EMPLOYER TERMS AND CONDITIONS FOR APPRENTICESHIPS

1. Definitions and Interpretation:

1.1 In this Agreement, except where the context otherwise requires:

- **Academic Council:** the Academic Council of BPP U, or any successor body from time to time;
- **Academic Regulations:** the GARs and the MoPPs which apply to BPP U and the Programmes;
- **Agreement:** these terms and conditions together with the Apprenticeship Schedules and the Apprenticeship Services Booking Form, form the contract for Apprenticeship services in accordance with the ESFA Funding Rules;
- **Additional Payment:** a capped additional payment payable by the ESFA to an Employer as an employer of an Apprentice who meets specific eligibility criteria, in accordance with the Funding Rules;
- **Additional Payment Claim Form:** the form supplied by BPP which the Employer must complete and submit to BPP each time it wishes to claim an Additional Payment;
- **Apprentice:** any employee of the Employer under an Apprenticeship Agreement who meets the Eligibility Criteria;
- **Apprenticeship:** the ESFA approved Apprenticeship Standard(s) and/or Framework(s) as selected in the Apprenticeship Booking form and detailed in Schedule 1 of the Apprenticeship Schedules, as amended by the ESFA from time to time;
- **Apprenticeship Agreement:** the Apprenticeship Agreement between the Employer and each Apprentice as required under the Funding Rules;
- **Apprenticeship Services Booking Form:** the booking form entitled 'Apprenticeship Services Booking Form' signed by the Employer that forms part of the Agreement;
- **Assessment Organisation:** an independent third party assessor who will conduct the End-Point Assessment as set out in Schedule 1 of the Apprenticeship Schedules and the Commitment Statement;
- **BPP:** means BPP Holdings Limited and/or BPP Professional Education Limited and/or BPP University Limited and/or BPP Actuarial Education Limited and/or any relevant BPP Group Company as the context may require;
- **BPP LM:** BPP Learning Media Limited (company number 05959432);
- **BPP Materials:** all materials developed, written, prepared or sourced by BPP or any Group Company (or on its behalf), their employees, agents or subcontractors (whether individually, collectively or jointly with the Employer and on whatever media) for use by BPP in relation to the Education and Training;
- **BPP Premises:** any premises in the UK used by BPP to deliver all or part of the Education and Training (excluding any Employer premises);
- **BPP U:** BPP University Limited (company number 02609100);
- **BPP U Award:** a qualification awarded by BPP U pursuant to its degree-awarding powers;
- **Business Day:** Monday through Friday, excluding any official holidays in England;
- **Change of Circumstance:** when there is change in relation to the Apprentice and the Apprenticeship delivery cannot continue as planned or must stop altogether, as set out in the Funding Rules;
- **Commencement Date:** the date that the Apprenticeship Services Booking Form is signed by the Employer;
- **Commitment Statement:** the written statement (set out in Schedule 2 of the Apprenticeship Schedules) as required by the Funding Rules to be entered into by each of the Apprentice, Employer and BPP prior to the commencement of the Apprenticeship;
- **Confidential Information:** information that is designated as 'confidential' or which by its nature is confidential. Confidential Information includes any information concerning the technology, technical processes, business processes, procedures, personal data, business affairs, financial affairs and finances of a Party or its Group Company, its customers, employees and suppliers. Confidential Information may include but shall not be limited to: (a) IPRs, documents, technical specifications, unpublished patent specifications, data, drawings, plans, processes, photographs, databases, computer software in disk, cassette, tape or electronic form and data storage or memory in, and items of, computer hardware; and (b) oral descriptions, demonstrations or observations; and (c) information which is in transit to/from, supplied to, stored by, processed or marked for destruction by a disclosing party;
- **Contract Manager:** the person appointed on behalf of each Party from time to time to fulfil the contract manager role;
- **Course:** means a course of teaching supplied by a BPP entity other than BPP U towards the applicable BPP Apprenticeship;
- **Course Handbook:** the relevant handbook for the Course prepared and issued by a BPP entity (other than BPP U) from time to time;
- **Data Protection Legislation:** (1) prior to 25 May 2018, the Data Protection Act 1998; (2) from 25 May 2018, the General Data Protection Regulation (EU 2016/679) ("GDPR") (as amended or re-enacted); and (3) any other legislation or regulation relating to data protection applicable in England and Wales from time to time;
- **Education and Training:** the delivery and/or provision by BPP of the specified training, Course or Programme to an Apprentice in accordance with this Agreement;
- **Eligibility Criteria:** the eligibility criteria as required by the Funding Rules and as set out in the Eligibility Declaration;
- **Eligibility Declaration:** the declaration confirming each Apprentice’s eligibility to participate in the Apprenticeship in accordance with the Funding Rules;
- **Employer Co-Investment:** the amount of any co-investment required to be paid by the Employer under the Funding Rules as set out in Schedule 3 of the Apprenticeship Schedules;
- **Employer Contribution:** the component of the Fees payable by the Employer to BPP as set out in Schedule 3 of the Apprenticeship Schedules;
- **Employer Materials:** any materials, data, information, or equipment owned by or licensed to the Employer made available to BPP for use in the provision of the Education and Training;
- **End-Point Assessment:** an assessment relevant to the Education and Training set by the Assessment Organisation;
- **Entry Criteria:** the entry criteria for the Education and Training, as determined by BPP in its sole discretion and stipulated to the Employer from time to time;
- **ESFA:** the Education and Skills Funding Agency or any of its successors;
- **ESFA Funding:** the proportion of Fees paid to BPP by the ESFA in accordance with the Funding Rules;
- **Fees:** the ESFA Funding, any Employer Co-Investment, any Additional Payments or Employer Contribution payable to BPP as calculated in accordance with Schedule 3 of the Apprenticeship Schedules (and any other additional fees which may be agreed between the Parties from time to time);
- **Force Majeure Event:** an event, inability or delay caused by circumstances beyond a Party’s reasonable control and which cannot be cured by reasonable means which might reasonably be taken in the course of the Party's business, including war or other action of military forces, terrorism, riot, civil commotion, sabotage, vandalism, accident, breakdown or damage to machinery or equipment or technology, fire, flood, legislative or administrative interference;
- **Funding Rules:** the ESFA’s apprenticeship funding rules and the ESFA’s technical funding guide or quality statements relating to apprenticeships as amended by the ESFA from time to time;
- **GARs:** the current General Academic Regulations of BPP U available at www.bpp.com/bpp-university/about/university-governance;
- **Group Company:** any company which is, from time to time, a subsidiary undertaking or parent undertaking of such company, or subsidiary
undertaking of that parent undertaking (as defined in s.1162 and schedule 7 of the Companies Act 2006);

Intake: an intake of Apprentices into Education and Training, as determined by BPP;

IPRs: patents, trademarks, service marks, rights (registered or unregistered) in any designs, applications for any of the foregoing, trade or business names, copyright (including rights in computer software) and topography rights, know-how and processes, lists of suppliers and customers and other proprietary knowledge and information, internet domain names, rights protecting goodwill and reputation, database rights (including rights of extraction) and all rights and forms of protection which may now or in the future subsist in any part of the world;

Job Role Analysis: An analysis undertaken by BPP, the Employer and Apprentice to identify the range of activities the Apprentice will undertake to support their learning and to identify what activities will be undertaken and how they will fit into meeting the learning outcomes of the Apprenticeship.

Line Manager: the Apprentice’s line manager employed by the Employer and appointed to assist the Apprentice under the Commitment Statement;


Ofsted: the Office for Standards in Education, Children's Services and Skills

Programme: a programme of teaching approved by the Academic Council supplied by BPP U towards the applicable BPP U Award and/or Apprenticeship as detailed in the Programme Handbook;

Programme Assessment: an assessment or examination leading to a BPP U Award for the relevant Programme;

Programme Handbook: the relevant handbook for the Programme prepared and issued by BPP U;

QAA: the Quality Assurance Agency for Higher Education or any of its successors, assigns or transferees;

Regulations: any regulation(s) imposed on BPP by a Regulator, including the Academic Regulations or any other applicable law;

Regulator: any regulator or regulatory body to which a Party is subject or whose consent, approval or authority is required so that the Party can lawfully carry on its business, which in relation to BPP includes the ESFA, QAA and Ofsted, and any successor body;


Terms and Conditions: the terms and conditions and privacy policy which apply to the Education and Training as published by BPP on its website, for BPP Programmes: www.bpp.com/bpp-university/terms and for Courses: www.bpp.com/professional-education/terms or www.aced.co.uk/terms_conditions.html (as applicable);

Tutor: a tutor engaged by BPP to provide any part of the Education and Training;

In this Agreement, unless the context otherwise requires:

1.1.1 references to any statute or statutory provision include, unless the context otherwise requires, a reference to that statute or statutory provision as modified, replaced, re-enacted or consolidated and in force from time to time prior to the date of this Agreement and any subordinate legislation made under the relevant statute or statutory provision (as so modified, replaced, re-enacted or consolidated) in force from time to time prior to the date of this Agreement;

1.1.2 “including”, “includes” and “in particular” are illustrative, none of them will limit the sense of the words preceding it and each of them will be deemed to incorporate the expression “without limitation”. “Other” and “otherwise” are also illustrative and will not limit the sense of the words preceding them.

2. Provision of Education and Training

2.1 BPP agrees that it will provide the Education and Training, BPP Materials and/or any other goods and or services on a non-exclusive basis.

2.2 To the extent the Education and Training, or any part of the Education and Training, is provided on BPP Premises, BPP will be responsible (at its own cost) for ensuring that BPP Premises are suitable for the Education and Training.

2.3 The Employer acknowledges and agrees that BPP is only permitted to provide Programmes at premises approved by the Academic Council and accordingly acknowledges and agrees that the Programme may only be provided at such BPP Premises.

2.4 BPP will not have any obligation and/or liability to the Employer, or the relevant Apprentice(s) in relation to any Apprentice(s) who does not accept the Terms and Conditions.

2.5 The Employer acknowledges that Intakes may comprise a mix of Apprentices and other students which, for the avoidance of doubt, means that provision of Education and Training will not be exclusively provided by BPP to the Employer’s Apprentices in segregated groups.

3. Entry Criteria

3.1 BPP will not be obliged to enrol any Apprentice onto Education and Training where that Apprentice does not meet the relevant Entry Criteria and BPP will have no liability whatsoever to the Employer and/or the relevant Apprentice for refusing to enrol an Apprentice on the Education and Training or for removing an Apprentice from Education and Training after enrolment or registration if BPP is made aware that the Apprentice does not meet the Entry Criteria published at the time of enrolment and or registration (as applicable).

4. Funding Rules

4.1 All Parties agree to comply with;

4.1.1 the terms of this Agreement;

4.1.2 its responsibilities under the Funding Rules; and

4.1.3 its obligations in the Commitment Statement

4.2 The Employer will comply with;

4.2.1 the supporting policies in Schedule 4 of the Apprenticeship Schedules; and

4.2.2 prior to the Apprenticeship Start Date for each Apprentice the Employer must complete the Eligibility Declaration and ensure that the Employer and each Apprentice has completed and signed a Job Role Analysis, Commitment Statement and Apprenticeship Agreement in connection with each Apprenticeship and ensure that a copy of each document is provided to BPP.

4.3 The Employer acknowledges that;

4.3.1 where an Apprentice fails to comply with the Commitment Statement and Apprenticeship Agreement, the Apprentice may be immediately removed from the Education and Training and BPP will not be liable to the Employer and/or the Apprentice for any loss, damage or otherwise, suffered by the Employer (or any person acting on its behalf) and/or the Apprentice relating to such removal; and

4.3.2 in order to qualify into certain professions the Apprentice may need to meet the requirements of the relevant professional body. Participating in the Education and Training will not automatically result in acceptance of the Apprentice by the relevant professional body. It is the Apprentice’s responsibility to ensure that they meet the eligibility requirements of the relevant professional body. BPP will not be liable for any failure of the Apprentice to be accepted into their chosen profession.

5. Assessments

5.1 All Programme Assessments will be designed, assessed and any relevant credit awarded by BPP U, acting in its sole discretion, to comply with the Academic Regulations and/or Programme Handbook (as applicable).

5.2 Apprentices will be allowed to undertake re-sits of their Programme Assessments or course assessments in accordance with the Academic Regulations, Programme Handbook or Course Handbook (as applicable); and the Terms and Conditions relevant to the Course or Programme (as applicable).

5.3 BPP reserves the right to recommend an Apprentice for withdrawal from the Course if the Apprentice fails a professional qualification assessment
6. **Fees**

6.1 The Fees will be paid in accordance with Schedule 3 (Fees) of the Apprenticeship Agreements.

6.2 The Parties acknowledge that the ESFA Funding and any Additional Payments will be paid by the ESFA to BPP in accordance with the Funding Rules.

6.3 The Employer will ensure that all information required by the ESFA under the Funding Rules is supplied to the ESFA or any other relevant party (as required) in a timely fashion and the Employer will use its best endeavours to ensure that all Fees are paid on time and amounts owing under this Agreement when due.

6.4 Any Employer Contribution and Employer Co-Investment will be paid to BPP within thirty (30) days of invoice (“Due Date”). Any dispute relating to an invoice will be notified to BPP prior to the Due Date.

6.5 In the event that the Employer reasonably disputes an invoice or any part of it, the Employer will pay the undisputed part of such invoice in accordance with clause 6.4 and the disputed part of the invoice will be dealt with in accordance with the process set out in clause 21 (Dispute Resolution) and any amount of the disputed part of the invoice due following the process in clause 21 will be payable fourteen (14) days from resolution of the dispute as applicable.

6.6 If any payment due from the Employer to BPP under this Agreement is unpaid (in whole or in part) by a Due Date, BPP may give to the Employer twenty (20) Business Days written notice to terminate this Agreement or the applicable Apprenticeship’s place on the Education and Training and, unless such overdue sum has been paid before the expiry of such notice period, BPP will, without the need to give any further notice, immediately cease to provide the Education and Training.

7. **Additional Payments**

7.1 Where the Employer is claiming an Additional Payment, the Employer employing the Apprentice for whom funding is being claimed must submit a valid and correctly completed Additional Payment Claim Form to BPP who will receive the Additional Payment from the ESFA on the Employer’s behalf.

7.2 BPP will pay the Employer the Additional Payment within thirty (30) Business Days of receipt of the Additional Payment from the ESFA.

7.3 The Employer agrees that where the Apprentice or Employer is not eligible to receive any Additional Payment, for whatever reason including but not limited to where there has been a Change of Circumstance, the Employer shall repay the Additional Payment to BPP to repay it to the ESFA.

8. **Intellectual Property**

8.1 Each party shall retain ownership of all IPRs that were vested in that Party prior to the Commencement Date.

8.2 Without prejudice to clause 8, all IPRs in any Employer Materials will remain vested in the Employer.

8.3 The Employer hereby grants to BPP a non-transferable, royalty free, non-exclusive licence to use the Employer Materials during the Term for the purposes of this Agreement.

8.4 Save for the rights granted under clause 8.5, all the IPRs in the Education and Training and BPP Materials will remain vested in BPP, BPP LM or its licensors (as the case may be), save to the extent they incorporate Employer Materials. The Employer will not obtain any rights in the Education and Training or BPP Materials.

8.5 BPP hereby grants to the Employer a non-transferable, non-exclusive licence to use the BPP Materials during the Term, strictly for the purpose of enabling Apprentices to participate in the Education and Training pursuant to this Agreement.

8.6 The Employer will not make the BPP Materials available to any other person who is not enrolled in the Education and Training except to the Line Manager for the sole purpose of supporting the Apprentice during the Education and Training.

8.7 Nothing in this clause 8 shall prevent BPP and/or BPP LM from using any general knowledge or experience which they may obtain as a result of the provision of Courses, Programmes or BPP Materials to the Employer provided that BPP and/or BPP LM do not use or disclose the Employer’s Confidential Information or Employer Materials in breach of the terms of the Agreement.

8.8 BPP LM may enforce this clause 8 under the Contracts (Rights of Third Parties) Act 1999.

9. **Warranties and undertaking**

9.1 BPP warrants that:

9.1.1 it will perform its obligations under this Agreement with all reasonable skill and care; and

9.1.2 the Tutors will possess the appropriate skills and will be sufficiently qualified to deliver the Education and Training.

9.2 All Parties warrant that they have full capacity, power and authority to enter into, deliver and perform its obligations under and in accordance with this Agreement (and all other documents to be entered into by it under this Agreement).

9.3 The Employer acknowledges that the Education and Training does not provide any warranty, guarantee or undertaking that the Apprentice will achieve the Apprenticeship qualification or BPP U Award (where applicable) by sole reason of having completed the Education and Training.

10. **Term and Termination**

10.1 This Agreement will come into effect on the Commencement Date and will continue in force whilst the Employer continues to employ Apprentices undertaking Education and Training under this Agreement, unless terminated earlier in accordance with this clause 10.

10.2 Either Party may terminate this Agreement immediately if the other Party:

10.2.1 ceases to do business or otherwise suspends business operations;

10.2.2 becomes insolvent or seeks protection under any bankruptcy, receivership, trust deed, creditors arrangement, composition or comparable proceeding;

10.2.3 materially breaches this Agreement, except where such breach is capable of being remedied, in such circumstances this Agreement may only be terminated where the Party in breach has failed to remedy the breach within twenty (20) Business Days of receipt of written notice of the breach.

10.3 This Agreement may be terminated immediately by BPP in the circumstances where:

10.3.1 the Employer is acquired by or merged with an entity which is a competitor of BPP;

10.3.2 termination is necessary for the purposes of BPP meeting the requirements from time to time of any Regulator (including if BPP U for any reason loses its ability to make a BPP U Award); or

10.3.3 there are any changes to the Funding Rules which means BPP cannot reasonably continue to provide the Education and Training.

11. **Consequences of Termination**

11.1 On expiry or termination of this Agreement, the Employer will pay to BPP all outstanding unpaid invoices and any interest due in respect of the Fees in accordance with clause 6.

11.2 The following clauses shall survive termination or expiry of this Agreement (1, 4, 6, 8, 12, 13, 14, 17, 20, 21, 24, 26).

11.3 Any termination or expiry of this Agreement, however it occurs, will not affect any rights or liabilities of any Party that may have accrued before termination or expiry of any terms of this Agreement.

11.4 In the event of Termination, all Parties will make reasonable efforts to support Apprentices in Education and Training to enable them to complete the relevant Apprenticeship, including transition to another Employer or Education and Training provider.
12. Compliance with relevant requirements

12.1 Each Party will, and will procure that persons associated with it or other persons who are performing services or providing goods in connection with this Agreement:

12.1.1 comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010;

12.1.2 have in place and comply with its own ethics and anti-bribery policy;

12.2 Each Party shall comply with all applicable laws, statutes, regulations and codes relating to slavery and human trafficking (including but not limited to the Modern Slavery Act 2015) and shall not engage in any activity, practice or conduct which would constitute slavery or human trafficking. Each party shall use reasonable endeavours to ensure that slavery and human trafficking is not occurring in any part of its supply chain.

12.3 Each party shall carry out its responsibilities under all relevant legislation, regulations and formal guidance for the protection of children and vulnerable adults including the Safeguarding Legislation.

12.4 If any Party (including any staff, subcontractor or agent of such Party, in all cases whether or not acting with such Party’s knowledge) breaches this clause 12, the non-breaching Party may terminate this Agreement by written notice with immediate effect.

12.5 If any Party (including any staff, subcontractor or agent of such Party, in all cases whether or not acting with such Party’s knowledge) breaches this clause 12, the non-breaching Party may terminate this Agreement by written notice with immediate effect.

13. Data Protection

13.1 Where applicable, expressions defined in the Data Protection Legislation and used in this clause 13 will have the meanings given to them in the Data Protection Legislation.

13.2 Each Party may be a Data Controller in relation to certain Personal Data and will comply with its obligations under the Data Protection Legislation in relation to that Personal Data.

13.3 Where a Party is a Data Processor in relation to Personal Data that is controlled by a Data Controller in accordance with clause 13.2, that Data Processor shall:

13.3.1 subject matter;

13.3.2 have in place, and maintain throughout the term of this Agreement, appropriate technical and organisational security measures against:

13.3.2.1 loss or destruction of or damage to the Personal Data,

13.3.2.2 unauthorised or unlawful processing, use, access to or theft of Personal Data; and

13.3.2.3 breach of confidentiality;

13.3.2.4 any further remuneration, regardless of any options or agreements with additional third parties entered into before termination.

13.4 Where a Party is a Data Processor in relation to Personal Data that is controlled by a Data Controller in accordance with clause 13.2, that Data Processor must process and must ensure that its employees and agents process that Personal Data only in accordance with the written instructions of the relevant Data Controller from time to time, having regard to the provisions of the Data Protection Legislation and shall not knowingly do anything or permit anything to be done which might lead to a breach by the relevant Data Processor of the Data Protection Legislation.

13.5 The relevant Data Processor may only process Data to the extent it relates to:

13.5.1 subject matter;

13.5.2 nature and purpose;

13.5.3 types of Personal Data; and

13.5.4 categories of Data Subject;

set out in Schedule A and only for the duration specified in Schedule A.

13.6 Without prejudice to Clause 13.4 the relevant Data Processor shall:

13.6.1 process the Personal Data only in accordance with the written instructions of the relevant Data Controller, unless the relevant Data Processor is required to process the Personal Data for other reasons under the laws of the European Union (or a member state of the European Union) to which the relevant Data Processor is subject. If the relevant Data Processor is required to process the Data for these other reasons, the relevant Data Processor shall inform the relevant Data Controller before carrying out the processing, unless prohibited by applicable law;

13.6.2 immediately inform the relevant Data Controller if it believes that the relevant Data Controller’s instructions infringe the Data Protection Legislation;

13.6.3 have in place, and maintain throughout the term of this Agreement, appropriate technical and organisational security measures against:

13.6.3.1 unauthorised or unlawful processing, use, access to or theft of Personal Data; and

13.6.3.2 loss or destruction of or damage to the Personal Data,

13.6.4 to ensure that the relevant Data Processor’s processing of the Personal Data is in accordance with the requirements of the Data Protection Legislation and protects the rights of the Data Subjects.

13.6.5 ensure that all persons authorised by the relevant Data Processor to process Personal Data are bound by obligations equivalent to those set out in Clause 14 (Confidentiality) and this Clause 13; and

13.6.6 ensure that access to the Personal Data is limited to those relevant Data Processor personnel who need access to the Personal Data to meet the relevant Data Processor’s obligations under this Agreement.

13.7 The relevant Data Processor shall provide such assistance as the relevant Data Controller requires in order for the relevant Data Controller to:

13.7.1 respond to requests relating to the relevant Data Processor’s data processing from Data Subjects; and

13.7.2 ensure compliance with the relevant Data Processor’s obligations under the Data Protection Legislation, including in relation to the security of processing, any consultation requirements and the preparation of any necessary data protection impact assessments.

13.8 Subject to Clause 13.22, the relevant Data Processor shall not engage any third party, including a member of the relevant Data Processor’s group, to carry out processing in connection with this Agreement (“Sub-Processor”) without the relevant Data Controller’s prior written consent. For the avoidance of doubt, this clause 13.8 shall also apply to any replacement Sub-Processor.

13.9 Subject to clause 13.22, prior to allowing an authorised Sub-Processor to process any Data, the relevant Data Processor shall enter into a written agreement with the Sub-Processor under which the Sub-Processor is obliged to comply with the terms of this Clause 13. The relevant Data Processor remains fully liable to the relevant Data Controller for any acts or omissions of any Sub-Processors.

13.10 On request and at no additional charge, the relevant Data Processor shall provide to the relevant Data Controller all information required by the relevant Data Processor to the relevant Data Controller to the extent possible, all information necessary for the relevant Data Controller to demonstrate the relevant Data Controller’s compliance with the Data Protection Legislation.

13.11 In order that the relevant Data Controller and/or its authorised representative and any supervisory authority may audit the relevant Data Processor’s compliance with the Data Protection Legislation and the terms of this Clause 13, on request and at no additional charge the relevant Data Processor shall provide the relevant Data Controller with:

13.11.1 reasonable access to all relevant information, premises, Personal Data, employees, agents, the relevant Data Processor Sub-Processors and assets at all locations from which obligations of the relevant Data Processor under this Clause 13 are being or have been or should have been carried out; and

13.11.2 all reasonable assistance in carrying out the audit, during the term of this Agreement and for 24 months after the termination of this agreement, subject to the relevant Data Controller giving the relevant Data Processor reasonable notice (except where such audit is required by a supervisory authority to which the relevant Data Controller is subject).

13.12 The relevant Data Processor shall promptly provide all assistance and information which is requested by any supervisory authority and the relevant Data Processor shall immediately notify the relevant Data Controller of any request that it receives from any supervisory authority for assistance or
13.13 The relevant Data Processor shall maintain records (the “Records”) of all processing activities carried out on behalf of the relevant Data Controller, including:

13.13.1 the information described in Clause 13.10 and Schedule A;
13.13.2 where applicable, the name and contact details of the Data Protection Officer of the relevant Data Processor and of any Sub-Processors;
13.13.3 any transfers of Personal Data outside of the EEA, including the identification of the relevant country or international organisation and any documentation required to demonstrate suitable safeguards; and
13.13.4 a description of the technical and organisational security measures referred to in Clause 13.6.3.

13.14 The relevant Data Processor shall provide the Records to the relevant Data Controller promptly on request.

13.15 On request, the relevant Data Processor shall take all necessary actions and provide the relevant Data Controller with all reasonable assistance necessary for the relevant Data Controller to comply with the relevant Data Controller’s obligations under the Data Protection Legislation in relation to:

13.15.1 the provision of information to Data Subjects;
13.15.2 the rectification of inaccurate Personal Data in relation to a Data Subject;
13.15.3 the erasure of a Data Subject’s Personal Data; and
13.15.4 the retrieval and transfer of the Personal Data of a Data Subject.

13.16 The relevant Data Processor shall notify the relevant Data Controller immediately after becoming aware of any unauthorised or unlawful processing, use of, or access to the Personal Data, or any theft of, loss of, damage to or destruction of the Personal Data (a “Security Incident”) or any breach of this Clause 13.

13.17 In the event of a Security Incident, the relevant Data Processor shall provide the relevant Data Controller with full co-operation and assistance in dealing with the Security Incident, in particular in relation to:

13.17.1 resolving any data privacy or security issues involving any Personal Data; and
13.17.2 making any appropriate notifications to individuals affected by the Security Incident or to a supervisory authority.

13.18 The relevant Data Processor shall investigate the Security Incident in the most expedient time possible and shall then provide the relevant Data Controller as soon as possible thereafter with a detailed description of the Security Incident, the type of data that was the subject of the Security Incident, and any other information that the relevant Data Processor may request concerning the Security Incident.

13.19 The relevant Data Processor shall take all steps necessary to prevent a repeat of the Security Incident and shall consult with and agree those steps with the relevant Data Controller unless immediate steps need to be taken and it is impractical to consult with the relevant Data Controller in that respect.

13.20 All Personal Data processed by a Data Processor in accordance with this Agreement is and will remain the Data Controller’s property absolutely. On termination of this Agreement, for whatever reason, the relevant Data Processor will immediately cease using the Personal Data and will arrange for its safe return or secure destruction as instructed by the relevant Data Controller provided that the relevant Data Processor will be entitled to retain copies of such Personal Data for its records and in accordance with any applicable law.

13.21 The provisions of this Clause 13 shall continue to apply to any Personal Data retained by a Data Processor in accordance with Clause 13.20.

13.22 For the purposes of IT support and Apprentice IT support BPP may transfer Personal Data to:

13.22.1 BPP Group Companies; and
13.22.2 its IT helpdesk provider;

(including outside the EEA).

13.23 In respect of the transfers at clause 13.22, BPP confirms that it has in place EU Standard Contractual Clauses and will ensure that such transfer of Personal Data is subject to adequate technical and organisational measures to ensure the security of such Personal Data and the Data Processors will act at all times in accordance with the instructions of BPP.

13.24 The Employer will ensure that Apprentices do not transfer to BPP any Personal Data belonging to the Employer, whether as part of evidencing their learning for the purpose of their Programme or Education and Training or for any other reason.

13.25 The Employer shall ensure that in the event that an employee of the Employer who has access to BPP’s reporting tools (including but not limited to SharePoint and or Power BI) ceases to be an employee of the Employer, the Employer shall inform BPP’s Contract Manager within 14 days of the employee leaving so that BPP’s Contract Manager can remove the employee’s access to the relevant reporting tool.

14. Confidentiality

14.1 Except to the extent set out in this clause 14, each Party will treat as confidential all Confidential Information obtained from the other under this Agreement, will protect such Confidential Information and will not, without the prior written consent of the other(s), disclose or use such Confidential Information except for the purposes of this Agreement.

14.2 Clause 14.1 does not prohibit disclosure of Confidential Information to:

14.2.1 the receiving party’s own employees, agents and permitted subcontractors who need to know it;
14.2.2 the receiving party’s auditors, professional advisors, HM Revenue & Customs, and any other person having a statutory or regulatory right to request and receive that information (including the ESFA and any Regulator); or
14.2.3 a person to whom an assignment has been permitted under clause 5.

14.3 Each party will ensure that any person mentioned in clause 14.2 is made aware, prior to any disclosure of Confidential Information, that it is confidential and that such person and the receiving party owe a duty to the owner of it to keep it confidential. The receiving party will be responsible for procuring that such person complies with the duty of confidentiality imposed by this Agreement as if they were a party to it.

14.4 Other than as expressly permitted under this Agreement, on termination or expiry of this Agreement for whatever reason, each party will cease to use any Confidential Information of the other and will return on demand, or at the request of the other, destroy or permanently erase all copies of that Confidential information in its possession or control, except that either party will be permitted to retain one copy of such part of the Confidential Information for the purposes of and for so long as required by any law or by judicial or administrative process or its legitimate internal compliance issues.

15. Insurance

15.1 Without prejudice to their liabilities under this Agreement, each Party will maintain at its own cost insurance policies with a reputable insurance company to cover potential liabilities which it may have to the other Party under this Agreement.

15.2 Each Party will promptly confirm to the other Parties upon request that it has complied with its obligations under clause 15.1.

16. Access to information

16.1 The Employer acknowledges that, as a provider of the Education and Training, BPP is subject to audit and inspection by regulating organisations under the Funding Rules and the Employer agrees to provide BPP with all necessary assistance and information as they may reasonably require to comply with any requests from a Regulator.
17. Indemnity and limitation of liability

17.1 Nothing in this Agreement limits or excludes a Party's liability for death or personal injury caused by its negligence.

17.2 Neither Party will have any liability to the other for any of the following arising out of or in connection with this Agreement, whether in contract, tort, misrepresentation, under statute or otherwise, howsoever caused including (without limitation) by negligence and also including (without limitation) any liability under an indemnity contained in this Agreement and/or arising from a breach of, or a failure to perform or defect or delay in performance of, any of the obligations under this Agreement for loss of: margin or anticipated savings, profits, revenue, business, goodwill, reputation, opportunity, contract or liability of any other Party to a third party or any special, indirect, consequential or pure economic loss or damages (in each case whether direct or indirect).

17.3 Subject to clauses 17.1, 17.2 and 17.4 and in the case of the Employer excluding any liability to pay the Fees, the maximum aggregate liability of either BPP or the Employer arising out of or in connection with this Agreement will be limited to the higher of: the total amount of the Fees paid or payable during the preceding twelve (12) months at the date of the event giving rise to the liability or £100,000.

17.4 All Parties will indemnify each other against all liability, loss, damage, costs and expenses (excluding legal costs) arising out of or in respect of a breach of clauses 8 (Intellectual Property), 12 (Compliance) and 13 (Data Protection) up to a maximum cap of £1,000,000.

18. Entire Agreement and Variation

18.1 This Agreement and the documents referred to in it, constitutes the entire Agreement and understanding of the Parties and supersedes any previous agreement, understanding, undertaking, representation, warranty or arrangement of any nature whatsoever between the Parties relating to the subject matter of this Agreement.

18.2 Each Party acknowledges that, in entering into this Agreement, it has not relied on, and will have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) other than as expressly set out in this Agreement.

18.3 No variation of this Agreement or any of the documents referred to in it will be valid unless it is in writing and executed by each of the Parties.

18.4 Sub-contractors are not required to give their consent to any variation agreed and executed by the Parties.

19. Force Majeure

19.1 No Party will be liable for any delay in performing their obligations under this Agreement where such delay is directly caused by a Force Majeure Event.

19.2 Subject to the Party who has been delayed promptly telling the other Parties in writing of the reasons for the delay and the likely duration of the delay and using its reasonable efforts to continue to perform its obligations under this Agreement and to mitigate the effects of the delay, the performance of that Party's obligations will be suspended during the period of the Force Majeure Event so far as it affects the obligations in question and that Party will be granted an extension of time for performance equal to the period of the delay.

19.3 The Employer will not be relieved of any of its payment obligations under this Agreement in relation to any part of the Education and Training delivered but not yet paid for, prior to any Force Majeure Event.

20. Notices

20.1 Any notice to be given pursuant to the terms of this Agreement will be given in writing to the Party's registered office or such other address as may have been notified to the other Parties. Notice will be delivered personally or sent by registered post, and will be deemed to be given in the case of personal delivery on delivery and in the case of posting (in the absence of evidence of earlier receipt) 48 hours after posting.

20.2 Should a notice be delivered on a day other than a Business Day, the notice will be deemed to be given on the next Business Day following the day of actual delivery.

21. Dispute Resolution

21.1 Where the Employer or the Apprentice has an enquiry or complaint in connection with the Apprenticeship which cannot be resolved through BPP the Employer or Apprentice can contact the ESFA Apprenticeship helpline as follows: Telephone: 08000150400 or 02476826482, https://www.gov.uk/government/organisations/skillsfunding-agency

21.2 Any dispute between any of the Parties arising out of or in connection with this Agreement will be referred by written notice first to the Contract Manager of each relevant Party who will meet and endeavour to resolve the dispute within ten (10) Business Days of such notice. Failing resolution of the dispute, by such Contract Manager, the matter shall be referred to a senior manager of each relevant Party who will meet and endeavour to resolve the dispute between them within fifteen (15) Business Days during which time neither relevant Party will resort to litigation unless the other relevant Party is unwilling or unable to engage in the escalation process.

21.3 If a dispute is not resolved pursuant to the process set out in clause 21.2 then the dispute may be referred to the courts for determination in accordance with clause 26.

22. No Joint Venture or Partnership

22.1 This Agreement does not create a partnership or joint venture between the Parties.

23. Assignment and Sub-contracting

23.1 BPP may (to the extent permitted by law, regulation and the Funding Rules) at any time novate any of its obligations under this Agreement without the consent of the Employer to any BPP Group Company.

23.2 BPP may (to the extent permitted by law, regulation and the Funding Rules), at any time subcontract any of its obligations under this Agreement with the consent of the Employer;

23.3 Other than as provided for in this clause 23, no Party may novate, charge, transfer or deal in any other manner with the benefit of, or any or all of its rights under this Agreement, nor subcontract any or all of its obligations under this Agreement, without the prior written consent of the other Party.

24. Severability and Waiver

24.1 If any clause or part of this Agreement is found to be illegal, invalid or unenforceable then that term will, to the extent required, be severed from this Agreement and will be ineffective without, as far as is possible, modifying any other clause or part of this Agreement and this will not affect any other terms of this Agreement which will remain in full force and effect.

24.2 Failure or delay by any party in exercising any right or remedy under this Agreement will not in any circumstances operate as a waiver of it, nor will any single or partial exercise of any right or remedy in any circumstances preclude any other or further exercise of it or the exercise of any other right or remedy.

25. Third Party Rights

25.1 BPP and/or any BPP Group Company providing Education and Training under this Agreement may enforce any term of this Agreement save for clause 10 (Termination).

25.2 Subject to clauses 8.8 and 25.1, no person who is not a Party to this Agreement will have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.
26. Governing Law and Jurisdiction

26.1 This Agreement and any non-contractual obligation arising out of or in connection with this Agreement and any dispute shall be governed by English law.

26.2 The courts of England will have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Agreement.

SCHEDULE A

DATA PROCESSING

1. Type of Personal Data to be processed:
   - Apprentice details recorded in the Commitment Statement and Apprenticeship Agreement (as contained at Schedule 2 to this Agreement)
   - Apprentice copy passport and achievement certificates
   - A passport sized photo each Apprentice for ID docs (library card and so on)
   - Records of each Apprentice’s attendance, progression and achievement on the Apprenticeship
   - Records of review meetings with each Apprentice’s apprenticeship manager and line manager
   - Records of other ad hoc meetings relating to the services provided under this Agreement

2. Categories of Data Subject whose Personal Data will be processed:
   - Apprentices
   - Apprentice manager
   - Apprentice Line Manager
   - Members of BPP staff engaged in delivering the services provided under this Agreement
   - Members of Employer staff engaged in receiving the services provided under this Agreement

3. The categories of recipients to whom the Personal Data have been or will be disclosed:
   - The ESFA
   - Ofsted (where applicable to the Apprenticeship being provided)
   - The QAA (where applicable to the Apprenticeship being provided)
   - Any End Point Assessment Organisation (where applicable to the Apprenticeship being provided)
   - Any external awarding body (where applicable to the Apprenticeship being provided)
   - Any professional body (where applicable to the Apprenticeship being provided)
   - The Federation for Industry Sector Skills and Standards (for obtaining the Apprenticeship Completion Certificate)
   - Those staff of the Employer who are engaged in receiving the services provided under this Agreement (including the Apprentice’s apprenticeship manager and line manager).
   - Those staff of BPP who are engaged in providing the services provided under this Agreement.

4. Nature and purpose of processing
   - To enable BPP to deliver one or more Approved Apprenticeship Standards or Frameworks to selected employee Apprentices.
   - To ensure compliance with the ESFA Funding Rules.
   - To ensure compliance with relevant external regulatory bodies.

5. Duration of processing
   - Term of the Agreement
   - As a training provider BPP will store records of the Apprentice’s achievements on the Apprenticeship indefinitely.