Department for Education

Education & Skills Funding Agency

Guidance

ESFA Apprenticeship Agreement for Employers (for use of the Apprenticeship Service to access funded apprenticeship training) 20 August 2020

Updated 13 August 2020

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Background

A. This Agreement sets out the terms for use of the Apprenticeship Service by the Employer and the obligations by which the Employer agrees to be bound.

B. This Agreement applies to all employers including those that pay the Apprenticeship Levy as well as those employers that do not pay the Apprenticeship Levy.

1. Agreed Terms

1.1. Terms in this Agreement which are defined have the first letter of each word capitalised and are set out in Schedule 1 (Definitions and Interpretation).

1.2. Unless the context requires otherwise, words in the singular shall include the plural and in the plural shall include the singular.

1.3. A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

1.4. A reference to a person or body includes a reference to its successor.

1.5. A reference to the Employer shall also include a Connected Employer unless the context requires otherwise and the actions and non-actions of a Connected Employer shall be deemed to be the actions and non-actions of the Employer.

1.6. 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.

2. Commencement and Duration

2.1. This Agreement will start on the date the Employer enters into this Agreement on https://accounts.manage-apprenticeships.service.gov.uk and will continue in force unless terminated earlier as set out in Clause 14.

2.2. By entering into this Agreement, the Employer is agreeing to be legally bound by its terms and conditions.

3. Purpose and Use of Funding

3.1. Subject to Funding being available and any applicable Spend Controls, the Employer, or the Training Provider on behalf of the Employer, may access Funding for an Apprenticeship through the Employer’s Apprenticeship Service Account.

3.2. The Employer acknowledges and accepts that the Funding which is made available through the Employer’s Apprenticeship Service Account is solely to support the Training and End-Point Assessment of Apprentices.

3.3. The use of Funding must at all times comply with the Funding Rules.

3.4. Payments under the Employer Incentive Scheme shall be made in accordance with Schedule 2 (Incentive Payments for Hiring a New Apprentice) and shall be made in addition to the Funding.

4. Payments and Approvals

4.1. The Employer and Training Provider must agree the Apprenticeship Details before the Apprenticeship begins and this information must be recorded on the Apprenticeship Service Account.

4.2. In order for the ESFA to pay the Training Provider, the Employer or the Training Provider, on behalf of the Employer, must keep the Apprenticeship Details up to date on the Apprenticeship Service and the Employer must use the Apprenticeship Service to approve the Apprenticeship Details.

4.3. The ESFA will check the Apprenticeship Details submitted by the Training Provider against the information on the Apprenticeship Service. If the Apprenticeship Details do not match, or the Employer has not approved the Apprenticeship Details on the Apprenticeship Service, the ESFA will not make the payment to the Training Provider.

4.4. The ESFA reserves the right to change or discontinue all or any part of the Apprenticeship Service at any time.

4.5. The ESFA reserves the right to limit or remove an Employer’s access to the Apprenticeship Service if there are reasonable grounds for concluding that the Employer has breached this Agreement and / or the Funding Rules.

4.6. The Employer agrees to pay the Training Provider directly for any Employer Co-Investment which is payable in accordance with the Funding Rules.

4.7. Where the Employer’s liability to pay Employer Co-Investment occurs after the cost of Training has been paid in full from the Apprenticeship Service Account, (for example, where a change in the Employer’s tax liability reduces the amount of Funding that was previously in the Apprenticeship Service Account), the Employer agrees to pay upon request the Employer’s Co-Investment to the ESFA.

5. Requirements

5.1. An Employer must:

5.1.1. ensure that information on the Apprenticeship Service Account is accurate and that it is kept up to date, including the review and approval of information entered by the Training Provider on the Employer’s behalf;

5.1.2. comply at all times with the Funding Rules;

5.1.3. assist and cooperate with the Training Provider and / or End-Point Assessment Organisation to enable them to deliver the Training in compliance with the Funding Rules and the contract for services entered into between the Employer and the Training Provider;

5.1.4. pay the Employer Co-Investment promptly when it is liable to pay it and as agreed with the Training Provider;

5.1.5. promptly inform the ESFA by contacting the Helpdesk (08000 150600 or helpdesk@manage-apprenticeships.service.gov.uk) of any concerns that the Employer might have about the Training delivered to the Apprentice and / or the Training Provider;

5.1.6. have procedures in place to deal with conflicts of interest in relation to the Apprenticeship Training;

5.1.7. have procedures and processes in place to deal with the prevention of fraud and / or administrative malfunction;

5.1.8. upon request, supply the Training Provider with any information it may reasonably require in relation to any Apprentice or the delivery of Training;

5.1.9. have a contract for services with a Training Provider for the provision of Training to the Apprentice;

5.1.10. inform the Training Provider of any change in the Employer’s or any Apprentice’s circumstances which might affect the Training, the Funding or any other issue connected with the contract for services within 10 Working Days;

5.1.11. ensure all financial and other information disclosed to the ESFA is true and accurate;

5.1.12. ensure that it has the appropriate registrations with the Information Commissioner’s Office for controlling and / or processing data and that it maintains them for the duration of this Agreement;

5.1.13. adhere to the Computer Misuse Act 1990;

5.1.14. comply with Legislation and Guidance relating to Health and Safety and Safeguarding;

5.1.15. not commit a Prohibited Act.

6. Information, Audit and Reporting

6.1. The Employer shall, upon request, supply any documents, information, data, reports, accounts, records or written or verbal explanations whether held in physical and / or electronic form which may be reasonably required by the ESFA or its authorised representatives or auditors in connection with this Agreement or the Apprenticeship Service, including in relation to any Apprentice, Training Provider or PAYE scheme of the Employer.

6.2. The Employer shall assist and cooperate with the ESFA in relation to any audit or investigation and shall grant the ESFA or its authorised representatives or auditors access to its premises at any reasonable time, with or without notice, to examine, remove and / or copy any relevant documents and records (including electronic records) and to interview the Employer’s and any Connected Employer’s employees or staff carrying out activities in connection with this Agreement or any Apprentice receiving Training under this Agreement.

6.3. The ESFA is entitled to disclose any information obtained from the Employer:

6.3.1. to any Crown Body;

6.3.2. to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;

6.3.3. to any professional adviser, consultant, contractor or other person engaged by the ESFA directly in connection with this Agreement, provided that such information is treated as confidential by the third party receiving the information;

6.3.4. on a confidential basis to any proposed successor body to the ESFA in connection with any assignment or disposal of its rights, obligations or liabilities under this Agreement.

6.4. The ESFA is entitled to use any information about the Employer that is shared with it through any of the people or bodies referred to in Clauses 6.3.1 to 6.3.4 when determining eligibility for Funding and / or a payment under the Employer Incentive Scheme.

7. Intellectual Property Rights

7.1. The ESFA and the Employer agree that all rights, title and interest in or to any information, data, reports, documents, procedures, forecasts, technology, Know-How and any other Intellectual Property Rights whatsoever owned by either the ESFA or the Employer before the Commencement Date or developed by either party during the Term of this Agreement, shall remain the property of that party.

7.2. Subject to Clause 7.3 below, the Employer may not use any Intellectual Property Rights belonging to the ESFA or the Crown without prior written consent from the ESFA.

7.3. The Employer may use the Apprenticeships Logo for the purposes of advertising and marketing its Apprenticeships without obtaining prior consent from the ESFA.

7.4. Where the ESFA has allowed the Employer to use any of its Intellectual Property Rights in connection with this Agreement, the Employer shall immediately cease to use such Intellectual Property Rights upon request or upon termination of this Agreement.

7.5. In the event of Clause 7.4 applying, the Employer must at the election of the ESFA either return or destroy such Intellectual Property Rights as requested by the ESFA and, where relevant, shall put arrangements in place to ensure that any Connected Employer also complies with the provisions of this Clause 7.

8. Confidentiality

8.1. Subject to Clause 9 (Freedom of Information), each party shall during the Term of this Agreement and afterwards keep secret and confidential all Intellectual Property Rights or Know-How or other business, technical or commercial information disclosed to it as a result of the Agreement. Each party shall not disclose the same to any person except to the extent necessary to perform its obligations in accordance with the terms of this Agreement or except as expressly authorised in writing by the other party.

8.2. The obligation of confidentiality contained in this clause shall not apply or shall cease to apply to any Intellectual Property Rights, Know-How or other business, technical or commercial information which:

8.2.1. at the time of its disclosure by the disclosing party is already in the public domain or which subsequently enters the public domain other than by breach of the terms of this Agreement by the receiving party;

8.2.2. is already known to the receiving party as evidenced by written records at the time of its disclosure by the disclosing party and was not otherwise acquired by the receiving party from the disclosing party under any obligations of confidence; or

8.2.3. is at any time after the date of this Agreement acquired by the receiving party from a third party having the right to disclose the same to the receiving party without breach of the obligations owed by that party to the disclosing party.

8.3. As an exemption to the duty of confidentiality set out in this Clause 8, the ESFA may disclose confidential information obtained from the Employer:

8.3.1. to any other Central Government Body, Non-Departmental or Quasi Government Body or agency, central or local;

8.3.2. to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement; or

8.3.3. to any professional adviser, consultant, contractor or other person engaged by the ESFA directly in connection with this Agreement, provided that such information is treated as confidential by the receiving party.

8.4. The Employer shall, where relevant, put in place arrangements for ensuring that any Connected Employer complies with the provisions of Clause 8 as though it were a party to this Agreement.

9. Freedom of Information

9.1. The Employer acknowledges that the ESFA is subject to the requirements of the Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations 2004 (EIRs).

9.2. The Employer will:

9.2.1. provide all necessary assistance and cooperation as reasonably requested by the ESFA to enable the ESFA to comply with its obligations under the FOIA and EIRs;

9.2.2. transfer to the ESFA all requests for information relating to this Agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;

9.2.3. within 5 Working Days (or such other period as the ESFA may specify) of the ESFA’s request for information, provide the ESFA with a copy of all information belonging to the ESFA that is in the Employer’s possession or control and is relevant to the request; and

9.2.4. not respond directly to a request for information unless authorised in writing to do so by the ESFA.

9.3. The Employer acknowledges that the ESFA may be required under the FOIA and EIRs to disclose information without consulting or obtaining consent from the Employer. The ESFA shall take reasonable steps to notify the Employer of a request for information to the extent that it is permissible and reasonably practical for it to do so. Nonetheless and regardless of any other provision in this agreement, the ESFA shall be responsible for determining in its absolute discretion whether any information is exempt from disclosure in accordance with the FOIA and / or the EIRs.

9.4. Where the Employer is also subject to the requirements of FOIA and the EIRs, the ESFA agrees to assist and cooperate with the Employer in relation to any request for information, in the same manner described in Clauses 9.1 to 9.3 above.

9.5. The Employer shall, where relevant, put in place arrangements for ensuring that any Connected Employer complies with the provisions of Clause 9 as though it were a party to this Agreement.

10. Data Protection

10.1. The Employer shall comply with the Data Protection Legislation.

10.2. The Employer shall make arrangements for ensuring that any person that is working with them or for them including employees, consultants, freelance workers and Connected Employers complies with the Data Protection Legislation.

10.3. The Employer shall notify the Training Provider of any suspected or actual breach of Apprentice personal data.

11. Anti-Discrimination

11.1. The Parties shall not unlawfully discriminate within the meaning and scope of Equalities Legislation.

11.2. The Employer shall take all reasonable steps to make sure that all people and bodies involved on behalf of the Employer in delivering the Training comply with Clause 11.1.

12. Limitation of Liability

12.1. Subject to Clause 12.3, the ESFA accepts no liability whatsoever for any consequences, whether direct or indirect, that may come about as a result of the actions and / or omissions of the Employer or a Connected Employer in relation to this Agreement, or their respective obligations to third parties, including but not limited to under a contract for services between the Employer and a Training Provider.

12.2. The Employer on behalf of itself and any Connected Employer shall indemnify and not hold the ESFA and the people or bodies working on its behalf responsible for any claims, demands, actions, costs, expenses, losses, damages and all other liabilities arising or incurred as a result of this Agreement including but not limited to under a contract for services between the Employer and a Training Provider.

12.3. Neither party seeks to limit or exclude its own liability for death or personal injury caused by its own negligence, fraud, fraudulent misrepresentation or any other liability which cannot be limited or excluded by law.

12.4. Subject to Clauses 12.1 and 12.3 above, the ESFA’s liability under this Agreement is limited to paying the Funding and any Employer Incentive Payment in accordance with the Funding Rules.

13. Withholding, Suspension and Repayment of Funding

13.1. Without prejudice to the ESFA’s other rights and remedies, the ESFA may at its discretion withhold or suspend payment of Funding for the Training if:

13.1.1. the Employer materially breaches any of the terms or conditions set out in this Agreement;

13.1.2. the ESFA becomes aware of any fraud, financial irregularity, dishonesty or negligence by the Employer, or the Training Provider in connection with this Agreement;

13.1.3. any employee or other individual carrying out activities on behalf of the Employer or a Connected Employer has (a) acted dishonestly or negligently at any time in connection with this Agreement or (b) taken any actions which, in the reasonable opinion of the ESFA, bring or are likely to bring the ESFA’s name, brand or reputation or the Apprenticeships brand into disrepute;

13.1.4. the Employer was not entitled to Funding under the Funding Rules in relation to one or more Apprenticeship;

13.1.5. there occurs, in respect of the Employer or a relevant Connected Employer, any Insolvency Event or Change of Control which, in the reasonable opinion of the ESFA, may affect the Employer’s ability to comply with its obligations under this Agreement;

13.1.6. the Employer fails to comply with any of the terms and conditions set out in this Agreement (including requirements in the Funding Rules) and fails to rectify any such failure within 30 days of receiving written notice detailing the failure;

13.2. The ESFA reserves the right to recover from the Employer any Funding paid to a Training Provider where the payment of Funding or any arrangement between the Employer and the Training Provider breaches the Funding Rules or the entitlement to Funding was based on wrong, inaccurate or misleading information. The ESFA will act reasonably and proportionately in exercising its discretion to recover any sum from the Employer under this clause.

13.3. The ESFA may retain or set off any sums owed to it by the Employer which have become due and payable against any sums due to the Employer under this Agreement or any other agreement which the Employer has with the ESFA.

13.4. The Employer shall make any payments due to the ESFA without any deduction.

14. Termination

14.1. Without prejudice to the ESFA’s other rights and remedies, the ESFA may terminate this Agreement with immediate effect by giving written notice to the Employer if:

14.1.1. the Employer commits a breach of any of Clauses 5.1.9 to 5.1.15;

14.1.2. the Employer commits a breach of this Agreement which is irremediable or which it fails to remedy before the deadline specified in a written request from the ESFA requiring the breach to be remedied;

14.1.3. the Employer 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;

14.1.4. the Employer commits a material breach of any term of this Agreement including but not limited to Clauses 5.1.1 to 5.1.8;

14.1.5. the ESFA becomes aware of any fraud or financial irregularity by the Employer or a Connected Employer in connection with this Agreement or any other Agreement with the Crown;

14.1.6. any employee or other individual carrying out activities on behalf of the Employer or a Connected Employer has (a) acted dishonestly or negligently at any time in connection with this Agreement or (b) taken any actions which, in the reasonable opinion of the ESFA, bring or are likely to bring the ESFA’s name, brand or reputation or the Apprenticeships brand into disrepute;

14.1.7. any Insolvency Event or Change of Control which, in the reasonable opinion of the ESFA, may affect the Employer’s ability to comply with its obligations under this Agreement.

14.2. Without affecting any other right or remedy available to it, either party may terminate this Agreement for any reason by giving not less than 30 days’ notice in writing to the other party, or such shorter or longer notice period as may be mutually agreed in writing between them.

14.3. Following the termination of this Agreement, the following clauses shall remain in full force and effect: Schedule 1 (Definitions and Interpretation), Schedule 2 (Incentive Payments for Hiring an Apprentice), 6 (Information, Audit and Reporting), 7 (Intellectual Property Rights), 9 (Freedom of Information), 10 (Data Protection), 12 (Limitation of Liability), 13 (Withholding, Suspension and Repayment of Funding), 18 (Notices), 19 (Dispute Resolution), 21 (Joint and Several Liability) and 22 (Governing Law).

15. Assignment

15.1. The Employer may not, without the prior written consent of the ESFA, assign, transfer, sub-contract, or in any other way make over to any third party the benefit and / or the burden of this Agreement.

16. Variation

16.1. The ESFA fully reserves the right to vary the terms of this Agreement. The Employer will be asked to confirm its acceptance of the new terms and conditions through the Apprenticeship Service Account.

17. Waiver

17.1. No failure or delay by either party to exercise any right or remedy under this Agreement shall be construed as a waiver of any other right or remedy.

18. Notices

18.1. All notices and communications in relation to this Agreement shall be in writing and personally delivered, emailed, or sent by first class post to the address of the relevant party, as referred to above or in the case of an email address or correspondence address, as notified by the relevant party in writing. The notice or communication will be considered delivered as follows:

18.1.1. if personally delivered, when handed over to the addressee;

18.1.2. if sent by email, on the day the email is sent if sent on a Working Day and before 5.00 pm, otherwise the email will be considered delivered at 9.00 am on the next Working Day;

18.1.3. if sent by first class post, on the second Working Day after the day on which it is posted.

19. Dispute Resolution

19.1. Any complaint or dispute arising in relation to this Agreement shall be resolved in accordance with ESFA’s official complaints procedure which can be accessed at https://www.gov.uk/government/organisations/education-and-skills-funding-agency/about/complaints-procedure.

20. No Partnership or Agency

20.1. This Agreement shall not create any partnership or joint venture between the ESFA and the Employer, nor any relationship of principal and agent, nor authorise any party to make or enter into any commitments for or on behalf of the other party.

21. Joint and Several Liability

21.1. Where the Employer is not a company nor any other separate legal entity, the individuals who enter into and sign this Agreement on behalf of the Employer shall be jointly and severally liable for the Employer’s obligations and liabilities arising under this Agreement.

22. Governing Law

22.1. This Agreement shall be governed by and construed in accordance with the law of England and Wales and the parties irrevocably submit to the exclusive jurisdiction of the English and Welsh courts.

Schedule 1

Definitions and Interpretation

In this Agreement the following terms shall have the following meanings:

Apprentice: a person who works under an Apprenticeship Agreement.

Apprenticeship: a job with training. This includes the Training and (where required) End-Point Assessment for an employee. The full definitions of (i) an English Apprenticeship (frameworks) and (ii) an approved English Apprenticeship (standards) can be found in Part 1 of the Apprenticeships, Skills, Children and Learning Act 2009.

Apprenticeship Agreement: an Apprenticeship Agreement (https://www.gov.uk/take-on-an-apprentice/apprenticeship-agreement) is between an employer and an Apprentice, either in accordance with the Apprenticeships, Skills, Children and Learning Act 2009 sections 32 to 36 (for frameworks) or section A1 (for standards – an approved English Apprenticeship Agreement).

Apprenticeship Details: the details of the Apprentice and their Apprenticeship including but not limited to; the Apprenticeship Standard; the agreed cost of the Training and End-Point Assessment; the Apprentice’s name, date of birth and Unique Learner Number and the Apprenticeship start date.

Apprenticeship Levy: the levy payable by all employers with an annual pay bill of more than £3 million which is used to support the funding of Apprenticeships.

Apprenticeships Logo: the logo consisting of the word “Apprenticeships” in plain black or white typeface with a semi-circle of orange or blue brush strokes to the left hand side of the letter A, the Intellectual Property Rights of which are owned by the Crown.

Apprenticeship Service: the digital service provided by the ESFA to manage and fund Apprenticeship Training approved by Employers through the service and delivered by Training Providers listed on the Register of Apprenticeship Training Providers using

Training Providers listed on the Register of Apprenticeship Training Providers using government funds.

Apprenticeship Service Account: the part of the Apprenticeship Service where the Employer can add Apprenticeship Details and see information about Funding and Apprentices they have previously added to their account.

Apprenticeship Standard: the apprenticeship standards designed by employers that have had both the standard and associated assessment plan approved by the Institute for Apprenticeships and Technical Education (IfATE), and are published on IfATE's website (https://www.instituteforapprenticeships.org/) alongside their allocated funding band.

Bribery Act: the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation.

Change of Control: has the meaning given in section 1124 of the Corporation Tax Act 2010.

Commencement Date: the date on which the Employer signs this Agreement through their Apprenticeship Service Account as set out in Clause 2.1.

Connected Employer: any entity (being a distinct legal entity from the Employer) which is connected with the Employer within the meaning of Schedule 1 Parts 1 and 2 of the National Insurance Contributions Act 2014, and which, not being a contracting party to this Agreement, carries out activities on behalf of the Employer in relation to the Apprenticeship Service or employs an Apprentice whose Training is funded through the Employer's Apprenticeship Service Account.

Data Protection Legislation: means (i) the General Data Protection Regulation (Regulation (EU) 2016/679), the Data Protection Act 2018, including Part 3 which implements the Law Enforcement Directive (Directive (EU) 2016/680) and any applicable national implementing Laws as amended from time to time.

Employer: the employer which enters into a contract with a Training Provider to commission Training (a) for its own Apprentices and / or (b) on behalf of a Connected Employer for the Connected Employer's Apprentices, to be funded through the Employer's Apprenticeship Service Account.

Employer Co-Investment: a financial contribution towards the cost of Training which is payable by the Employer to the Training Provider in accordance with the Funding Rules.

End-Point Assessment: the independent assessment of the Apprentice's knowledge, skills and behaviours carried out by an End-Point Assessment Organisation, after the Apprentice has passed their gateway assessment, to confirm that they have met the requirements of any relevant Apprenticeship Standard.

End-Point Assessment Organisation: any organisation on the Register of End-Point Assessment Organisations which is selected by an Employer and contracted by a Training Provider to carry out End-Point Assessment.

Equalities Legislation: The Equality Act 2010 and any other law, enactment, order, or regulation relating to discrimination whether in race, gender, religion, disability, sexual orientation, age or otherwise in employment.

ESFA: the Secretary of State for Education, acting through the Education and Skills Funding Agency, an executive agency of the Department for Education, whose principal address is at Cheylesmore House, Quinton Road, Coventry, CV1 2WT.

Funding: the funding paid to the Training Provider on behalf of the Employer towards the cost of Training and End-Point Assessment in accordance with this Agreement.

Funding Rules: the ESFA's rules for funding Apprenticeships published on GOV.UK https://www.gov.uk/guidance/apprenticeship-funding-rules as revised and amended from time to time.

Guidance: any applicable guidance or directions with which the Employer is bound to comply.

Health and Safety: procedures intended to prevent accident or injury in workplaces or public environments.

Insolvency Event: means any of the following circumstances:

a. a party suspends or threatens to suspend payment of its debts or is unable to pay its debts as they fall due or is deemed unable to pay its debts within the meaning of any relevant provision of the Insolvency Act 1986;

b. a party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors (other than for the sole purpose of a bona fide reconstruction or amalgamation);

c. a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the relevant party (other than for the sole purpose of a bona fide reconstruction or amalgamation);

d. a receiver, administrative receiver or similar officer is appointed over the whole or any part of the relevant party's business or assets;

e. an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given;

f. any event occurs, or proceeding is taken, with respect to the relevant party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in (a) - (e)(inclusive); or

g. the relevant party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

Intellectual Property Rights: all patents, trademarks, logos (including the Apprenticeships Logo), copyrights and design rights (whether registered or not) and all applications for any of the foregoing and all rights of confidence and Know-How however arising for their full term and any renewals and extensions.

Know-How: information, data, know-how or experience whether patentable or not and including but not limited to any technical and commercial information relating to research, design, development, manufacture, use or sale.

Legislation: means any Act of Parliament or subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, any exercise of the Royal Prerogative, and any enforceable community right within the meaning of Section 2 of the European Communities Act 1972, in each case in the United Kingdom.

Prohibited Act: means:

a. offering, giving or agreeing to give to any servant of the Crown any gift or consideration of any kind as an inducement or reward for:

i. doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Agreement or any other contract with the Crown; or

ii. showing or not showing favour or disfavour to any person in relation to this Agreement or any other contract with the Crown;

b. entering into this Agreement or any other contract with the Crown where a commission has been paid or has been agreed to be paid by the Employer or on its behalf, or to its knowledge, to a servant of the Crown unless before the relevant contract is entered into particulars of any such commission and of the terms and conditions of any such contract for the payment thereof have been disclosed in writing to the ESFA;

c. committing any offence:

i. under the Bribery Act;

ii. under legislation creating offences in respect of fraudulent acts; or

iii. at common law in respect of fraudulent acts in relation to this Agreement or any other contract with the Crown; or

d. defrauding or attempting to defraud or conspiring to defraud the Crown.

Register of End-Point Assessment Organisations: the online register of End-Point Assessment Organisations from which the Employer may select an organisation to carry out the End-Point Assessment of Apprentices.

Register of Apprenticeship Training Providers: means the register maintained by the ESFA of organisations qualified to receive Funding from the ESFA to deliver Apprenticeships.

Safeguarding: action taken to protect vulnerable groups including children and young people from any type of harm from adults or other children.

Spend Controls: the controls applied to manage the availability of Funding through the Apprenticeship Service as set out in the Funding Rules.

Term: means the duration of this Agreement as set out in Clause 2.1.

Training: the delivery of training and on-programme assessment and where relevant End-Point Assessment by the Training Provider and where relevant the End-Point Assessment Organisation to one or more Apprentices.

Training Provider: an organisation listed on the Register of Apprenticeship Training Providers which has a contract with the Employer to provide Training to one or more Apprentices.

Working Day: means Mondays to Fridays (inclusive) in each week, excluding bank and other public holidays in England.

Schedule 2

Incentive Payments for Hiring a New Apprentice

Definitions

Eligibility Criteria: means the eligibility criteria for the Employer Incentive Scheme as set out in Paragraph 1 of this Schedule.

Employer Declaration: means the declaration the Employer is asked to make about the eligibility of Apprentices and the accuracy of the information they provide in their application for an Employer Incentive Payment through their Apprenticeship Service Account.

Employer Incentive Payment: means a payment under the Employer Incentive Scheme which comprises of the First Incentive Payment and if relevant, the Second Incentive Payment of the amount stated in the Funding Rules.

Evidence: means the information set out in the relevant section of the Funding Rules that an Employer is required to hold to support a claim for an Employer Incentive Payment.

First Incentive Payment: means a payment made in accordance with Paragraph 10 of fifty percent of the total Employer Incentive Payment that applies for the relevant Apprentice.

Scheme Period: means 1 August 2020 to 31 January 2021.

Second Incentive Payment: means a payment made in accordance with Paragraph 10 of fifty percent of the total Employer Incentive Payment that applies for the relevant Apprentice.

Conditions of Funding and Eligibility Criteria

1: An Employer that takes on an Apprentice in the circumstances specified in the section in the Funding Rules entitled "Incentive Payments for Hiring a New Apprentice" may claim an Employer Incentive Payment in respect of that Apprentice.

2: In order to be eligible for the Employer Incentive Payment in relation to an Apprentice as referred to in Paragraph 1, the Employer must:

2.1. Comply at all times with the Funding Rules;

2.2. Meet the eligibility requirements for the Incentive Payments for Hiring a New Apprentice set out in the Funding Rules;

2.3. Be registered on the Apprenticeship Service;

2.4. Submit correct, accurate and up to date information as part of the application for an Employer Incentive Payment and the Employer Declaration in relation to each Apprentice;

2.5. Provide Evidence promptly if requested in writing to do so by the ESFA.

3: Subject to Paragraph 4, an Employer may make a claim for the Employer Incentive Payment in respect of each Apprentice that meets the criteria as set out in Paragraph 2.

4: If an Apprentice is employed by more than one employer, only one of the employers may make a claim for the Employer Incentive Payment in accordance with the Funding Rules.

Payment of the Employer Incentive Payment

5: The Employer Incentive Payment will be made in accordance with Paragraphs 6 to 10.

6: The information submitted by the Employer in accordance with Paragraph 2.4 will be checked against data submitted to the ESFA by the Training Provider and any other information available to the ESFA in accordance with Clauses 6.3 and 6.4 of this Agreement. Where the information does not match and / or other requirements as set out in the Funding Rules are not met, the ESFA will be under no obligation to pay an Employer Incentive Payment.

7: Before making any Employer Incentive Payment, the ESFA will carry out the checks set out in Clause 4.3 of this Agreement including but not limited to the age of the Apprentice, the date the Apprentice started the Apprenticeship and the period during which the Apprentice has been undertaking the Apprenticeship and the Employer will ensure that it has Evidence in respect of these checks.

8: Where the ESFA does not make a payment of Funding for Training for an Apprentice, the associated Employer Incentive Payment will not be paid. This could be for a number of reasons including but not limited to the Apprenticeship Details on the Apprenticeship Service do not match and / or payments for Training have been stopped or paused by the Employer or the ESFA.

9: If one or more of the Eligibility Criteria as set out in Paragraph 2 are not met in relation to an Apprentice, the Employer will not be entitled to the relevant Employer Incentive Payment. If the ESFA has already made the relevant Employer Incentive Payment, it will recover the payment in accordance with Paragraph 12.

10: If the Employer meets the Eligibility Criteria for an Employer Incentive Payment, the ESFA will pay the Employer the First Incentive Payment or the Second Incentive Payment as relevant within 10 Working Days by transferring the relevant Employer Incentive by BACS transfer to the bank account specified by the Employer in its application for the Employer Incentive Scheme.

Extension of the Scheme Period

11: The ESFA may at any time and in its sole discretion designate one or more additional periods as follow-on Scheme Periods by notice to the Employer from time to time. Any such notice shall specify any amendment that is required to this Schedule.

Recovery of Payment

12: If in the reasonable opinion of the ESFA, the Employer:

12.1. fails to meet any obligation set out in this Schedule;

12.2. failed to meet one or more of the Eligibility Criteria as referred to in Paragraph 2 when any Employer Incentive Payment was made to it;

12.3. has provided incorrect, inaccurate or misleading information or declarations in its application for the Employer Incentive Scheme; and / or

12.4. has failed to supply Evidence following a written request from the ESFA as set out in Paragraph 2

the ESFA may take all action necessary under this Agreement to recover any Employer Incentive Payments that have been made, including without limitation suspending any further payments of Employer Incentive Payments, terminating the Agreement, invoicing, retaining or setting-off payment of any amount it owes to the Employer under any other agreement that the ESFA has with the Employer.

13: The ESFA reserves the right at any time to recover any Employer Incentive Payments that have been made in respect of an Apprentice if subsequent changes to data submitted by the Employer and / or the Training Provider mean the Eligibility Criteria are no longer met.

Miscellaneous

14: The ESFA will not accept any new applications for Employer Incentive Payments any later than 3 months after the Scheme Period has elapsed. For the avoidance of doubt, the ESFA will continue to make Employer Incentive Payments after the Scheme Period has elapsed in relation to Apprentices who meet the criteria set out in Paragraph 2.

15: The Employer must retain all Evidence in relation to the Employer Incentive Scheme for 6 years from the date of the relevant Evidence or if the Evidence is not dated, from the date the relevant Evidence came into existence.

16: This Schedule forms part of the Agreement as varied and the terms and conditions of the Agreement apply to the Employer Incentive Scheme in addition to the provisions of this Schedule.

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