

Commencement Date:

(1) CMS VOCATIONAL TRAINING LTD

(THE TRAINING PROVIDER)

(2)

(THE EMPLOYER)

APPRENTICESHIP SERVICES AGREEMENT and COMMITMENT STATEMENT



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## PARTIES, COMMENCEMENT AND DURATION

Commencement Date:	
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### 1. Parties

This Agreement is made as a deed between:

CMS VOCATIONAL TRAINING LTD incorporated and registered in England and Wales with company number 4108137 whose registered office is at PARR HOUSE, 26 STATION ROAD, BATLEY, WEST YORKSHIRE WF17 5SU (the Training Provider); and

incorporated and registered in England

and Wales with company number

whose registered office is

(THE EMPLOYER)

### 2. Duration

This Agreement shall commence on the Commencement Date and covers all apprentices recruited onto programme in the 2018/19 academic year (1st August 2018 to 31st July 2019) for the duration of their programme in conjunction with Schedule 1, 2 and 3.

Future Apprentices recruited post this commencement date but prior to the end of contract year date will be done pursuant to a Schedule 1, 2 and 3 being signed by all parties.

## ORDERING

### 3 Ordering Services

3.1 The Training Provider shall provide the agreed services as specified in schedules 1-3 of the 'Apprenticeship Schedule and Commitment Statement' document which is issued after learner induction.

3.2 The Training Provider and the Employer shall negotiate in good faith each Request for Services

## FEES, INVOICING AND PAYMENT

### 4 Fees, Invoicing and Payment

4.1 All Employers are responsible for the payment of fees as outlined in Schedule 3 of the Apprenticeship Schedule and Commitment Statement.

4.2 Where Levy funds are available, Levy employers will make payment via the Apprenticeship Service Website on which their Digital Apprenticeship Account is held.

4.3 Employer co-investment contribution may be required where:

- (a) a levy account is exhausted and the employer needs to utilise the co-investment route (10% employer contribution) for future apprentices, or
- (b) non-levy employer is required to contribute to the co-investment route (10% employer contribution)

employer contributions will be collected via either:

- (a) payment in full at the start of programme, or
  - (b) payment on a quarterly basis, in even instalments across the duration of the programme.
- Fees will be gathered by Direct Debit via the [CMS DD Portal](#)

e.g a £900 ex vat employer contribution over an 18 Month programme would be collected in 6 quarterly instalments of £150 ex vat at months 3, 6, 9, 12, 15 and 18.

## TRAINING PROVIDER RESPONSIBILITIES

### 5 Training Provider General Responsibilities

5.1 The Training Provider shall:

5.1.1 provide the Agreed Services in all material respects in accordance with the applicable Request for Services and Good Industry Practice;

5.1.2 use all reasonable endeavours to meet any performance dates specified in a Request for Services;

5.1.3 specify in the Request for Services a manager ('the Services Manager'), to act on behalf of the Training Provider (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;

5.1.4 observe all health and safety and security requirements that apply at any of the Employer's premises that have been communicated to it, 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; and

5.1.5 obtain and maintain all necessary licences and consents and comply with all applicable laws as may be required.

### 6 Training Provider ESFA Responsibilities

6.1 The Training Provider shall in accordance with the ESFA Rules:

6.1.1 prepare and redistribute the Individual Learning Plan and Commitment Statement at the outset of an Apprentice's programme;

6.1.2 extend the actual end-date of the Apprenticeship if the working hours of the Apprentice fall below 30 hours a week;

6.1.3 check the eligibility of the individual Apprentice at the start of their apprenticeship programme;

6.1.4 only use funds in the Employer's Digital Account or government-employer co-investment for those who are eligible;

6.1.5 retain evidence of each Apprentice's eligibility for as long as reasonably necessary;

6.1.6 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;

6.1.7 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;

6.1.8 conduct a thorough Functional Skills assessment based on the national literacy and numeracy standards.

6.1.9 contract with an Apprenticeship Assessment Organisation of the Employer's choosing, and agree with it the arrangements for end-point assessments, re-takes and payments. For this the Employer shall choose an [Apprenticeship Assessment Organisation](#) reasonably acceptable to the Training Provider.

6.1.10 make payment to the Apprentice Assessment Organisation for conducting the end-point assessment and keep records of all such payments;

6.1.11 collect employer co-investment contributions at least every three months and report the value received on the ILR;

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

## 7 Training Provider Assurances

7.1 The Training Provider warrants that it will not:

7.1.1 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;

7.1.2 commence an Apprentice's programme if there is no prospect of the Apprentice completing the programme within the amount of time available;

7.1.3 enrol an Apprentice without ensuring that they meet the eligibility requirements or have permission to work in England;

7.1.4 claim funding for individuals who do not meet the eligibility requirements set out in the ESFA Rules;

7.1.5 claim funding of any part of any Apprentice's programme that duplicates training or assessment they have received from any other source;

7.2 The Training Provider 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

### 8 Employer General Responsibilities

#### 8.1 The Employer shall:

8.1.1 co-operate with the Training Provider in all matters relating to the agreed services;

8.1.2 specify a manager ('the Contract Manager') to act on behalf of the Employer in all matters relating to the Agreed Services;

8.1.3 inform the Training Provider of all health and safety and security requirements that apply at the Employer's premises or otherwise for the purposes of this Agreement;

8.1.4 ensure that all the Employer's Equipment is in good working order and suitable for the purposes for which it is used;

### 9 Employer Apprenticeship Responsibilities

#### 9.1 The Employer shall:

9.1.1 enter into an Apprenticeship Agreement with each Apprentice for:

(a) a fixed term of at least 372 days 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;

9.1.2 work with the Training Provider and each Apprentice to agree an Apprenticeship Standard or Framework, Commitment Statement and Individual Learning Plan for each Apprentice;

9.1.3 pay Apprentices at least the minimum wage as required by law;

9.1.4 assist the Apprentice with their development;

9.1.5 permit the Training Provider to apply for Additional Funding for the benefit of Apprentices.

### 10 Employer ESFA Responsibilities

#### 10.1 The Employer undertakes that in accordance with the ESFA Rules it shall:

10.1.1 promptly provide accurate and up to date information;

10.1.2 provide the Training Provider with all reasonable support and information it requires in relation to the Apprentice and the Apprenticeship;

10.1.3 at all times provide the Training Provider with up to date information on the Apprentice's employment status or breaks in learning;

10.1.4 immediately notify the Training Provider of any changes to the Apprentice's employment status;

10.1.5 provide the Training Provider with such information known to the Employer that the Training Provider may reasonably require for it to obtain funds from the Employer's Digital Account or the government-employer co- investment, including:

- (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.

10.1.6 involve the Apprentice in active learning or monitored workplace practice throughout the Apprenticeship programme to the reasonable satisfaction of the Training Provider;

10.1.7 subject to the Apprenticeship Agreement check that the Apprentice works a minimum of 30 hours a week, including any off-the-job training;

10.1.8 check that the Apprentice works such number of hours per week to undertake sufficient, regular training and on the job activity as the Training Provider may reasonably require;

10.1.9 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 the Training Provider may reasonably require;

10.1.10 disclose any reason why the Apprentice may not have enough time to complete the Apprenticeship;

10.1.11 check that the Apprentice will spend at least 50% of his working hours in England over the duration of the Apprenticeship;

10.1.12 check that the Apprentice is not already enrolled on any other Apprenticeship programme or another DfE funded FE/HE programme contrary to the ESFA rules;;

10.1.13 check that each Apprentice is eligible to work in England;

10.1.14 promptly provide the Training Provider with any information known to the Employer that the Training Provider may reasonably require in relation to previous Apprenticeship training or qualifications that any Apprentice may have received;

10.1.15 promptly pay all sums owed to the Training Provider in relation to the Apprenticeship;

10.1.16 select an Apprentice Assessment Organisation to deliver end-point assessment from the Register of Apprentice Assessment Organisations; and

10.1.17 promptly confirm with the ESFA the spending of funds from the Digital Account.

10.2 The Employer undertakes that in accordance with the ESFA Rules, it shall not require Apprentices (including former Apprentices) to make financial contributions towards the cost of the Apprenticeship programme (including their former Apprenticeship programme);

10.3 The Employer shall:

(a) promptly and whenever reasonably required by the Training Provider provide such information as the ESFA may require to pay the fees out of the Digital Account; and

(b) authorise and direct the ESFA to make payments to the Training Provider for the Agreed Services.

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

## MUTUAL ESFA RESPONSIBILITIES

### 11 Positive Obligations

11.1 The Training Provider and the Employer undertakes with the other that it shall in accordance with the ESFA rules:

11.1.1 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;

11.1.2 agree where applicable when the Apprentice is ready for end point assessment. The Employer shall agree a time proposed by the Training Provider within 14 days. If the Employer fails to do so, the Training Provider is authorised to decide the date and time as the Training Provider thinks fit;

11.1.3 take the costs of the end-point assessment into account when agreeing the fees;

### 12 Negative obligations

12.1 The Training Provider and the Employer undertakes to the other that in accordance with the ESFA Rules it shall not:

12.1.1 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;

(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) end-point assessment costs incurred by the Training Provider but not included in the price agreed between the Employer and any Apprentice Assessment Organisation;

(h) English and math's up to Level 2

(i) repeating the same regulated qualification where the Apprentice has previously achieved it unless it is a requirement of the Apprenticeship or for any GCSE;

(j) re-sits for mandatory qualifications or the end-point assessment needed for the Apprenticeship where no additional learning is required;

(k) 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.

## LIMITATION OF LIABILITY

### 13 Limitation of Liability

13.1 Nothing in this Agreement shall limit or exclude either Party's liability for:

13.1.1 death or personal injury caused by its negligence;

13.1.2 fraud or fraudulent misrepresentation;

13.1.3 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.

13.2 The Employer shall not be liable to the Training Provider, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with this Agreement for:

13.2.1 loss of profits; sales or business; anticipated savings; goodwill;

13.2.2 loss of use or corruption of software, data or information; or

13.2.3 any indirect or consequential loss.

## GENERAL INFORMATION AND CLARIFICATION

### End Point Assessment (EPA)

Schedule 3 includes the cost of the EPA. Should a learner refer the EPA at the first attempt a re-sit fee will be payable to the EPA Organisation and the cost split 50 / 50 between employer and training provider. The training provider will invoice the employer as necessary.

This arrangement relates to the responsibilities and required commitment of both parties to the development of the Apprentice's competency.

The employers 50% contribution to any re-sit fee must be paid to the training provider prior to the booking of a re-sit with the EPA Organisation.

### Sub-contracting Arrangements

100% of all Apprenticeship training and on-programme assessment will be directly delivered by the training provider.

### 20% off the Job Learning

An apprentice must spend at least 20% of their time in 'off-the-job' training.

The training provider and the employer are required to ensure the 20% off the job rule is adhered to in line with ESFA Funding Rules.

Off-the-job training is defined as learning which is undertaken outside of the normal day-to-day working environment and leads towards the achievement of the apprenticeship. This can include training that is delivered at the apprentice's normal place of work but must not be delivered as part of their normal working duties.

Off-the-job training must be paid and completed within the apprentices contracted working hours.

Any off-the-job training must be directly relevant to the apprenticeship framework or standard and could include the following.

- The teaching of theory (for example: lectures, role playing, simulation exercises, online learning or manufacturer training).
- Practical training: shadowing; mentoring; industry visits and attendance at competitions.
- Learning support and time spent writing assessments / assignments.

It does not include:

- English and maths (up to level 2) which is funded separately
- Progress reviews or on-programme assessment needed for an apprenticeship framework or standard
- Training which takes place outside the apprentice's normal working hours

20% off-the-job learning requirements will be quantified in the following way

Length of on-programme learning (weeks) – Holiday entitlement (weeks) x contracted hours worked per week x 0.2

E.G

An apprentice is enrolled on a 15 month apprenticeship in which the 'on-programme learning' aspect is expected to last 12 months. The remaining 3 months is for 'end-point assessment' (EPA).

- The apprentice works 47 weeks per year (52 weeks minus 5.6 weeks for annual leave rounded up to 47 weeks)
- The apprentice works 5 x 8 hour days a week with 1 hour allowed for lunch each day = 35 paid hours per week
- 35 hours per week x 47 working weeks = 1,645 hours over a year
- 20% of 1,645 hours = 329 hours a year off-the-job learning
- 329 hours a year = an average of 7 hours a week required off-the-job learning

The provider is required, with the support of the employer, to ensure the apprentice completes at least 329 hours of learning in their time on programme during 'on-programme learning'.

### Delivery of Maths and English

The provider utilises an online learning platform which is used to complete mandatory initial assessments for apprentices.

After completing initial assessments learners are then required to complete further Diagnostics to highlight any developmental areas.

The results of the Diagnostics allow the provider to allocate appropriate online and PDF learning resources, further supported by face to face visits with the apprentice.

Once the apprentice shows an appropriate level of understanding of a given topic it is then the responsibility of the tutor to contextualise the application of Maths and English to home to workplace examples for the benefit of all.

Apprentices will be set a range of tasks to complete which are viewable on their e-portfolio 'e-track'. Progress against these tasks will be tracked by the tutor and the provision of any additional support provided.

## PRIMARY TERMS AND CONDITIONS

As a responsible training provider CMS look to provide high levels of Information, Advice and Guidance to our learners ensuring the experience of working with CMS is a mutually beneficial one. It is in this vain that we wish to make you aware of our main terms and conditions.

I acknowledge and agree that:

A learner's start date will be deemed the date on which CMS hold all relevant information in order to process the learner in line with the ESFA funding rules and when evidence of learning has been provided to the training provider by the learner.

Where a learner is unsuccessful in passing the End Point Assessment re-sit fees will be payable by the employer (50%) and training provider (50%) towards the cost of re-sit. This arrangement outlines the responsibilities of both parties to the development of the Apprentice's competency.

I have read the above section titled '20% off the Job Learning' and agree to support the requirements of the programme.

I agree that the apprentice will be able to complete all learning, including that related to Maths and English within their contracted working hours.

I will ensure the apprentice is in receipt of a written contract of employment within 2 months of starting employment with the employer.

I can confirm that the apprentice will spend at least 50% of their working hours in England over the duration of the apprenticeship including time spent on off-the job training. Where the business footprint is larger than England this could include a roster for a typical month for the apprentice along with written confirmation from the employer.

Where co-investment is required fees will be gathered in full payment at the start of programme or quarterly via Direct Debit using the CMS DD Portal.

Where necessary I am aware of the need to update the Apprenticeship Service linking The Employer to CMS Vocational Training Ltd whose provider number is 10001515

I have the authority to confirm the service agreement enclosed within this document is correct.

Employer Representative

Name:

Job Title:

Signature:

Date:

e-mail:

CMS Representative:

Name:

Job Title:

Signature:

Date:

e-mail:

## SCHEDULE 1 – REQUEST FOR SERVICES

Apprentice Name:	
Employer Name:	
Job Title / Occupation of Apprentice:	
Contracted Hours Per Week:	
Apprenticeship Start Date:	
Estimated Completion of Learning Date:	
Required 20% off-the-job learning (hours):	
Estimated Completion for End Point Assessment: (standards only)	
Your Services Manager(s) will be:	<p>Hadyn Luke  <a href="mailto:hadyn.luke@cmsvoc.co.uk">hadyn.luke@cmsvoc.co.uk</a></p> <p>Mandy Hodson  <a href="mailto:mandy.hodson@cmsvoc.co.uk">mandy.hodson@cmsvoc.co.uk</a></p> <p>Katrina Clarke  <a href="mailto:katrina.clarke@cmsvoc.co.uk">katrina.clarke@cmsvoc.co.uk</a></p> <p>Hilary Munding  <a href="mailto:hilary.munding@cmsvoc.co.uk">hilary.munding@cmsvoc.co.uk</a></p> <p>CMS Tel: 01924 470 477</p>

## SCHEDULE 2 - SERVICES TO BE PROVIDED

Service:

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Expected Accreditation Outcome(s) from Awarding Organisations (AO), and End Point Assessment Organisation (EPA):

Outcome	AO / EPA

### SCHEDULE 3 - PAYMENT

	Levy	Co-Investment	Government
How will the programme be			

The party responsible for recording the required details of the Apprenticeship with the ESFA will be:

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Description	Employer Levy Contribution £ (VAT Exempt)	Employer Co- investment Contribution £ (ex VAT)	Government Contribution £ (VAT Exempt)
Job Competency Related Training			
Training Provider 16-18 Uplift	£0	£0	
Functional Skills (£471 each)	£0	£0	
<b>Total Contributions</b>			
<b>Total Cost of Apprenticeship</b>			

#### Incentives Due to Employer

Description

Further information regarding payment of incentives can be provided via your CMS service manager named above. Incentives are subject to eligibility and availability.

Employer Representative

Name:

Job Title:

Signature:

Date:

e-mail:

CMS Representative:

Name:

Job Title:

Signature:

Date:

e-mail:

Learner:

Name:

Job Title:

Signature:

Date:

e-mail:

