**Dated 20[ ]**

**[Training Provider]**

**and**

**[End-Point Assessment Organisation]**

**Contract for Apprenticeship End**

**Point Assessment Services**

**Please read the note below before using this template documentation**

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**THIS AGREEMENT** is dated **20[ ]**

|  |  |
| --- | --- |
| **END-POINT ASSESSMENT ORGANISATION DETAILS** | |
| **End-Point Assessment Organisation (EPAO):** | [EPAO’S COMPANY NAME] LIMITED |
| **Company Number:** | [EPAO’S COMPANY NUMBER] |
| **EPAO’s address:** | [EPAO’S REGISTERED ADDRESS] |
| **[EPAO's Representative:]** | Name: [NAME]  Title: [TITLE]  Email: [EMAIL]  Telephone: [NUMBER]  Postal Address: [POSTAL ADDRESS] |
| **TRAINING PROVIDER DETAILS** | |
| **Training Provider:** | [TRAINING PROVIDER NAME] |
| **Company Number:** | [TRAINING PROVIDER COMPANY NUMBER] |
| **Training Provider's address:** | [ADDRESS] |
| **Training Provider’s UKPRN** |  |
| **Training Provider’s VAT number:** | [NUMBER] |
| **[Training Provider’s Representative:]** | Name: [NAME]  Title: [TITLE]  Email: [EMAIL]  Telephone: [NUMBER]  Postal Address: [POSTAL ADDRESS] |
| **SPECIFIC TERMS** | |
| **Expiry Date** | [[DATE] OR [The [number] (Xth) anniversary of this agreement]] |
| **Additional End-Point Assessment Services** | Tick the required option:  **Fixed:** This agreement is for the End-Point  Assessment Services set out in Schedule 1  *only* and Clause 5 *shall not* apply  **OR**  **Multiple:** This agreement allows additional  End-Point Assessment Services to be ordered  and Clause 5 *shall* apply |
| **SCHEDULES** | |
| **Schedule 1:** | End-Point Assessment(s):   1. [List End-Point Assessments required] 2. [ ] 3. [ ] |
| **Schedule 2:** | Mandatory Policies:   1. [List Training Provider Policies that EPAO must follow] 2. [ ] 3. [ ] |

This agreement is entered into on the date set out above and is made up of these Contract Particulars, the Contract Terms and the Schedules stated above.

**SIGNED** on behalf of the **TRAINING PROVIDER:**

**……………………………………………… ……………………………………………….**

Signature Print Name

**SIGNED** on behalf of the **END-POINT ASSESSMENT ORGANISATION:**

**……………………………………………… ……………………………………………….**

Signature Print Name

**Contract Terms**

1. **Definitions and Interpretation**

1.1 The definitions and rules of interpretation in this clause apply to this agreement:

**EPAO’s Representative** means the person stated as the EPAO’s representative in the Contract Particulars or notified to the Training Provider from time to time who is the EPAO’s single point of contact for communication with the Training Provider in relation to this Agreement;

**Accountability Statement** means the “Apprenticeship Accountability Statement” published by the Department for Education which sets out the roles and responsibilities of the various regulatory bodies responsible for regulating Apprenticeships a copy of which can be found at:

<https://www.gov.uk/government/publications/apprenticeship-accountability-statement>

**Apprentice** means a person who works under an Apprenticeship Agreement entered into with an Employer;

**Apprenticeship** means the training and (where applicable) End-Point Assessment for an employee as part of a job with an accompanying skills development programme in accordance with section A1 of the Apprenticeships, Skills, Children and Learning Act 2009;

**Apprenticeship Agreement** means a complete apprenticeship agreement that complies with relevant statutory requirements, being either (a) an approved English apprenticeship agreement; or (b) an apprenticeship agreement within the meaning given in section 32 or section A1(4) of the Apprenticeship, Skills, Children and Learning Act 2009 as it applies in relation to England;

**Apprenticeship Programme** means a course of Training delivered by the Training Provider to an apprentice in accordance with an Approved Apprenticeship Standard and which concludes with End-Point Assessment pursuant to this agreement;

**Apprenticeship Programme Completion Date** means the date on which the last Apprentice enrolled on an Apprenticeship Programme successfully completes the relevant End-Point Assessment provided pursuant to this agreement (including following any resits or retakes necessary for such successful completion) or withdraws from the Apprenticeship or is deemed to have failed the apprenticeship as defined in the Apprenticeship Standard;

**Approved Apprenticeship Standard** has the meaning given in Section A1 of the Apprenticeships, Skills, Children and Learning Act 2009;

**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;

**Contract Particulars** means the particulars of this agreement as set out and attached to this agreement above;

**Contract Terms** means these contract terms from clause 1 to 20 (inclusive);

**Data Controller** has the meaning set out under the Data Protection Legislation;

**Data Processor** has the meaning set out under the Data Protection Legislation;

**Data Protection Legislation** means (i) the Data Protection Act 2018 and, for the periods when they are in force, (ii) the General Data Protection Regulation (Regulation (EU) 2016/679) and the Law Enforcement Directive (Directive (EU) 2016/680) and any applicable national implementing laws as amended from time to time;

**Data Subject** has the meaning set out in the Data Protection Legislation;

**Employer** means any person, organisation or business that has a contract of employment with an Apprentice who is the recipient of Training;

**Employer Agreement** means any agreement entered into between the Training Provider and an Employer for the delivery of Training to that Employer’s Apprentices;

**End-Point Assessment** the independent assessment (and any resits of that assessment) of the Apprentice’s knowledge, skills and behaviours carried out by the EPAO at the end of the Training to confirm that the Apprentice has met the requirements of any relevant Approved Apprenticeship Standard;

**End-Point Assessment Organisation (EPAO)** means the person named as such in the Contract Particulars;

**End-Point Assessment Programme** means a programme of End-Point Assessment set out in Schedule 1 on incorporated into Schedule 1 pursuant to clause 5;

**End-Point Assessment Services** the provision of End-Point Assessments in respect of the Apprenticeship Programmes to be delivered by the Training Provider, as further detailed in the relevant End Point Assessment Programme or agreed pursuant to Clause 5;

**EPA Assessment Plan** means the scheme of assessment approved by the Institute for Apprenticeships in relation to an Approved Apprenticeship Standard which EPAOs use to develop assessment tools and deliver EPAs;

**ESFA** means 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;

**ESFA Contingency** means the action following change in employer, apprentice or provider circumstances set out in the Funding Rules;

**ESFA Contingency Event** means each scenario described in each ESFA Contingency;

**ESFA Contract** means the contract entered into between the Training Provider and ESFA in relation to the provision of funding to the Training Provider;

**Expiry Date** means the date stated as being the expiry date in the Contract Particulars;

**Fees** means the amounts payable by the Training Provider to the EPAO in respect of the End-Point Assessment Services as set out in the relevant End-Point Assessment Programme, the cost of resits or retakes pursuant to clause 4.4 and additional costs pursuant to clause 19.2;

**Funding Rules** means the Apprenticeship Funding Rules for main providers amended from time to time and available at: https://www.gov.uk/guidance/apprenticeship-funding-rules

**Good Industry Practice** means the exercise of such degree of skill, diligence and care which would reasonably and ordinarily be expected from a skilled and experienced provider engaged in the discharge of their usual business (as the context so dictates) under the same or similar circumstances as those applicable to this Agreement;

**Institute for Apprenticeships and Technical Education (IfATE)** means the Institute for Apprenticeships and Technical Education, being an executive non-departmental public body sponsored by the Department for Education responsible for ensuring that high quality Approved Apprenticeship Standards and end point assessment plans are developed, advising government on funding for each Approved Apprenticeship Standard and ensuring that all End-Point Assessments are quality assured, or such other statutory or non-statutory body responsible for the same from time to time;

**Intellectual Property Rights** means any and all intellectual property rights of any nature anywhere in the world whether registered, registerable or otherwise, including patents, utility models, trademarks, registered designs and domain names, applications for any of the foregoing, trade or business names, goodwill, copyright and rights in the nature of copyright, design rights, rights in databases, moral rights, know-how and any other intellectual property rights which subsist in computer software, computer programs, websites, documents, information, techniques, business methods, drawings, logos, instruction manuals, lists and procedures and particulars of customers, marketing methods and procedures and advertising literature, including the “look and feel” of any websites;

**Law** means all statutes, statutory instruments, regulations, byelaws, rules, judicial rulings and orders made under any statute, directive or by any competent legislative or judicial body in England and Wales including but not limited to the Bribery Act;

**Mandatory Policies** means the policies of the Training Provider set out in Schedule 2 or made known to the EPAO from time to time;

**Ofqual** means the non-ministerial government department known as the Office of Qualifications and Examinations Regulation (Ofqual) regulates qualifications, examinations and assessments in England;

**OfS** means the Office for Students or such other statutory or non-statutory body responsible for regulating the higher education sector from time to time and all matters currently assigned to the OfS under the Accountability Statement;

**Ofsted** means the Office for Standards in Education, Children’s Services and Skills Piccadilly Gate, Store Street, Manchester, M1 2WD or such other statutory or non-statutory body responsible for carrying out its functions from time to time (including but not limited to the regulation of the further education sector, teacher training in the higher education sector and training in apprenticeships at all levels including degree apprenticeships and all matters assigned to it under the Accountability Statement);

**Personal Data** has the meaning set out the Data Protection Legislation;

**QAA UK Quality Code** means the code published by the QAA which sets out the expectations that all providers of UK higher education are required to meet.

**Quality Assurance Agency for Higher Education (QAA)** means the Quality Assurance Agency for Higher Education, company number 03344784 with registered office Southgate House, Southgate Street, Gloucester, Gloucestershire, GL1 1UB or such other statutory or non-statutory body responsible for carrying out its functions from time to time (including but not limited to monitoring and improving quality in the higher education sector and all matters assigned to it under the Accountability Statement);

**Register of End-Point Assessment Organisations** means thelist of organisations maintained by the ESFA that have been assessed as being suitable to conduct independent End-Point Assessment for a particular standard;

**Training** means the delivery of training and on-programme assessment by the Training Provider or its subcontractor to one or more Apprentices;

**Training Provider’s Representative** means the person stated as the Training Provider’s representative in the Contract Particulars or notified to the EPAO from time to time;

**VAT** means value added tax at the rate prevailing at the time of the relevant supply charged in accordance with the provisions of the Value Added Tax Act 1994;

1.2 Clause and Schedule headings do not affect the interpretation of this agreement.

1.3 References to clauses and Schedules are (unless otherwise provided) references to the clauses and Schedules of this agreement.

1.4 If there is an inconsistency between any of the provisions in the main body of this agreement and the Schedules, the provisions in the main body of this agreement shall prevail.

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

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

1.7 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time.

1.8 Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

1.9 Words or phrases defined in the Funding Rules shall have the same meaning in this agreement.

1.10 A reference to a person includes firms, partnerships and corporations and their successors and permitted assignees or transferees.

1. **Commencement and Duration**

2.1 This agreement shall commence on the date stated in the Contract Particulars and shall continue until the later of:

2.1.1 the Expiry Date; or

2.1.2 the latest Apprenticeship Programme Completion Date to occur provided that the relevant Apprenticeship Programme giving rise to such date has commenced prior to the Expiry Date.

2.2 The Expiry Date may be amended by agreement between the parties in writing.

1. **Training Provider Obligations**

3.1 The Training Provider shall manage the delivery of Training to Employers and the Apprentices:

3.1.1 using reasonable skill and care;

3.1.2 in compliance with the Funding Rules;

3.1.3 in compliance with the ESFA Contract; and

3.1.4 in compliance with the Law and associated codes and guidance from time to time in force.

3.2 The Training Provider shall carry out the actions allocated to it in the End-Point Assessment Programme and provide the EPAO with sufficient information to enable End-Point Assessment to take place.

3.3 The Training Provider will include the amount the Employer has negotiated with the EPAO within the price it agrees with the Employer for the cost of the apprenticeship.

3.4 Subject to the EPAO fulfilling the obligations set out in clause 4, the Training Provider shall use its reasonable endeavours to recover sums in respect of the Fees from the ESFA and/or the relevant Employer under the Employer Agreement (as the case may be).

3.5 The Training Provider will lead the relationship with the EPAO including where delivery of the apprenticeship training is subcontracted.

1. **EPAO Obligations**

4.1 The EPAO shall deliver the End-Point Assessment Services:

4.1.1 in accordance with the relevant End-Point Assessment Programme;

4.1.2 using reasonable skill and care;

4.1.3 in compliance with the Funding Rules;

4.1.4 in compliance with the ESFA Contract

4.1.5 in compliance with the Law and associated codes and guidance from time to time in force

4.1.6 in compliance with the quality codes, guidance and requirements issued by the IfATE, the OfS, QAA and/or Ofsted, Ofqual or other relevant regulatory body or accreditation institution (as the case may be)

4.1.7 in accordance with the relevant EPA Assessment Plan.

4.2 The EPAO shall:

4.2.1 promptly do all acts and not omit to do anything reasonably requested of the EPAO by the Training Provider for the purposes of the Training Provider’s:

(a) compliance with the Funding Rules;

(b) obtaining any payment to which it may be entitled under the Funding Rules or an Employer Agreement (including but not limited to promptly providing the Training Provider with evidence that an End-Point Assessment has been completed by an Apprentice); and

(c) fulfilment of its obligations under an Employer Agreement, and the EPAO agrees to be bound by and undertakes to the Training Provider to comply with all applicable terms of an Employer Agreement;

4.2.2 comply with the Mandatory Policies

4.2.3 promptly provide the Training Provider with any ILR data that the EPAO holds so that the Training Provider’s data returns to the ESFA accurately reflect delivery information;

4.2.4 provide the Training Provider with sufficient evidence to allow it to:

(a) assess the EPAO’s performance against Ofsted’s Common Inspection Framework or the requirements of the QAA UK Quality Code; and

(b) prepare its self–assessment report in accordance with the Funding Rules and including appropriate evidence;

4.2.5 always have suitably qualified and experienced staff available to provide the End-Point Assessment Services and provide evidence of such qualifications (in such form as the Training Provider may request) to the reasonable satisfaction of the Training Provider;

4.2.6 immediately inform the Training Provider if evidence of irregular financial or delivery issues arises, including but not limited to non-delivery of End Point Assessment when funds have been paid, sanctions imposed by a regulatory organisation, allegations of fraud, not meeting relevant QAA UK Quality Code indicators and members or other relevant parties;

4.2.7 ensure that all relevant external quality assurance and/or accreditation required in any Approved Apprenticeship Standard or otherwise has been obtained and the cost of such external quality assurance and/or accreditation is included in the Fees.

4.3 To secure an efficient working relationship between the Training Provider and the EPAO and to protect the interests of the Apprentice, the EPAO shall:

4.3.1 cooperate in good faith with the Training Provider and/or any of its subcontractors and/or any Employer to enable the successful delivery and completion of each Apprenticeship;

4.3.2 allow the Training Provider, an Employer and/or the ESFA (including their staff, auditors, contractors, or agents) access to the Apprentice, the EPAO’s premises and any relevant records or documents, including health and safety records, to allow the Training Provider to comply with the Training Provider’s obligations under an Employer Agreement and the Funding Rules. Such access shall be as reasonably agreed between the parties or on reasonable notice from the Training Provider;

4.3.3 appoint an EPAO’s Representative and promptly notify the Training Provider of any change of the EPAO’s Representative from time to time.

4.4 If requested by the Training Provider, the EPAO shall arrange for Apprentices to resit or retake End-Point Assessment and the cost of such resits or retakes shall be incorporated into the Fees and be payable by the Training Provider pursuant to clause 6.1.

4.5 The EPAO warrants at the date of this agreement that it is, and undertakes for the duration of this agreement that it shall be, registered on the Register of End-Point Assessment Organisations and the EPAO shall notify the Training Provider as soon as it becomes aware that it is in breach of this warranty.

4.6 The EPAO acknowledges that the Funding Rules require the Training Provider to arrange End-Point Assessments and the EPAO shall not enter into any contract or other arrangement with any third party for the delivery of End-Point Assessments to Apprentices who are receiving Training from the Training Provider.

1. **Ordering Additional End-Point Assessment Services**

Where indicated in the Contract Particulars, this clause 5 shall have effect.

5.1 The Training Provider may prior to the Expiry Date request that additional End-Point Assessment Services be delivered by the EPAO in accordance with this clause 5.

5.2 The Training Provider and the EPAO shall discuss the nature and content of the additional End-Point Assessment Services and such a discussion shall result in the Training Provider requesting either:

5.2.1 the re-provision of all or part of the End-Point Assessment Services set out in Schedule 1 (a **Repeat Services Request**) in accordance with clause 5.3; or

5.2.2 the development of a new programme of End-Point Assessment 5.4 (a **New Services Request**).

5.3 **Repeat End-Point Assessment Services**

5.3.1 The Training Provider shall notify the EPAO in a written Repeat Services Request which of the End-Point Assessment Services (or part thereof) set out in Schedule 1 that it wants to be repeated and shall provide the EPAO with sufficient information (in the opinion of the Training Provider acting reasonably) to allow the EPAO to prepare an updated programme of End-Point Assessment Services (an **Updated Programme**).

5.3.2 Within ten (10) Business Days of receipt of the Repeat Services Request, the EPAO shall:

(a) notify the Training Provider that it declines to repeat the requested End-Point Assessment Services; or

(b) provided that the Training Provider has provided sufficient information pursuant to clause 5.3.1, provide the Training Provider with a Updated Programme (in the form of the End-Point Assessment Programme set out in Schedule 1) containing all relevant information in respect of End-Point Assessments to be delivered by the EPAO as required by the Funding Rules.

5.3.3 The parties shall negotiate the contents of the Updated Programme provided pursuant to clause 5.3.2(b) and once agreed between the parties the EPAO and the Training Provider shall each indicate such agreement by executing the Updated Programme under hand.

5.3.4 An Updated Programme that has been executed by both parties pursuant to clause 5.3.3 shall be deemed to form part of the End-Point Assessment Services for the purposes of this agreement and shall be incorporated into Schedule 1 accordingly.

5.4 **New End-Point Assessment Services**

5.4.1 The Training Provider shall notify the EPAO in a written New Services Request that it request the development and delivery of a new programme of End Point Assessment (a **New Programme**). The New Services Request shall contain sufficient information (in the opinion of the Training Provider acting reasonably) for the EPAO to develop a New Programme setting out the End-Point Assessment required.

5.4.2 Within twenty (20) Business Days of receipt of the New Services Request, the EPAO shall:

(a) notify the Training Provider that it declines to offer the requested Training; or

(b) provided that the Training Provider has provided sufficient information pursuant to clause 5.4.1, provide the Training Provider with a New Programme (in the form of the End-Point Assessment Programmes set out in Schedule 1) containing all relevant information in respect of End-Point Assessment to be delivered by the EPAO as required by the Funding Rules.

5.4.3 The parties shall negotiate the contents of the New Programme provided pursuant to clause 5.4.2(b) and once agreed between the parties the EPAO and the Training Provider shall each indicate such agreement by executing the New Programme under hand.

5.4.4 A New Programme that has been executed by both parties pursuant to clause 5.4.3 shall be deemed to form part of the End-Point Assessment Services for the purposes of this agreement and shall be incorporated into Schedule 1 accordingly.

1. **Fees and Payment**

6.1 In consideration of the EPAO fulfilling its obligations under this agreement, the Training Provider shall pay the Fees to the EPAO to the extent that payment in respect of the Fees has been recovered by the Training Provider from the ESFA or the relevant Employer under the relevant Employer Agreement.

6.2 The EPAO shall send invoices in respect of the Fees to the Training Provider at such intervals as may be agreed between the parties from time to time (or if not agreed, on a monthly basis). Subject to clause 6.1, the Training Provider shall pay such invoices within thirty (30) days of receipt or such longer period as may be agreed.

6.3 The Fees stated in this agreement are exclusive of VAT. In the case of any VAT payable in respect of the End-Point Assessment Services, the VAT shall be incorporated into the Fees and shall be payable pursuant to clause 6.1.

6.4 Without prejudice to the rights of either party under this agreement, any sums that remain unpaid after their due date shall bear interest at the rate of four per cent (4%) above the Bank of England base rate from time to time.

1. **Dispute Resolution**

7.1 In the event of a dispute arising between the parties in relation to this agreement, either party may serve written notice on the other stating the nature of the dispute (a **Dispute Notice**).

7.2 After service of the Dispute Notice, the following procedure shall be followed by the parties (all periods specified in this clause 7.2 shall be extendable by mutual agreement):

7.2.1 within five (5) days, the Training Provider’s Representative and the EPAO’s Representative shall meet to attempt to settle the dispute (each party acting in good faith);

7.2.2 if the Training Provider’s Representative and the EPAO’s Representative are unable to reach a settlement within twenty one (21) days from the date of service of the Dispute Notice, the appropriate senior officers of each of the parties shall meet within the following fourteen (14) days to attempt to settle the dispute; and

7.2.3 if no settlement results from the meeting specified in clause 7.2.2, for the following fifty six (56) days the parties shall attempt to settle the dispute by mediation (in accordance with the CEDR Model Mediation Procedure) by an independent mediator appointed by CEDR unless otherwise agreed between the parties, with costs to be shared equally between the parties.

7.3 If no settlement is reached under clause 7.2 the dispute shall be determined by the English Courts and the parties submit to the exclusive jurisdiction of such court for such purposes.

1. **Termination**

8.1 Without prejudice to any rights that have accrued under this agreement or any of its rights or remedies, either party may at any time terminate this agreement or any part of it with immediate effect by giving written notice to the other party if:

8.1.1 the other party commits a material breach of any term of this agreement and (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;

8.1.2 the other party repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement;

8.1.3 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;

8.1.4 the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

8.1.5 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or on connection with the winding up of that other party;

8.1.6 an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party;

8.1.7 the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;

8.1.8 a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;

8.1.9 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;

8.1.10 any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 8.1.3 to clause 8.1.9 (inclusive);

8.1.11 the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business;

8.1.12 any of the provisions of Regulation 73(1) of the Public Contracts Regulations 2015 apply;

8.1.13 the Training Provider’s funding agreement with the ESFA is terminated;

8.1.14 the relevant Employer Agreement (or relevant part of it) is terminated; or

8.1.15 the EPAO ceases to be in compliance with clause 4.5.

8.2 The Training Provider may terminate this agreement at any time by giving not less than three (3) months’ written notice to the EPAO.

1. **Consequences of Termination**

9.1 Other than as set out in this agreement, neither party shall have any further obligation to the other under this agreement after its termination.

9.2 Any provision of this agreement which expressly or by implication is intended to come into or continue in force on or after termination of this agreement, including clause 1, clause 4.2.1, clause 4.3.2, clause 7, clause 9, clause 10, clause 12, clause 15, clause 16, clause 17 and clause 20 shall remain in full force and effect.

9.3 Termination or expiry of this agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry.

9.4 On termination (for any reason) or expiry of this agreement:

9.4.1 each party shall promptly return to the other any equipment, documents, information or materials owned by the other party (or a third party) and used in connection with the End-Point Assessment Services; and

9.4.2 each party shall cooperate in good faith to ensure that there is continuity of assessment such that no Apprentice is materially disadvantaged by the termination of this agreement.

1. **ESFA Contingencies**

The parties shall take all necessary steps to give effect to the ESFA Contingencies in the event of an ESFA Contingency Event occurring. Where the occurrence of an ESFA Contingency Event means that an End-Point Assessment is no longer required, the Fees shall be reduced accordingly and any advance payment or deposit paid by the Training Provider to the EPAO shall be refunded within 30 days. For the avoidance of doubt, giving effect to the ESFA Contingencies (including but not limited to the withholding of Fees) shall not constitute a breach of this agreement.

1. **Force Majeure**

Neither party shall be in breach of this agreement nor liable for delay in performing, or failure to perform, any of its obligations under this agreement if such delay or failure results from events, circumstances or causes beyond its reasonable control. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for ninety (90) days or more, the party not affected may terminate this agreement by giving thirty (30) days' written notice to the other party.

1. **Liabilities and Insurance**

12.1 Neither party excludes or limits liability to the other party for:

12.1.1 fraud or fraudulent misrepresentation;

12.1.2 death or personal injury caused by negligence;

12.1.3 a breach of any obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or

12.1.4 any matter for which it would be unlawful for the parties to exclude liability.

12.2 Subject to clause 12.1, neither party shall in any circumstances be liable to the other whether in contract, tort (including for negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, for:

12.2.1 any loss (whether direct or indirect) of profits, business, business opportunities, revenue, turnover, reputation or goodwill;

12.2.2 loss (whether direct or indirect) of anticipated savings or wasted expenditure (including management time); or

12.2.3 any loss or liability (whether direct or indirect) under or in relation to any other contract with the exception of an Employer Agreement.

12.3 Subject to clause 12.1 and except in relation to the indemnity contained in clauses 16.3 and/or 17, the parties’ total aggregate liability in contract, tort (including negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of this agreement shall be limited to the total Fees payable during the 12 months immediately preceding the date on which the claim arose or, if the claim arose during the first twelve months of this agreement being in force, the Fees payable during the first twelve months of this agreement.

12.4 **Insurance**

Each party shall at its own cost effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by that party, arising out of the its performance of the agreement, including death or personal injury, loss of or damage to property or any other loss.

12.5 The terms of any insurance or the amount of cover shall not relieve the insured party of any liabilities under this agreement.

1. **Safeguarding**

13.1 The EPAO acknowledges that the Training Provider has a statutory duty to safeguard and promote the welfare of individuals under the age of 18 years old and vulnerable adults over the age of eighteen (18) years old pursuant to the Children Act 2004 and the Safeguarding Vulnerable Groups Act 2006.

13.2 The EPAO shall and shall ensure that the EPAO’s employees, contractors and agents:

13.2.1 comply with the requirements of the Children Act 2004 and the Safeguarding Vulnerable Groups Act 2006 to the extent that they apply to the EPAO; and

13.2.2 confidentially report to the Training Provider’s designated senior person from time to time, any concerns relating to an Apprentice or other learner enrolled with the Training Provider, employee, agent or contractor of the Training Provider.

13.3 The EPAO shall by signing this agreement, be deemed to have read the Training Provider’s policy and guidance relating to safeguarding and will (at its own cost) comply with its contents at all times.

1. **Health and Safety**

14.1 The parties shall perform their obligations under this agreement (including those in relation to the End-Point Assessment Services) in accordance with:

14.1.1 all applicable Law regarding health and safety; and

14.1.2 the health and safety policy of the other party or any third party whilst at the other party’s or any third party’s premises (to the extent it has been made known to the party attending the relevant premises).

14.2 Each Party shall notify the other as soon as practicable of any health and safety incidents or material health and safety hazards at either party’s premises of which it becomes aware and which relate to or arise in connection with the performance of this agreement. Each party shall adopt any necessary associated safety measures in order to manage any such material health and safety hazards.

1. **Confidentiality**

15.1 Subject to Clause 15.2, the parties shall keep confidential all matters relating to this agreement and shall use all reasonable endeavours to prevent their employees, contractors, agents and other personnel from making any disclosure to any person of any matters relating it.

15.2 Clause 15.1 shall not apply to any disclosure of information:

15.2.1 required by any applicable law, provided that Clause 17 shall apply to any disclosures required under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004;

15.2.2 that is reasonably required by persons engaged by a party in the performance of such party’s obligations under this agreement;

15.2.3 where a party can demonstrate that such information is already generally available and in the public domain otherwise than as a result of a breach of Clause 15.1;

15.2.4 in any document which the parties to this agreement have agreed contains no commercially sensitive information;

15.2.5 which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party; and

15.2.6 by the Training Provider to any other department, office or agency of the Government.

1. **Intellectual Property**

16.1 Each party shall retain ownership of all Intellectual Property Rights in any materials:

16.1.1 created prior to this agreement; or

16.1.2 generated other than solely for the purpose of delivering the End-Point Assessment Services,

by that party and used for the delivery of an End-Point Assessment Programme (the **Project Materials**). Intellectual Property Rights generated by either party solely for the purpose of delivering the End-Point Assessment Services shall belong to the Training Provider.

16.2 Each party shall make available to the other and to each Employer free of charge and hereby grants to the other party and to each Employer a non-exclusive, non-transferable, royalty free licence to use their Project Materials in relation to this Agreement for the duration of the relevant End-Point Assessment Programme.

16.3 Each party shall indemnify the other against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Right in the performance of a party’s obligations under this agreement, except to the extent that they have been caused by or contributed to by the indemnified party’s acts or omissions.

1. **Data Protection and Freedom of Information**

17.1 The EPAO acknowledges that the Training Provider is subject to the requirements of the Data Protection Legislation, the Freedom of Information Act 2000 and the Environmental Information Regulations 2004, all as amended or replaced from time to time. The Training Provider acknowledges that the EPAO is subject to the requirements of the Data Protection Legislation as amended or replaced from time to time.

17.2 The EPAO shall offer such prompt and reasonable assistance to the Training Provider as the Training Provider may request from time to time, to assist it in complying with its information disclosure obligations under the legislation at Clause 17.1.

17.3 The Training Provider and the EPAO acknowledge that each Party is individually a Data Controller in respect of any Personal Data processed by it and each agrees to comply with its obligations under the Data Protection Legislation.

17.4 In the event that one Party wishes to exchange Personal Data with the other Party then that Party (the requesting Party) shall make a written request to the other Party setting out why it considers such a transfer to be compliant with the Data Protection Legislation. It shall be for the other Party to determine whether it is willing to exchange such data in accordance with its obligations under the Data Protection Legislation. The Parties will where possible in order to facilitate the exchange of information anonymise or aggregate such information to the degree that it does not identify any individual. The Parties may agree additional terms or conditions upon which such data is to be shared.

17.5 The Parties shall and shall procure that any of their staff and agents involved in the provision of this agreement and any sub-contractor shall comply with their obligations under Data Protection Legislation and shall enter into appropriate arrangements with third parties.

17.6 Upon the termination or expiry of this agreement each Party shall ensure that all Personal Data held by it shall be up-to-date and accurate. Where it is necessary in order for the efficient transition of services to the other Party or to a third party to be achieved then the transferring Party shall, having first satisfied itself that such transfer is compliant with all laws, transfer current and required Personal Data to the other party or to the third party in a secure manner and shall take all reasonable steps, at its own cost, to provide the Personal Data in a usable and compatible format.

17.7 Historical personal data shall be retained by the Parties in accordance with legal retention requirements. Personal Data which cannot be lawfully retained shall be securely deleted in accordance with Data Protection Legislation and Good Industry Practice.

17.8 For the avoidance of doubt, it is stated here that neither Party is a Data Processor on behalf of the other Party in furtherance of their obligations under this agreement. In the event it is established at any time during this agreement that Personal Data is to be processed by the one party on behalf of the other, the parties shall:

17.8.1 immediately enter into a data processing agreement on reasonable terms to be determined by the Training Provider to ensure full compliance with Data Protection Legislation; and

17.8.2 indemnify and keep the other party indemnified in full for any and all consequences (including a Personal Data breach) arising as a result of that party’s failure to comply with any of its obligations under this clause 17.

17.9 Failure by the EPAO to enter into a data processing agreement in accordance with clause 17.8.1 shall be deemed a material/serious breach which shall entitle the Training Provider to immediately terminate the agreement without consequence or any liability under this agreement;

17.10 Any clause in this Contract limiting a party’s liability in respect of any obligations, claims, losses, damages or otherwise under the Data Protection Legislation shall not apply

17.11 Each Party (the indemnifying Party) agrees to fully indemnify and keep indemnified and defend at its own expense the other Party against all costs, claims, damages or expenses incurred by the other Party or for which the other Party may become liable due to any failure by the indemnifying Party or its employees or agents or sub-contractors to comply with their obligations under this Clause 17.

17.12 Where the EPAO receives a request for information under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004 relating to the operation of this agreement, the EPAO shall promptly pass the request to the Training Provider and shall not respond directly to any such request without the Training Provider’s prior written consent.

1. **Equality Legislation**

18.1 Each party shall (and shall procure that its employees, contractors, agents and other personnel shall):

18.1.1 perform its obligations under this agreement (including those in relation to the End-Point Assessment Services) in accordance with all applicable equality law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);

18.1.2 at all times comply with the provisions of the Human Rights Act 1998 in the performance of this agreement.

1. **Contract Variation**

19.1 No variation to this agreement other than pursuant to clause 19.3 shall have effect unless agreed in writing and signed by both parties pursuant to clause 19.2.

19.2 **Change Protocol**

19.2.1 In the event either party (acting reasonably) requires a change (**Change**) to this agreement, the parties shall discuss any such Change proposed by the other and such discussion shall result in a written request for a Change being submitted by the requesting party to the other party.

19.2.2 The parties shall work together in good faith to assist the requesting party in preparing a written recommendation for a Change which shall set out:

(a) the title of the Change;

(b) the originator and the date of the request;

(c) the reason for the Change;

(d) the full details of the Change, including any specification or service standards;

(e) the price, if any, of or associated with the Change;

(f) a timetable for implementation;

(g) the impact, if any, of the Change on other aspects of this agreement, including contractual documentation and resources;

(h) provision for signature of the request by all parties to signal acceptance of the Change; and

(i) any other relevant information reasonably requested by any party.

19.2.3 If approved, each party shall sign the written recommendation. The signing of the written recommendation shall signify acceptance of a Change by the parties.

19.2.4 Once signed by both parties, the Change shall be immediately effective and the parties shall perform their respective obligations on the basis of the agreed amendment.

19.3 Where in the reasonable opinion of the Training Provider a change to one or more of the End-Point Assessment Services is required in order to comply with rules, guidance or instructions issued from time to time by the ESFA, the IfATE, the OfS, QAA, Ofsted, Ofqual or other relevant regulatory body or accreditation institution (a **Regulator Change**), the Training Provider shall notify the EPAO in writing of the Regulator Change and the Regulator Change shall have effect from such date as may be stated in such notice. Any additional costs reasonably incurred by the EPAO arising from the Regulator Change shall, subject to the provisions of clause 6.1, be incorporated into the Fees and be payable by the Training Provider.

1. **General**

20.1 **Assignment and subcontracting**

20.1.1 No party shall otherwise novate, assign or transfer its rights or obligations under this agreement without the prior written consent of the other party.

20.1.2 The EPAO shall under no circumstances subcontract its obligations under this agreement.

20.2 **Provisions to Remain in Force**

If any term, condition or provision of this agreement shall be held to be invalid, unlawful or unenforceable to any extent, such term, condition or provision shall not affect the validity, legality and enforceability of the other provisions of or any other documents referred to in this agreement.

20.3 **Entire Agreement**

This agreement and the documents referred to in this agreement contain all the terms which the parties have agreed in relation to the subject matter of this agreement.

20.4 **Waiver**

No term or provision of this agreement shall be considered as waived by a party to this agreement unless a waiver is given in writing by that party. No waiver shall be a waiver of a past or future default or breach, nor shall it amend, delete or add to the terms, conditions or provisions of this agreement unless (and only to the extent) expressly stated in that waiver.

20.5 **Counterparts**

This agreement may be executed and delivered in any number of counterparts, each of which so executed will be an original, but together will constitute one and the same instrument.

20.6  **No Agency**

Nothing in this agreement shall be construed as creating a partnership or as a contract of employment between the parties and neither party shall be, or be deemed to be, an agent of the other party and neither party shall hold itself out as having authority or power to bind the other in any way.

20.7 **No Double Recovery**

Notwithstanding any other provisions of this agreement, no party shall be entitled to recover compensation or to make a claim under this agreement in respect of any loss that it has incurred to the extent that it has already been compensated in respect of that loss pursuant to this agreement or otherwise.

20.8 **Further Assurance**

Each party shall do all things and execute all further documents necessary to give full effect to this agreement.

20.9 **Governing Law**

This agreement and any non-contractual obligation arising out of it is subject to the laws of England and the parties agree that any disputes between the parties shall be subject to the exclusive jurisdiction of the courts of England.

20.10 **Third Party Rights**

No term of this agreement is intended to give any entitlement as against any party to any person who is not a party to this agreement and no term of this agreement may be enforced by any person other than a party to this agreement under the Contracts (Rights of Third Parties) Act 1999.

**Schedule 1**

**End-Point Assessment Programmes**

Inserted overleaf are the End-Point Assessment Programmes (to be delivered pursuant to the relevant Employer Agreement) in which the End-Point Assessment Services are described:

***[Template End-Point Assessment Programme is inserted overleaf.***

***This will need to be filled in for each apprenticeship programme and each Fees schedule tailored appropriately.***

***Where multiple programmes of End-Point Assessment Services are being provided under the same contract, multiple End-Point Assessment Programmes will need to be inserted]***

|  |  |  |
| --- | --- | --- |
| **End-Point Assessment Programme** | | |
|  | **Employer and Apprenticeship Occupation** | [Employer Name]  [Name of apprenticeship/job title] |
|  | **Apprenticeship Standard** | [Insert name of apprenticeship Standard to be satisfied] |
|  | **Name/Level of qualification** | [Insert name/level of qualification] |
|  | **Associated Regulatory Body** | [Insert associated regulatory body where applicable. Where approval is needed from them before Apprenticeship delivery takes place ensure it is done so] |
|  | **Target End-Point Assessment Date** | [Insert end date] |
| **Number of Apprentices undertaking Apprenticeship Programme** | | |
|  | **Number of Apprentices** | [Insert number and names of apprentices] |
| **End-Point Assessment Organisation Actions** | | |
|  | **EPAO Activities Prior to End-Point Assessment** | [Insert details of pre-End-Point Assessment activities (e.g. providing specimen papers, preparatory materials, involvement in Gateway process)] |
|  | **End-Point Assessment to be carried out** | [Insert details of the End-Point Assessment that will be carried out by the EPAO. (e.g. exams, practical tests, observations)] |
|  | **End-Point Assessment Location** | [Insert location of End-Point Assessment] |
| **Training Provider Actions** | | |
|  | **Actions to be done by the Training Provider that are needed for the End-Point Assessment** | [Insert details of Training Provider Actions (e.g. arranging location for exams, allowing access to equipment for observations to take place, coordinating access to Employer or subcontractor)] |

|  |  |
| --- | --- |
| **Fees** | |
| The agreed Fees (excluding VAT) for the End-Point Assessment of each Apprentice under this Agreement is as follows: | |
| **Cost Allocation** | **Price per Apprentice (£)** |
| End-Point Assessment Services Costs | [ ] |
| **Total** | [ ] |

***[The following signature section should be included only on additional End-Point Assessment Programmes added after the date that the Agreement is signed in accordance with clause 5]***

This End-Point Assessment Programme is agreed and incorporated (in respect of the End-Point Assessment Services) into Schedule 1 of the agreement between the Training Provider and the End-Point Assessment Organisation dated 20[ ] in accordance with clause 5 of that agreement.

**SIGNED** on behalf of the **TRAINING PROVIDER:**

**……………………………………………… ……………………………………………….**

Signature Print Name

**SIGNED** on behalf of the **END-POINT ASSESSMENT ORGANISATION:**

**……………………………………………… ……………………………………………….**

Signature Print Name

**Schedule 2**

**Mandatory Policies**

Inserted overleaf are the Mandatory Policies set out in the Contract Particulars.