 10.1.2 specify in the Commitment Statement a manager (the '**Contract Manager**') to act on behalf of the Employer in all matters relating to the Agreed Services;
  - 10.1.3 provide East Surrey College at no charge with such access to the Employer's premises, data and other facilities as East Surrey College may reasonably require;
  - 10.1.4 provide East Surrey College in a timely manner and within no later than 5 Business Days with all such documents, information and materials in any form as East Surrey College may reasonably require provided that such documentation, information and materials may be modified or varied by the Employer so as to relate solely to the scope of the Agreed Services;
  - 10.1.5 inform East Surrey College of all health and safety and security requirements that apply at the Employer's premises or otherwise for the purposes of this Agreement, such requirements and policies are as set out in Schedule 6 and the Employer should comply with these at all times;
  - 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 Law as may be required to enable East Surrey College to provide the Agreed Services, the installation of ESC's Equipment if relevant, 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 where the Employer is provided with or has access to ESC's Equipment keep, maintain and insure ESC's Equipment in accordance with East Surrey College's instructions from time to time and not dispose of or use ESC's Equipment other than in accordance with East Surrey College's written instructions or authorisation; and
- 10.1.9 make any complaint to East Surrey College only in accordance with East Surrey College's Complaints Policy provided pursuant to clause 6.2.2.

## **11 Employer Apprenticeship Responsibilities**

### **11.1 The Employer shall:**

- 11.1.1 enter into an Apprenticeship Agreement with each Apprentice for:
  - (a) a fixed term of at least 12 months for at least 30 hours per week; or
  - (b) fewer than 30 hours per week (or an unspecified number of hours) but for an extended duration in accordance with the ESFA Rules;
- 11.1.2 work with East Surrey College 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 East Surrey College;
- 11.1.5 permit East Surrey College to apply for Additional Funding for the benefit of Apprentices; and
- 11.1.6 compensate East Surrey College for all costs and expenses reasonably incurred by East Surrey College:
  - (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 East Surrey College owing to any act or omission of the Employer.

## **12 Employer ESFA Responsibilities**

### **12.1 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 East Surrey College;
- 12.1.2 provide East Surrey College with all reasonable support and information it requires in relation to the Apprentice and the Apprenticeship;

- 12.1.3 at all times provide East Surrey College with up to date information on the Apprentice's employment status, hours of work or breaks in learning;
- 12.1.4 immediately notify East Surrey College of any changes to the Apprentice's employment status;
- 12.1.5 promptly provide East Surrey College with such information as it may reasonably require for it to obtain funds from the Employer's Digital Account or the government-Employer co-investment, 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 East Surrey College;
- 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 East Surrey College 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 East Surrey College 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 East Surrey College may reasonably require if East Surrey College 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 East Surrey College 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 East Surrey College 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 provide East Surrey College with all information it may reasonably require in relation to Additional Funding claims;
- 12.1.17 promptly pay all sums owed to East Surrey College in relation to the Apprenticeship including the full difference between band maximums and agreed prices, or for any mandatory co-investment;
- 12.1.18 select an Apprentice Assessment Organisation to deliver end-point assessment from the Register of Apprentice Assessment Organisations and promptly notify such decision to East Surrey College; and
- 12.1.19 promptly confirm with the ESFA the spending of funds from the Digital Account.
- 12.2 Unless it is one of the Agreed Services to be provided by East Surrey College, the Employer will record the required details of the Apprenticeship with the ESFA through the Digital Account.
- 12.3 The Employer warrants to East Surrey College that each Apprenticeship under this Agreement is a genuine apprenticeship within the meaning of the ESFA Rules.

### **13 Employer additional Apprentice Responsibilities**

- 13.1 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 East Surrey College to seek Additional Funding in relation to Learning Support if in East Surrey College'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 Responsibilities to East Surrey College**

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 this Agreement.

14.1.1 Without prejudice to clause 14.1 the Employer shall:

- (a) promptly and whenever reasonably required by East Surrey College provide such information as the ESFA may require to pay the Charges out of the Digital Account; and
- (b) authorise and direct the ESFA to make payments to East Surrey College for the Agreed Services and the assessment by the Apprentice Assessment Organisation;

in each case to the extent permissible under the ESFA Rules.

14.2 The Employer shall not be entitled to stop or suspend payments by the ESFA to East Surrey College unless one of the Termination Conditions applies.

14.3 The Employer shall indemnify East Surrey College against all loss damages costs claims and expenses suffered or incurred by East Surrey College as a result of:

14.3.1 the Employer failing to disclose any information to East Surrey College that was reasonably required by East Surrey College, including but not limited to:

- (a) where East Surrey College 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, its Digital Account or the Apprentice;

14.3.2 any action which the ESFA may take if the Employer's recruitment practice is detrimental either to the Apprentice or the apprenticeship brand; or

14.3.3 as a result of the ESFA taking action to recover funding from East Surrey College owing to any breach of the ESFA Rules by the Employer or any breach of this Agreement by the Employer which results in a breach of or failure to comply with the ESFA Rules,

and the limitation in paragraph 4 of Schedule 2 shall not apply to this clause 14.3.

## **MUTUAL ESFA RESPONSIBILITIES**

## **15 Positive Obligations**

15.1 East Surrey College and the Employer undertakes with the other that it shall in accordance with the ESFA rules:

- 15.1.1 enter into a Commitment Statement in relation to each Apprentice before the start of and for the entire length of the Apprenticeship which is signed, dated and provided to the relevant Apprentice;
- 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 East Surrey College within 14 days of East Surrey College requiring it to do so and if the Employer shall fail to do so East Surrey College is hereby authorised in the name and on behalf of the Employer and East Surrey College to decide that time as East Surrey College 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 address for East Surrey College in the Apprenticeship Agreement and in 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 in seeking alternative opportunities.

## **16 Negative Obligations**

- 16.1 Each of East Surrey College and the Employer undertakes to the other that in accordance with the ESFA Rules it shall not:
  - 16.1.1 use funds in the Employer's Digital Account or government-employer co-investment 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 Apprenticeship Framework);

- (i) end-point assessment costs incurred by East Surrey College 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 East Surrey College;
- (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 General**

The general terms and conditions set out in Schedule 2 shall apply.

This Agreement has been entered into on the date stated at the beginning of it.



## SCHEDULE 1

### Definitions and Interpretations

1. The definitions and rules of interpretation set out below shall apply in this Agreement.

<b>Additional Funding</b>	means either funding for Apprentices in need of Functional Skills or Learning Support in accordance with the criteria in paragraphs 1.1, 1.2, 1.3 and 2 of Schedule 11;
<b>Agreed Services</b>	means the Training Services and any other services to be provided by East Surrey College which shall be agreed between the Parties in a Commitment Statement 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 Commitment Statement under this agreement as varied by any applicable Change Note or Mandatory Change Notice;
<b>Applicable Law</b>	means: <ul style="list-style-type: none"> <li>(a) any law, statute, regulation, by-law or subordinate legislation in force from time to time to which a party is subject and/or in any jurisdiction that the Services are provided to or in respect of;</li> <li>(b) the common law and laws of equity as applicable to the parties from time to time;</li> <li>(c) any binding court order, judgment or decree; or</li> <li>(d) any applicable direction, policy, rule or order that is binding on a party and that is made or given by any regulatory body having jurisdiction over a party or any of that party's assets, resources or business;</li> </ul>
<b>Apprentice</b>	means an individual employed by the Employer under an Apprenticeship Agreement who is an Apprentice under the ESFA Rules and in relation to whom East Surrey College is to provide any of the Agreed Services;
<b>Apprentice Assessment Organisation</b>	means an approved qualification-awarding organisation for the applicable Apprenticeship;
<b>Apprenticeship</b>	means the training and employment of an Apprentice in accordance with the ESFA Rules;
<b>Apprenticeship Agreement</b>	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;
<b>Apprenticeship Framework</b>	means a framework approved by the Education and Skills Funding Agency and published by the Secretary of State and assessed through this Agreement;
<b>Apprenticeship</b>	means a standard approved by the Education and Skills Funding

<b>Standard</b>	Agency and published by the Secretary of State, and assessed through a standardised exam, more particularly described in the ESFA Rules;
<b>Apprenticeship Particulars</b>	means details of the proposed Apprenticeships in a Request for Services in the form set out in Schedule 7;
<b>Awarding Organisation</b>	means the approved qualification-awarding organisation for the applicable Apprenticeship;
<b>Business Day</b>	means a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business;
<b>Business Hours</b>	means the period from 9.00am to 5.00pm on any Business Day;
<b>Change Note</b>	means a Change Note pursuant to clause 4 and Schedule 3;
<b>Charges</b>	means the charges specified in the Price List as incorporated into a Commitment Statement for the Agreed Services together with any Mandatory Additional Cost Payment (as defined in clause 4.3);
<b>Commencement Date</b>	means the date of this Agreement;
<b>Commitment Statement</b>	means the statement agreed between the Parties as set out in Schedule 5;
<b>Control</b>	shall be as defined in section 1124 of the Corporation Tax Act 2010, and the expression change of control shall be construed accordingly;
<b>Completion Payment</b>	means the payment for the 20% of the Charges for each Apprenticeship that under the ESFA Rules is only paid once an Apprentice sits his final exam;
<b>Confidential Information</b>	means any information that a Party has or acquires before, on or after the date of this Agreement 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;
<b>Digital Account</b>	means the Employer's digital account held under the ESFA Rules;
<b>Data Controller</b>	means the person or organisation who determines the purposes for which and the manner in which any Personal Data is processed;
<b>Data Protection Law</b>	means any Applicable Law relating to the processing, privacy, and use of Personal Data, as applicable to the Employer, East Surrey College and/or the Agreed Services or any Requests for Services, including: <p>(a) in the United Kingdom:</p> <p>(i) the Data Protection Act 1998 and the Privacy and Electronic Communications (EC Directive) Regulations 2003, SI 2003/2426, and any laws or regulations implementing Directive 95/46/EC (Data Protection Directive) or Directive 2002/58/EC (ePrivacy Directive); and/or</p>

	(ii) the General Data Protection Regulation (EU) 2016/679 (' <b>GDPR</b> '), and/or any corresponding or equivalent national laws or regulations (Revised UK DP Law); and
	(b) any judicial or administrative interpretation of any of the above, any guidance, guidelines, codes of practice, approved codes of conduct or approved certification mechanisms issued by any relevant supervisory authority;
<b>EHC Plan</b>	means an education, health and care plan pursuant to the Children and Families Act 2016 as amended from time to time;
<b>Employer's Equipment</b>	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;
<b>Employer Materials</b>	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 East Surrey College in connection with the Agreed Services, including the items provided pursuant to clause 10;
<b>ESFA</b>	means the Education and Skills Funding Agency;
<b>ESFA Rules</b>	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;
<b>Force Majeure Event</b>	any circumstance not within a Party's reasonable control including, without limitation: <ul style="list-style-type: none"> <li>(a) acts of God, flood, drought, earthquake or other natural disaster;</li> <li>(b) terrorist attack, civil commotion or riots, war, threat of or preparation for war;</li> <li>(c) nuclear, chemical or biological contamination;</li> <li>(d) any law or any action taken by a government or public authority;</li> <li>(e) collapse of buildings, fire, explosion or accident;</li> <li>(f) any labour or trade dispute, strikes, industrial action or lockouts (other than in each case by the Party seeking to rely on this clause, or companies in the same group as that Party);</li> <li>(g) non-performance by suppliers or subcontractors (other than by companies in the same group as the Party seeking to rely on this clause); and</li> <li>(h) interruption or failure of utility service;</li> </ul>

<b>Functional Skills</b>	means Functional Skills for the purposes of the ESFA Rules;
<b>Good Industry Practice</b>	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 this Agreement;
<b>ILR</b>	means the individualised learner record which East Surrey College submits to the ESFA;
<b>Individual Learning Plan</b>	means in relation to each Apprentice a plan agreed between the Employer, East Surrey College and the Apprentice setting out how the Apprentice will develop the skills required under the Apprenticeship Standard or Apprenticeship Framework;
<b>Intellectual Property Rights (IPRs)</b>	means patents, rights to inventions, copyright and moral rights, trademarks 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;
<b>Learning Support</b>	means support available for Apprentices with learning difficulties or disabilities;
<b>Levy Funded</b>	means intended by the Employer to be funded in whole or in part with Levy Funding;
<b>Levy Funding</b>	means funding provided by the ESFA through either the Employer's Digital Account with Apprenticeship Service, the ESFA or through Government-Employer co-investment;
<b>Mandatory Change Notice</b>	shall have the meaning given in clause 4.3;
<b>Mandatory Policies</b>	means the Employer's business policies listed in Schedule 6, as amended by notice to East Surrey College from time to time;
<b>Payment Schedule</b>	means the schedule for payment agreed between the Parties as stated at Schedule 9
<b>Personal Data</b>	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 Controller's possession);
<b>Price List</b>	means the Colleges published list of prices for Apprenticeships from time to time as incorporated into a Commitment Statement;

<b>Request for Services</b>	means a request for services made in accordance with clause 3;
<b>Termination Conditions</b>	means the conditions specified in Schedule 2 paragraphs 5.1.1, 5.1.2 and 5.1.3;
<b>ESC's Equipment</b>	means any equipment, including tools, systems, cabling or facilities, provided by East Surrey College 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;
<b>Training Materials</b>	means all documents, information, items and materials in any form, whether owned by East Surrey College or a third party, which are used by East Surrey College in connection with the Agreed Services;
<b>Training Services</b>	means the services set out in Schedule 8 along with any management of the Employers Digital Apprenticeship Service; and
<b>VAT</b>	means value added tax chargeable under the Value Added Tax Act 1994.

2. Clause, Schedule and paragraph headings shall not affect the interpretation of this Agreement.
3. A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
4. The Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Schedules.
5. A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
6. Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
7. Unless the context otherwise requires, a reference to one gender shall include a reference to each other gender.
8. This Agreement shall be binding on, and enure to the benefit of, the Parties to this Agreement 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.
9. A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time
10. A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.

11. References to any Applicable Law (including to the Data Protection Laws and each of them) and to terms defined in such Applicable Law shall be replaced with or incorporate (as the case may be) references to any Applicable Law replacing, amending, extending, re-enacting or consolidating such Applicable Law (including particularly the GDPR revisions to Data Protection Law in force at the Commencement Date) and the equivalent terms defined in such Applicable Law, once in force and applicable
12. A reference to writing or written does includes email.
13. Any obligation on a Party not to do something includes an obligation not to allow that thing to be done.
14. A reference to this Agreement or to any other agreement or document referred to in this Agreement is a reference of this Agreement or such other agreement or document as varied or novated (in each case, other than in breach of the provisions of this Agreement) from time to time.
15. References to clauses and Schedules are to the clauses and Schedules of this Agreement and references to paragraphs are to paragraphs of the relevant Schedule.
16. 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.
17. Words or phrases defined in the ESFA Rules shall have the same meaning in this document.
18. The provisions of this Agreement shall be construed consistently with the ESFA Rules.

## **SCHEDULE 2**

### **General Terms and Conditions**

#### **1 Intellectual Property Rights**

- 1.1 In this paragraph 1 'its Materials' means in relation to East Surrey College the Training Materials and in relation to the Employer the Employer Materials.
- 1.2 Each Party (or its licensors, as applicable) shall retain ownership of all IPRs in its Materials.
- 1.3 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 East Surrey College to provide the Agreed Services;
- 1.4 Each Party:
  - 1.4.1 warrants that, so far as it is aware, the receipt and use in the performance of this Agreement by the other, its agents, subcontractors or consultants of its Materials will not infringe the rights, including any Intellectual Property Rights, of any third party; and
  - 1.4.2 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 this Agreement of its Materials,

and the limitation in paragraph 4 of Schedule 2 shall not apply to this clause 14.3.

#### **2 Data Protection and Data Processing**

- 2.1 East Surrey College 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.
- 2.2 Each Party shall process Personal Data only in accordance with the Data Protection Laws 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.
- 2.3 Each Party shall take reasonable steps to ensure the reliability of all its employees who have access to the Personal Data.
- 2.4 Each Party warrants to the other that it will process the Personal Data in compliance with all Applicable Law, enactments, regulations, orders, standards and other similar instruments.
- 2.5 Each Party warrants that, having regard to the state of technological development and the cost of implementing any measures, it will:
  - 2.5.1 take appropriate technical and organisational measures against the unauthorised or unlawful processing of Personal Data and against the accidental loss or



destruction of, or damage to, Personal Data to ensure a level of security appropriate to:

- 2.5.2 the harm that might result from such unauthorised or unlawful processing or accidental loss, destruction or damage; and
- 2.5.3 the nature of the data to be protected including, but not limited to, the security measures specified or referred to in the Schedule 8;
- 2.5.4 take reasonable steps to ensure compliance with those measures.

### **3 Confidentiality**

- 3.1 Each Party undertakes that it shall not at any time during this Agreement, and for a period of five years after termination or expiry of this Agreement, 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 paragraphs 3.2 and 3.3.
- 3.2 Each Party may disclose the other Party's Confidential Information:
  - 3.2.1 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 this Agreement 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 paragraph 3; and
  - 3.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 3.3 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:
  - 3.3.1 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 this Agreement;
  - 3.3.2 was available on a non-confidential basis to a Party prior to disclosure to it by the other Party;
  - 3.3.3 is developed by or for a Party independently of the information disclosed by the other Party; or
  - 3.3.4 the Parties agree in writing that the information is not confidential.

### **4 Limitation of Liability**

- 4.1 Nothing in this Agreement shall limit or exclude either Party's liability for:
  - 4.1.1 death or personal injury caused by its negligence;



- 4.1.2 fraud or fraudulent misrepresentation; or
- 4.1.3 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.
- 4.2 Subject to paragraph 4.1, neither party shall be liable to the other, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with this Agreement for:
  - 4.2.1 loss of profits; sales or business; anticipated savings; goodwill;
  - 4.2.2 loss of use or corruption of software, data or information; or
  - 4.2.3 any indirect or consequential loss.
- 4.3 Subject to paragraph 4.1, the total liability of either party to the other, 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 this Agreement shall be limited to £[TBC].
- 4.4 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 this Agreement.

## **5 Termination**

- 5.1 Without affecting any other right or remedy available to it, either Party may terminate this Agreement in its entirety or only in relation to the Agreed Services agreed pursuant to any Commitment Statement with immediate effect by giving written notice to the other Party if:
  - 5.1.1 the other Party commits a material breach of any term of this Agreement 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;
  - 5.1.2 the other Party repeatedly breaches any of the terms of this 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 this Agreement;
  - 5.1.3 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;
  - 5.1.4 the other 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 any of its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other Party with one or more other companies or the solvent reconstruction of that other Party;
  - 5.1.5 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 that other Party other than for the sole

purpose of a scheme for a solvent amalgamation of that other Party with one or more other companies or the solvent reconstruction of that other Party;

- 5.1.6 an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other Party;
  - 5.1.7 the holder of a qualifying floating charge over the assets of that other Party has become entitled to appoint or has appointed an administrative receiver;
  - 5.1.8 a person becomes entitled to appoint a receiver over all or any of the assets of the other Party or a receiver is appointed over all or any of the assets of the other Party;
  - 5.1.9 a creditor or encumbrancer of the other Party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other Party's assets and such attachment or process is not discharged within 14 days;
  - 5.1.10 any event occurs, or proceeding is taken, with respect to the other Party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in Clause 5.1.4 to Clause 5.1.9 (inclusive); or
  - 5.1.11 the other Party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.
- 5.2 Without affecting any other right or remedy available to it, East Surrey College may terminate this Agreement with immediate effect by giving written notice to the Employer if:
- 5.2.1 the Employer fails to pay any amount due under this Agreement 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
  - 5.2.2 there is a change of Control of the Employer.

## **6 Consequences of Termination**

- 6.1 On termination or expiry of this Agreement:
- 6.1.1 unless expressly stated otherwise in the termination notice this Agreement shall continue in relation to any uncompleted Agreed Services agreed pursuant to every Commitment Statement until those services are completed, provided that East Surrey College shall be entitled to cease to perform these Agreed Services on notice in writing;
  - 6.1.2 the Employer shall immediately pay to East Surrey College all Charges due in respect of the Agreed Services or otherwise and whether or not East Surrey College is entitled to be paid any of those charges out of the Levy Funding;

- 6.1.3 the Employer shall promptly return all of ESC's Equipment and if the Employer fails to do so, East Surrey College may enter the Employer's premises and take possession of ESC's Equipment;
  - 6.1.4 until ESC's Equipment has been returned or repossessed, the Employer shall be solely responsible for its safe keeping; and
  - 6.1.5 East Surrey College shall on request return any of the Employer Materials not used up in the provision of the Agreed Services.
- 6.2 Termination or expiry of this 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.

## **7 Employer Delay and Force Majeure**

- 7.1 If a Party (the '**Affected Party**') is prevented, hindered or delayed in or from performing any of its obligations under this Agreement by a Force Majeure Event, the Affected Party shall not be in breach of this Agreement or otherwise liable for any such failure or delay in the performance of such obligations. Without prejudice to paragraph 7.3 the time for performance of such obligations shall be extended while the effects of Force Majeure Event prevails.
- 7.2 The corresponding obligations of the other Party shall be suspended, and its time for performance of such obligations extended, to the same extent as those of the Affected Party.
- 7.3 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 this Agreement by giving 1 month written notice to the Affected Party and paragraph 6 shall apply.
- 7.4 Notwithstanding the other provisions of this paragraph 7.4 if East Surrey College's performance of its obligations under this Agreement is prevented or delayed by any act or omission of the Employer, its agents, subcontractors, consultants or employees then, without prejudice to any other right or remedy it may have, East Surrey College 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 East Surrey College.

## **8 Assignment and Other Dealings**

- 8.1 Subject to paragraph 8.2, 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 this Agreement without the consent of the other Party.
- 8.2 East Surrey College may in accordance with the other provisions of this Agreement subcontract performance of the Agreed Services to any sub-contractor with the consent of the Employer such consent not to be unreasonably withheld conditioned or delayed and provided for the avoidance of doubt that East Surrey College shall remain responsible for performance of the Agreed Services by that sub-contractor.

- 8.3 If any subcontractor undergoes a change of circumstances that affects its ability to continue to deliver any of the Agreed Services, East Surrey College shall be entitled to make such alternative delivery arrangements for each affected Apprentice as it may reasonably decide.

## **9 Variation**

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

## **10 Waiver**

- 10.1 A waiver of any right or remedy under this Agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default.
- 10.2 A failure or delay by a Party to exercise any right or remedy provided under this Agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this Agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.

## **11 Severance**

If any provision or part-provision of this 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.

## **12 Entire Agreement**

- 12.1 This Agreement the Commitment Statement and the documents referred to therein 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.
- 12.2 Each Party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement the Commitment Statement and the document referred to therein. Each Party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.

## **13 Partnership and Agency**

- 13.1 Nothing in this Agreement 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.
- 13.2 Each Party confirms it is acting on its own behalf and not for the benefit of any other person.

- 13.3 For the purpose of obtaining any payment to which East Surrey College may be entitled in respect of the Agreed Services or otherwise pursuant to this Agreement under the ESFA Rules and by way of security the Employer hereby irrevocably appoints East Surrey College to be its attorney in its name and on its behalf to do anything necessary or desirable to obtain such payment

#### **14 Third Party Rights**

No one other than a Party their successors and permitted assignees, shall have any right to enforce any of the terms of this Agreement.

#### **15 Notices**

- 15.1 Any notice given to a Party under or in connection with this Agreement 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
- 15.2 Any notice shall be deemed to have been received: on signature of a delivery receipt;
- 15.3 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.

#### **16 Counterparts**

- 16.1 This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.
- 16.2 No counterpart shall be effective until each Party has executed and delivered at least one counterpart.

#### **17 Disputes**

If a dispute arises out of or in connection with this Agreement or the performance, validity or enforceability of it (including non-contractual claims) the Parties shall follow the procedure set out in Schedule 4.

#### **18 Conflict**

If there is any inconsistency between any of the provisions of this Agreement and the provisions of any Commitment Statement, the provisions of this Agreement shall prevail.

#### **19 Governing Law and Jurisdiction**

- 19.1 This Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

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

SAMPLE

### SCHEDULE 3

#### Change Procedure

- 1 Any discussions which may take place between the Employer and East Surrey College in connection with a possible change to the Agreed Services or this Agreement shall be without prejudice to the rights of either Party.
- 2 A request to amend this Agreement or the Agreed Services by either Party shall be made in writing to the other in the form of the Template Proposed Change note in this Schedule 3 (a **'Proposed Change Note'**).
- 3 The Parties shall negotiate each Proposed Change Note in good faith and without any obligation on either Party to agree. A Proposed Change Note shall have a period of validity of 6 months from the date it is received by the other Party (**'Validity Period'**). If no Change Note is agreed within the Validity Period, no further action shall be taken as a result of the Proposed Change Note and that Proposed Change Note shall expire.
- 4 Accordingly, discussion between East Surrey College and the Employer concerning a Proposed Change Note shall result in any one of the following:
  - (a) no further action being taken; or
  - (b) a change this Agreement being agreed between the Parties.
- 5 If the Parties agree a change pursuant to a Proposed Change Note, both Parties shall sign and date the Proposed Change Note which shall thereupon become a Change Note and shall constitute an amendment to this Agreement and a variation for the purposes of paragraph 9 of Schedule 2.
- 6 The Template Proposed Change Note is as follows:

### Proposed Change Note

Change Requested By:	Date of Request:
Reason for change:	
Full details of the change : (including working arrangements, subcontractors if any, other contractual issues)	
Price change if any :	Total Amount:
Timetable for the implementation of the change: (revised timetable of service)	
<p>Signed by:</p> <p>On behalf of the Employer ..... Position within the Organisation</p> <p>On Behalf of East Surrey College ..... Position within the Organisation</p>	



## SCHEDULE 4

### Dispute Resolution Procedure

- 1 In the event of a complaint by the Employer or East Surrey College (**'Dispute'**), the Employer may serve written notice on the Deputy Principal – Curriculum & Standards at East Surrey College and East Surrey College may serve written notice on the Contract Manager, setting out the nature and particulars of the disputed matter together with relevant supporting documents. Any such notice served by the Parties on the other shall be referred to as a **'Dispute Notice'**.
- 2 On service of a Dispute Notice, the Deputy Principal and the Contract Manager (together **'the Managers'**) shall attempt in good faith to resolve the Dispute.
- 3 If a Dispute is not resolved to the satisfaction within 30 days of service of the Dispute Notice, the Dispute shall be referred to the chief executive officers of the Parties.
- 4 If the chief executive officers are unable to resolve the Dispute within 30 days of it being referred to them, the Parties shall attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure.
- 5 Unless otherwise agreed between the Parties, the mediator shall be nominated by CEDR.
- 6 To initiate the mediation, a Party shall serve alternative dispute resolution notice in writing (an **'ADR notice'**) to the other Party to the Dispute, requesting a mediation.
- 7 A copy of an ADR notice should be sent to CEDR.
- 8 The mediation will start not later than 30 days after the date of the ADR notice.
- 9 If the Dispute is not resolved within 90 days after service of the ADR notice, or either Party fails to participate or to continue to participate in the mediation before the expiration of the said period of 90 days, or the mediation terminates before the expiration of the said period of 90 days, the Dispute shall be finally resolved by the courts of England and Wales in accordance with clause 18.
- 10 The commencement of mediation shall not prevent the Parties commencing or continuing court proceedings in relation to the Dispute at any time.

## SCHEDULE 5

### The Commitment Statement

The Commitment Statement shall include in accordance with the ESFA rules:

1. the planned content and schedule for eligible training (and must also include end-point assessment if they are undertaking a standard);
2. what is expected and offered by the Employer, East Surrey College (and any subcontractors) and the Apprentice to achieve the Apprenticeship;
3. a summary of:
  - 3.1 details of the Apprenticeship being followed, including start and end-dates for the apprenticeship training and (where applicable) end-point assessment and key milestones for mandatory or other qualification achievements;
  - 3.2 details on which elements are eligible for funding from the Employer's Digital Account or government-Employer co-investment and necessary to meet any end-point assessment, those which are extra and not eligible for co-investment but will be fully funded by the Employer, and those fully funded by the ESFA including English and maths; and
  - 3.3 the list of all organisations delivering the training including English and maths;
4. roles and responsibilities for the Employer, East Surrey College and Apprentice and arrangements for how the three parties will work together; this must include contact details and the expected commitment from each party to ensure the smooth running and day-to-day delivery of the Apprenticeship, including:
  - 4.1 Employer: commitment to wages and time off to study in the working day - Off the job training, schedule 8
  - 4.2 East Surrey College: support and guidance available and how to access this.
5. the process for resolving any queries or complaints regarding the Apprenticeship, including quality; this must include details of the escalation route within East Surrey College's own organisation and the escalation process to the ESFA through the apprenticeship helpline.

Confirmation of whether ESC intends to sub-contract all or part of the Requested Services, and if so:

- 6 The Apprenticeship training and/or on-programme assessment that will be directly delivered by East Surrey College.
- 7 The amount of funding to be retained for direct delivery of the Apprenticeship training and/or on-programme assessment that each subcontractor will contribute to the Employer's Apprenticeship programme.
- 8 The amount of funding payable by East Surrey College to each subcontractor for their contribution.

- 9 The amount of funding to be retained by East Surrey College to manage and monitor each subcontractor.
- 10 The support that East Surrey College will provide to each subcontractor in exchange for the amount of funding retained.
- 11 The monitoring that East Surrey College will undertake to ensure the quality of the apprentice training and/or on-programme assessment.
- 12 Any actual or perceived conflict of interest between East Surrey College and any delivery subcontractors.

SAMPLE

## **SCHEDULE 6**

### **Policies**

- Employer's Health and Safety Policy [insert]
- Insurance Policy [insert]
- Modern Slavery and Human Trafficking Policy [insert]
- Ethics and Anti Bribery Policy [insert]

SAMPLE

## SCHEDULE 7

### Request For Services

Course Name:	Course Code:
Start Date:	Term:
Awarding Organisation:	
End Point Assessment Organisation:	
Schedule of Delivery:	
Name of the Employer Contract Manager and the ESC Training Services Manager:	

LEVY FUNDED SERVICES		
Element of Apprenticeship Management or Training	Training Delivered by* or Support Provided for Management Fee	Amount
End Point Assessment (EPA) (*Not to exceed 20% of the total value)		
<b>Total Amount</b>		
*where delivery of any element (excluding EPA) is provided by a subcontractor will be attached detailing costs and how that provision will be monitored for quality. Refer to clauses 15-21		

NON LEVY SERVICES	
DESCRIPTION	AMOUNT
Registration Fee	
Certification Fee	
Apprentices returns management	
<b>TOTAL AMOUNT</b>	

  

Signed by:

On behalf of the Employer .....  
 Position within the Organisation

  

On Behalf of East Surrey College .....  
 Position within the Organisation

## SCHEDULE 8

### ESC Services Price List

- F** shall mean the Apprenticeship is provided under the Apprenticeship Framework  
**S** shall mean the Apprenticeship is provided under the Apprenticeship Standard

Area of Study	Level	Type	Price
Activity Leadership	2	F	£2,000
Adult Care Worker	2	S	£3,000
Advanced Carpentry and Joinery	3	S	
Assistant Accountant	3	S	£9,000
Business and Administration	2	F	£2,000
Business and Administration	3	F	£2,500
Business and Professional Administration	4	F	£4,000
Care Leadership and Management	5	F	£2,000
Children and Young People's Workforce	2	F	£2,000
Children and Young People's Workforce	3	F	£2,500
Civil Engineering Site Management (degree)	6	S	
Civil Engineering Technician	3	S	
Construction - Carpentry	2	F	£6,000
Construction - Carpentry	3	F	£9,000
Construction - Civil Engineering - Construction Operations	2	F	£4000
Construction - Contracting Operations	3	F	£9,000
Construction - Maintenance Operation	2	F	£5,000
Construction - Management	4	F	£12,000
Construction - Painting	2	F	£6,000
Construction - Painting and Decorating	3	F	£9,000
Construction - Technical and Professional	3	F	£9,000
Construction - Trowel (Brick)	2	F	£5,000
Construction - Trowel (Brick)	3	F	£6,000
Customer Service Practitioner	2	S	£4,000
Customer Service Practitioner	3	S	£4,000
Early Years Educator	3	S	
Education Learning Mentor	3	S	
Electrical/Electronic Technical Support Engineer	3	S	£27,000
Electrical/Electronic Technical Support Engineer	6	S	£27,000
Embedded Electronic Systems Design and Development Engineer	6	S	£27,000
Engineering Manufacture	2	F	Call for prices
Engineering Manufacture	3	F	Call for prices
Engineering Technician	3	S	£27,000
Hair Professional	2	S	£9,000
Healthcare Support Worker	2	S	£3,000
Improving Operational Performance	2	F	£4,000

Installation Electrician/Maintenance Electrician	3	S	£18,000
IT, Software, Web and Telecoms Professionals	2	F	
IT, Software, Web and Telecoms Professionals	3	F	
IT, Software, Web and Telecoms Professionals	4	F	
Lead Adult Care Worker	3	S	£3,000
Machinist (Advanced Manufacturing Engineering)	3	S	£27,000
Maintenance and Operations Engineering Technician	3	S	£27,000
Manufacturing Engineering - Mechanical	4	F	£12,000
Manufacturing Engineering - Electrical	4	F	£9,000
Mechatronics Maintenance Technician	3	S	£27,000
Motor Vehicle Service and Maintenance Technician (light vehicle)	3	S	£18,000
Operations/Departmental Manager	5	S	£9,000
Outdoor Programmes	3	F	£2,000
Plumbing and Heating	2	F	£5,000
Plumbing and Heating	3	F	£9,000
Product Design and Development Engineer	6	S	£27,000
Product Design and Development Technician	3	S	£27,000
Professional Accounting Taxation Technician	4	S	£9,000
Property Maintenance Operative	2	S	£9,000
Rail Engineering Technician	3	S	£27,000
Senior Healthcare Support Worker	3	S	£3,000
Supporting Teaching and Learning in Schools	2	F	£2,000
Supporting Teaching and Learning in Schools	3	F	£2,500
Surveying Technician	3	S	£9,000
Team Leader/Supervisor	3	S	£5,000
Vehicle Maintenance and Repair	2	F	£5,000
Vehicle Maintenance and Repair	3	F	£6,000
Welding	2	S	£9,000
Welding	3	S	£12,000
Include additional table for services such as Certification, Registration Apprentices Returns Management			

Apprentice Name	ULN NO	Date of Birth	Programme	Start Date	End Date



## SCHEDULE 10

### Price List

The Charges that will apply are set out in East Surrey College's Price List which is set out in Schedule 8 and will be updated as new standards are released.

Cost	Amount	Payment Due Date
<b>Levy Funded</b>		
Initial Costs		
Monthly Payment from Employer's Digital Account		
Invoice Cost and percentage of fee		
End Point Assessment (up to 20%)		

<b>Additional services not funded by the Levy</b>		
Registration Fee		
Certification Fee		
Apprentices Returns Management		
<i>Insert Additional Rows as required</i>		

## SCHEDULE 11

### Additional Funding

1. Subject to paragraph 3 of Schedule 11, East Surrey College will apply to ESFA for Additional Funding where an Apprentice meets the following criteria:
  - 1.1 aged between 16 and 18 years old (or 15 years old if the Apprentice's 16<sup>th</sup> birthday is between the last Friday of June and 31 August)
  - 1.2 aged between 19 and 24 years old and either has:
  - 1.3 an EHC plan provided by their local authority
  - 1.4 or has been a '**Child in care**' as defined in below
2. A Child in Care is defined as:
  - 2.1 an eligible child - a young person who is 16 or 17 and who has been looked after by the local authority/Health and Social Care Trust for at least a period of 13 weeks since the age of 14, and who is still looked after.
  - 2.2 a relevant child - a young person who is 16 or 17 who has left care after their 16th birthday and before leaving care was an eligible child.
  - 2.3 a former relevant child - a young person who is aged between 18 and 21 (up to their 25th birthday if they are in education or training) who, before turning 18, was either an eligible or a relevant child, or both.
3. East Surrey College will require written approval from the Apprentice before it can inform the Employer whether the Apprentice has an EHC plan or has been in care of a Local Authority and relevant evidence to submit to the ESFA before any Additional Payments can be made.

Signed by **EAST SURREY COLLEGE**  
acting by , a director

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[Position]

Signed by **[EMPLOYER]**  
acting by , a director

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Director