

CENTRE AGREEMENT - TERMS AND CONDITIONS

TERMS AND CONDITIONS (AS REFERRED TO IN THE CENTRE RECOGNITION FORM)

1. Definitions and Interpretation

1.1 The definitions and rules of interpretation set out in Appendix 1 apply to this Agreement.

2. Agreement Duration and Centre Recognition

2.1 The Agreement shall commence on the date that the Centre Recognition Form is signed by you and shall remain in force unless and until it is terminated in accordance with its provisions or these Terms.

2.2 Notwithstanding the coming into force of the Agreement pursuant to clause 2.1, you shall not be recognised as approved by us as a potential provider of Qualifications in the Territory unless and until we notify you in writing that you have been given such approval. Whether or not we give any such approval (and, where given, the timing of such approval) shall be determined by us in our absolute discretion. Any such approval may be given by us at any time during the term of the Agreement and, where given, shall be subject to clause 2.3.

2.3 Notwithstanding the granting of Centre Recognition, you shall not be approved to deliver any Qualifications in the Territory unless and until:

2.3.1 you have submitted a Qualification Approval Form in respect of each Qualification that you wish to apply for; and

2.3.2 we notify you that you have been given such approval in respect of any specific Qualification and Territory. Whether or not we give any such approval (and, where given, the timing of such approval) shall be determined by us in our absolute discretion. Any such approval may be given by us at any time during the term of the Agreement in respect of any Qualifications, whether or not approval was previously given in relation to those or any other Qualifications.

2.4 For the avoidance of doubt:

2.4.1 any granting of Qualification Approval shall apply only to the specific Qualifications and Territory referred to in the Qualification Approval Form (and no other Qualifications or Territory); and

2.4.2 any granting of Centre Recognition or Qualification Approval shall be subject to the other provisions of the Agreement.

3. Delivery of Qualifications and Services

- 3.1 Subject to Qualification Approval, you shall deliver Qualifications in accordance with the Agreement (including, for the avoidance of doubt, the Centre Rules, the Relevant Regulations and the Policies).
- 3.2 Depending on the Qualifications you have been granted Qualification Approval for, we shall provide the relevant Services.
- 3.3 Subject to these Terms, we shall provide to you the Qualification Specifications.
- 3.4 We shall not be obliged to provide the Services or observe our other obligations under the Agreement where:
 - 3.4.1 you have given us information which is wrong, misleading or incomplete; or
 - 3.4.2 you have not complied with these Terms and/or have not done what we agreed you would do within the Agreement.

4. Changes to the Agreement

- 4.1 Without prejudice to any other provision of the Agreement, we may issue or update any Policies, any Relevant Regulations and any changes to any aspect of the Agreement (including, for the avoidance of doubt, these Terms, the Centre Rules or any Relevant Regulations) by, at our discretion, publishing them on the Portal and/or on the Website and/or by email to the main contact email address we hold for you at the relevant time.
- 4.2 It is your responsibility to regularly check the Portal and the Website for any updates to the Policies.
- 4.3 Without prejudice to clause 4.2, we shall inform you of any material changes to any Policies, Relevant Regulations, and any aspect of the Agreement and where any additional Policies are created.

5. Compliance

- 5.1 You shall, at all times:
 - 5.1.1 comply with these Terms, the Centre Rules, the Relevant Regulations, the Policies and Relevant Legislation;
 - 5.1.2 ensure that no act or omission by you or your Workforce or the Third Party Suppliers puts or may put us in breach of any Relevant Legislation and/or Relevant Regulations or bring us into disrepute. If this occurs you shall promptly (and within 2 Business Days) notify us and consult with affected Learners and Users to formulate and take any action required and shall provide evidence of such consultation to us upon request;
 - 5.1.3 be solely responsible for obtaining (at your own cost) any licences or permits necessary for the delivery of Qualifications in the Territory (if any); and

- 5.1.4 ensure you, your Workforce and the Third Party Suppliers are familiar with and comply with all relevant requirements of the Agreement (including the Centre Rules, Relevant Regulations, the Policies and Relevant Legislation).
- 5.2 You shall not (and you shall ensure that your Workforce, the Third Party Suppliers and any other person connected with you does not):
 - 5.2.1 make any false or misleading representations relating to us, a Qualification, the Centre Recognition or the Centre Services; or
 - 5.2.2 advertise or promote Qualifications or the Centre Services in a manner likely to be misleading to Users.
- 5.3 You hereby warrant, agree and undertake that:
 - 5.3.1 the details contained within the Centre Recognition Form and the Qualification Approval Form and any other information which you provide to us from time to time are accurate and complete in all material respects and are not misleading; and
 - 5.3.2 the person signing the Centre Recognition Form and Qualification Approval Form on your behalf is and will be duly authorised to do so.
- 5.4 You shall notify us of:
 - 5.4.1 any changes in the laws, regulations or other applicable laws in the Territory; and/or
 - 5.4.2 you become subject to any enforcement or regulatory proceedings in the Territory, that may affect your ability to deliver the Qualifications in accordance with the Agreement.

6. Charges, Invoicing and Payment

- 6.1 You will be invoiced for and shall pay to us a registration fee and all other applicable Charges in accordance with the relevant provisions of the Agreement (including the Invoicing Policy and the Centre Rules).
- 6.2 All Charges shall be paid within our payment terms, details of which are set out in the Invoicing Policy.
- 6.3 If you fail to make any payment due to us under the Agreement by the due date for payment, then, without prejudice to any other rights or remedies we have, we shall have the right to require you to pay interest on the overdue amount at the rate of 4% per annum above the Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount.

7. Records and Audit

- 7.1 You shall prepare and keep full and accurate records of all relevant matters in connection with the performance of your obligations under the Agreement, including all applicable records which you are required to maintain pursuant to the Relevant Regulations and Relevant Legislation.
- 7.2 We may, from time to time (at our discretion and acting reasonably), carry out audits to ensure that you are complying with the provisions of the Agreement.

- 7.3 Without prejudice to clause 7.2, you shall allow us, our agents, auditors and advisers to carry such inspections, audits and tests as may be required for the purpose of conducting our own internal audits or any audits required by Relevant Regulations and/or the Relevant Legislation.
- 7.4 You shall promptly provide us, our agents, auditors and/or advisers and/or (if required) any of the Regulatory Bodies (the 'Reviewer') with all access, reasonable co-operation and assistance in relation to any audit pursuant to this clause 7, including:
- 7.4.1 all information reasonably required for the purposes of such audit;
 - 7.4.2 granting or procuring the grant of reasonable access to premises (including the Centre Address, the Satellite Sites and the premises of Third Party Suppliers), your Workforce, the Third Party Suppliers and Learners;
 - 7.4.3 making any documents and records required to be maintained under the Agreement and any relevant operational records or manuals available for inspection; and
 - 7.4.4 providing a reasonable number of copies of any documents or records required by the Reviewer and/or granting reasonable copying facilities to the Reviewer for the purposes of making such copies.
- 7.5 We shall provide at least 5 Business Days' notice to you of any audit we intend to carry out pursuant to this clause 7 unless:
- 7.5.1 we have reasonable grounds to suspect that you are in breach of your obligations under the Agreement or other circumstances have arisen which would give rise to us having the right to terminate the Agreement (in which case, no prior notice need be given); or
 - 7.5.2 the audit is required by, or in connection with, any of the requirements of any of the Regulatory Bodies (in which case, shorter notice or no notice may be given to reflect any notice given by the relevant Regulatory Body to us).
- 7.6 We shall bear all costs of any audits carried out by us pursuant to this clause 7 except in any case where such audit:
- 7.6.1 is to be carried out in a Territory outside of the United Kingdom (in which case, all costs incurred in respect of the relevant audit shall be agreed between the parties); or
 - 7.6.2 is the consequence of or uncovers a default of yours (in which case, all costs incurred in respect of the relevant audit shall be payable by you); or
 - 7.6.3 is required by, or in connection with any of the requirements of, any of the Regulatory Bodies (in which case, each of the parties shall bear its own costs).

8. Confidentiality

- 8.1 You shall keep in strict confidence any Confidential Information which you may obtain for time to time, provided that this does not apply to any Confidential Information if and to the extent that it:
- 8.1.1 is or becomes generally available to the public (other than as a result of its disclosure by you, your Workforce or the Third Party Suppliers in breach of this clause 8); or
 - 8.1.2 was previously available or known to you on a non-confidential basis; or
 - 8.1.3 is required to be disclosed by Relevant Legislation and/or the Relevant Regulations provided that, to the extent you are legally permitted to do so, you give us as much notice of such disclosure as possible and you take into account our reasonable requests in relation to the content of such disclosure.
- 8.2 You shall not use any Confidential Information for any purpose other than for the purpose of exercising your rights or performing your obligations under the Agreement.
- 8.3 You shall not disclose Confidential Information to any third party, other than to such members of your Workforce (and the Third Party Suppliers where appropriate) as need to know it for the purpose of exercising your rights or performing your obligations under the Agreement, and shall ensure that such of your Workforce (and the Third Party Suppliers where appropriate) are subject to obligations of confidentiality which are no less onerous than those contained in this clause 8. You shall be deemed to be directly liable to us for any breach of such obligations of confidentiality by any third party to whom you have disclosed the Confidential Information.

9. Data Protection

- 9.1 The Parties acknowledge and agree that for the purposes of Data Protection Law each Party shall be an independent Controller in respect of the Shared Personal Data.
- 9.2 Each Party shall ensure that it complies with the Data Sharing Agreement set out in Appendix 3 (Data Sharing Agreement) of this Agreement and applicable Data Protection Law at all times during the term of this Agreement.

10. Intellectual Property Rights

- 10.1 You acknowledge and agree that:
- 10.1.1 the Intellectual Property Rights in or in relation to the Qualifications, Qualification Specifications, Policies, Relevant Regulations and our business (including our materials, data, computer programs, source codes and reports), together with the goodwill connected therewith (together the **Relevant IPRs**), belong to us or our licensors at all times; and
 - 10.1.2 you shall not obtain any rights in the Relevant IPRs other than as expressly provided under the Agreement.
- 10.2 Subject to these Terms and Qualification Approval, you may use the Relevant IPRs in the Territory during the term of the Agreement to provide the Qualifications to Learners, or as authorised by us in any policy (and not for any other purpose). You will comply with any limitations, guidelines and/or restrictions related to the Relevant IPRs which are communicated to you by us from time to time.

- 10.3 You may only use our Trade Marks in the Territory in connection with the Qualifications and strictly in accordance with any written instructions that we may issue to you from time to time.
- 10.4 You shall not at any time do, omit to do, or authorise any third party to do or to omit to do, anything which could constitute a breach of the Relevant IPRS and/or invalidate or be inconsistent with the Relevant IPRs.
- 10.5 You shall assign to us, with full title guarantee and free from all third party rights, all existing and future Intellectual Property Rights which you or your Workforce or Third Party Suppliers may generate in or in relation to the Qualifications, Policies, Relevant Regulations and our business (including any other materials we develop), together with the goodwill connected therewith, to the fullest extent permitted by law (the "Assigned Rights"). Insofar as they do not so vest automatically by operation of law or under the Agreement, you shall hold legal title in such rights on trust for us.
- 10.6 You shall promptly, at our request, do (or procure to be done) all such further acts and things and the execution of all such other documents as we may from time to time require for the purpose of securing for us the full benefit of the terms of the Agreement, including all right, title and interest in and to the Intellectual Property Rights and all other rights assigned to us in accordance with clause 10.5.
- 10.7 You warrant, agree and undertake to us that as at the date of each assignment contemplated in Clause 10.5:
- 10.7.1 You are the sole legal and beneficial owner of, and that you own all rights and interests in, the Assigned Rights;
- 10.7.2 you are not aware of any infringement, likely infringement, or any claims in relation to any infringement of the Assigned Rights; and
- 10.7.3 as far as you are aware, the use of the Assigned Rights will not infringe the rights of any third party.
- 10.8 You shall obtain waivers of any moral rights in the Qualifications, Policies and/or Relevant Regulations to which any individual is now or may be at any future time entitled under Chapter IV of Part I of the Copyright Designs and Patents Act 1988 or any similar provisions of law in any jurisdiction.
- 10.9 You shall inform us immediately of any infringements or other issues relating to our Intellectual Property Rights which you become aware of.

11. Sanctions

- 11.1 You shall comply with and be bound by the relevant provisions of the Sanctions Policy.
- 11.2 Where we intend to apply one or more of the Sanctions, the provisions of the Sanctions Policy shall apply.
- 11.3 Without prejudice to any other rights or remedies available to us, we may apply any of the Sanctions, in accordance with the relevant provisions of the Sanctions Policy:
- 11.3.1 in the circumstances set out in the Sanctions Policy; and
- 11.3.2 in the circumstances where we are entitled to terminate the Agreement pursuant to clause 12.1, 12.3 or 12.5.

- 11.4 For the avoidance of doubt, where we are entitled to apply the Sanctions pursuant to clause 11.3 and/or any Sanctions are applied, this shall not preclude us from also having the right to terminate the Agreement or suspend the provision of the Services where we are entitled to do so under clauses 12.1, 12.3, 12.7, 12.10 and 12.11.
- 11.5 If we apply a Sanction or we otherwise exercise any right which results in the withdrawal of Qualification Approval previously granted by us in relation to one or more (but not all) Qualifications then (except if and to the extent otherwise notified by us in writing):
- 11.5.1 this shall not affect the provisions of the Agreement insofar as they apply to the remaining Qualifications in respect of which Qualification Approval has not been withdrawn (and such provisions shall continue in full force and effect accordingly); and
- 11.5.2 references in the Agreement to the “Qualifications” shall be deemed to be a reference to such remaining Qualifications.

12. Termination or suspension

Termination without cause

- 12.1 Subject to clause 12.2, either party shall be entitled to terminate the Agreement at any time without cause, by giving not less than one month’s notice in writing to the other.
- 12.2 Where either party gives notice to terminate the Agreement pursuant to clause 0 then termination shall not take effect unless and until the expiry of the achievement process for all of the Learners for all of the Qualifications for which Qualification Approval was in force at the time such notice took effect. For the avoidance of doubt, all relevant provisions of this Agreement shall continue to apply until such expiry (and we shall continue to provide all applicable Services and you shall continue to deliver the Qualifications accordingly).

Termination by either party with immediate effect

- 12.3 Either party shall be entitled to terminate the Agreement with immediate effect at any time, by giving notice in writing to the other, if:
- 12.3.1 the other party commits any material breach of its obligations under the Agreement and (if the breach is capable of remedy) fails to remedy that breach within a period of 14 (fourteen) days after receipt of notice in writing requiring it to do so;
- 12.3.2 the other party ceases, or threatens to cease, to carry on all or substantially the whole of its business; or
- 12.3.3 an Insolvency Event occurs in relation to the other party.
- 12.4 For the purposes of the Agreement, an **Insolvency Event** means:
- 12.4.1 the relevant party is unable or admits inability to pay its debts as they fall due (or is deemed to or declared to be unable to pay its debts under Relevant Legislation), suspends or threatens to suspend making payments on any of its debts or, by reason of actual or anticipated financial difficulties or commences negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness;
- 12.4.2 the value of the assets of the relevant party is less than its liabilities (taking into account contingent or prospective liabilities);
- 12.4.3 a moratorium is declared in respect of any indebtedness of the relevant party;

12.4.4 any corporate action, legal proceedings or other procedure or step is taken in relation to:

12.4.4.1 the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of the relevant party;

12.4.4.2 a composition, compromise, assignment or arrangement with any creditor of the relevant party;

12.4.4.3 the appointment of a liquidator, receiver, administrator, administrative receiver, compulsory manager or other similar officer in respect of the relevant party or any of its assets; or

12.4.4.4 enforcement of any security interest (howsoever described) over any assets of the relevant party; or

12.4.5 any event analogous to those set out in clause 12.4.4 occurs in any jurisdiction in respect of the relevant party.

Automatic termination upon withdrawal of Centre Recognition

12.5 If we apply a Sanction which results in withdrawal of Centre Recognition or otherwise withdraw Centre Recognition for any reason, then the Agreement shall automatically terminate without notice on the date on which such Sanction is applied or on which you are notified of the withdrawal of Centre Recognition (as the case may be).

Termination upon expiry of all Qualifications

12.6 If all of your approved Qualifications have expired (due to not having any registrations over a two-year period as set out in the Qualification Approval Form), then your Centre Recognition shall lapse and the Agreement shall automatically terminate without notice, with effect from the date all your Qualification(s) have expired.

Termination by Ascentis with immediate effect

12.7 Without prejudice to any other rights or remedies available to us (and in addition to our rights to terminate the Agreement under clauses 12.1,0 and 12.3), we shall be entitled to terminate the Agreement with immediate effect at any time, by giving notice in writing to you if:

12.7.1 you fail to pay any undisputed amount due under the Agreement on the due date for payment and remain in default not less than 14 (fourteen) days after being notified in writing to make such payment;

12.7.2 required to do so by Relevant Legislation or by any Regulatory Body (or to avoid breaching any Relevant Legislation or any requirements of any Regulatory Body);

12.7.3 you repeatedly breach any of the provisions of the Agreement in such a manner that we consider that your conduct is inconsistent with you having the intention or ability to give effect to the provisions of the Agreement;

12.7.4 you are unable to offer Qualifications as a result of a change in Relevant Legislation in the Territory, or as a result of loss of a licence or permit necessary to deliver the Qualifications in the Territory;

12.7.5 there is a change affecting who Controls you;

- 12.7.6 we cease to develop or make available, or propose to cease developing or making available, to Learners the Qualifications; or
- 12.7.7 if (in our opinion) an event has occurred, or is likely to occur, which has or could reasonably be expected to have, an Adverse Effect.
- 12.8 For the purposes of clause 12.7.7 and paragraph 8.2.3 of the Centre Rules, an **Adverse Effect** means any act, omission, event, incident or circumstance (other than where caused by any default of ours) or any change in Relevant Legislation which:
- 12.8.1 gives rise to prejudice to Learners or potential Learners; or
- 12.8.2 adversely affects:
- 12.8.2.1 our or your ability to undertake the development, delivery or award of Qualifications in accordance with the Relevant Regulations;
- 12.8.2.2 the standards of Qualifications which we make available or propose to make available, or
- 12.8.2.3 public confidence in Qualifications.
- 12.9 By way of illustrative example (but without limitation) for the purposes of clause 12.8, an Adverse Effect may include circumstances where:
- 12.9.1 there is a substantial error in your assessment materials (including examination papers);
- 12.9.2 there has been a loss or theft of, or a breach of confidentiality in, any assessment materials (including examination papers);
- 12.9.3 we cannot supply assessment materials (including examination papers) for a scheduled assessment or examination date;
- 12.9.4 there has been a failure in the delivery of an assessment which threatens the ability of an assessor to differentiate accurately and consistently between the levels of attainment demonstrated by Learners;
- 12.9.5 we or you will be unable to meet a published date for the issue of results or the award of a Qualification;
- 12.9.6 we or you have issued incorrect results or certificates;
- 12.9.7 we or you believe that there has been an incident of malpractice or maladministration, which could either invalidate the award of a Qualification which you make available or could affect a third party organisation recognised by a Regulatory Body for the purposes of awarding products similar to the Qualifications;
- 12.9.8 we or you are named as a party in any criminal or civil proceedings or are subjected to a regulatory investigation or sanction by any Regulatory Body;
- 12.9.9 a senior officer of yours or ours is a party to criminal proceedings (other than minor driving offences), is subject to any action for disqualification as a company director, or is subject to disciplinary proceedings by any Regulatory Body;

12.9.10 the number of complaints made by Learners to you, or ourselves, reaches an unacceptable level (as determined by us);

12.9.11 you, your Workforce or Third Party Suppliers do anything which could damage our reputation or goodwill, including as a result of any political activities or unlawful conduct or irresponsible or negligent behaviour, and

12.9.12 we are entitled to take any action in accordance with the Sanctions Policy.

Termination in relation to data protection compliance

12.10 Each Party reserves the right to inspect the other Party's arrangements for the Processing of Shared Personal Data and to terminate the Agreement with immediate effect where it considers that the other Party is not Processing the Shared Personal Data in accordance with this Agreement and either the circumstances are irremediable or the other Party has failed to remedy them within 14 days of being notified in writing.

Suspension or withdrawal of Qualification Approval

12.11 Without prejudice to any other rights or remedies available to us (including our rights to terminate the Agreement in accordance with its provisions), we shall be entitled to suspend the provision of the Services (or part thereof), or withdraw Qualification Approval in respect of any one or more or all Qualifications, at any time (without liability to you):

12.11.1 if and to the extent required to do so by Relevant Legislation or by any Regulatory Body (or to avoid any breach of Relevant Legislation or the requirements of any Regulatory Body);

12.11.2 if you are in breach of any provisions of the Agreement; and/or

12.11.3 pending receipt by us of any necessary information, assistance or materials from you which we need in order to provide the relevant Services.

12.12 We shall, if and to the extent reasonably practicable to do so (having regard to the relevant circumstances), provide prior notice to you of any suspension of the provision of the Services or withdraw of Qualification Approval pursuant to clause 12.11. We shall not be required to give such prior notice where this would or may (in our opinion):

12.12.1 contravene any Relevant Legislation or the requirements of any Regulatory Body;

12.12.2 prejudice the interests of any Regulatory Body or any potential investigation by a Regulatory Body; or

12.12.3 prejudice our interests (including where any delay in suspending the provision of the Services would prevent us from avoiding any breach of Relevant Legislation or the requirements of any Regulatory Body).

12.13 Where the provision of the Services is suspended by us or Qualification Approval is withdrawn pursuant to clause 12.11, we shall (subject to our own legal and regulatory obligations) notify you of any such suspension or withdrawal, and the suspension or withdrawal shall take immediate effect upon written notice or on such late date specified by us in the notice.

12.14 If we suspend the provision of the Services or withdraw Qualification Approval pursuant to clause 12.11 then:

12.14.1 any associated obligations of ours shall not apply to any period in which the Services are so suspended; and

12.14.2 such suspension shall not preclude us from subsequently applying any of the Sanctions and/or from subsequently terminating the Agreement, if and to the extent we are entitled to do so, for the same circumstances giving rise to our right to such suspension.

12.15 For the avoidance of doubt:

12.15.1 if we terminate the Agreement under clauses 12.3, 12.7 or 12.10/12.5, this shall not preclude us from subsequently applying any of the Sanctions pursuant to clause 11.3, if and to the extent applicable (and for the avoidance of doubt, our rights of Sanction pursuant to clause 11.3 shall survive termination of the Agreement); and

12.15.2 if either party terminates the Agreement under clause 12.1, this shall not preclude:

12.15.2.1 any termination of the Agreement in accordance with any of its other provisions prior to the date on which termination would take effect pursuant to clause 12.2; or

12.15.2.2 us from subsequently applying any of the Sanctions pursuant to clause 11.3, if and to the extent applicable.

13. Consequences of Termination

13.1 On termination of the Agreement for any reason (and without affecting the rights or remedies of either party):

13.1.1 all outstanding sums payable by you to us (including any Charges which have been accrued but not previously payable) shall immediately become due and payable;

13.1.2 we shall not be obliged to provide any further Services, subject to clause 13.3;

13.1.3 you shall immediately cease to describe yourself as being connected in any way to us, including as having gained Centre Recognition and delivering the Qualifications (subject always to clause 13.3);

13.1.4 you shall (within 7 days of the date of termination) identify and provide to us full and accurate details, including contact details, for each of the Learners who were registered in relation to any of the Qualifications at the date of termination;

13.1.5 without prejudice to clause 13.3, you shall cooperate with and assist us, as we require, in effecting a smooth and orderly transition to another centre in respect of the transfer and continuation of the delivery of the Qualifications for the Learners referred to in clause 13.1.4 and any other relevant Users or third parties, and shall promptly execute such documents and do all such acts and things as may be necessary to effect such transfer in a timely manner;

13.1.6 subject to clause 13.2, your rights and licences to our Intellectual Property Rights granted pursuant to the Agreement shall immediately cease and you shall as soon as reasonably practicable cease use of such Intellectual Property Rights (including our Trade Marks) and you shall at our election either destroy or deliver up any materials which contain or refer to our Intellectual Property Rights;

- 13.1.7 except if and to the extent (and for the duration) otherwise required for the purposes of clause 13.3, you shall (at your cost) immediately deliver to us all copies of information (including the Relevant Regulations and Qualification Specifications), data, computer programs (including source codes) and reports provided by us to you for the purposes of the Agreement (including any such information and data supplied by you to Third Party Suppliers) and you shall certify to us that neither you nor the Third Party Suppliers have retained any such copies, except for one copy which you may use for audit purposes only (and subject always to the confidentiality obligations in clause 8); and
- 13.1.8 all Intellectual Property Rights referred to in clause 10.5 shall automatically pass to us (to the extent that they have not already done so by virtue of such clause 10.5).
- 13.2 Nothing in clause 13.1.6 shall require you to recall or remove any advertising, marketing or promotional materials containing or using our Intellectual Property Rights which were used or distributed in accordance with the Agreement prior to its termination and which are no longer in your possession or control.
- 13.3 Notwithstanding termination of this Agreement for any reason, the provisions of paragraphs 8.3 and 8.4 of the Centre Rules shall continue to apply and the parties shall continue to perform their obligations pursuant to such paragraphs accordingly (and all other provisions of the Agreement shall continue to apply if and to the extent applicable in connection with the performance of such obligations).
- 13.4 For the avoidance of doubt, on the expiry of the parties' obligations under clause 13.3, the Centre shall immediately comply with the provisions of clause 13.1.7 in respect of all items referred to in such clause which were not returned to us for the purposes of the Centre complying with clause 13.3.
- 13.5 If you fail to fulfil your obligations to return any items under clause 13.1.6, 13.1.7 or 13.4 then you hereby grant (and shall procure for us from all applicable third parties, including Third Party Suppliers) an irrevocable licence for us and our representatives to enter any premises where such items are, or might reasonably be expected to be (including the Centre Address, any Satellite Sites, any other of your premises and any premises of the Third Party Suppliers), after providing reasonable notice, in order to take possession of them. Until any such items have been returned or repossessed, you shall be solely responsible for their safe keeping.
- 13.6 Termination of the Agreement for any reason shall be without prejudice to any other rights or remedies a party may be entitled to under the Agreement or at law and shall not affect any rights or liabilities of either party which have accrued as at termination.
- 13.7 The provisions of the Agreement which expressly or by implication have effect after termination of the Agreement shall continue to be enforceable notwithstanding such termination.

14. Remedies

- 14.1 We reserve the right to set off any monies owed by us against any Charges owed by you.
- 14.2 We can deduct any and all loss, damage, cost and/or expense caused to us by any default of yours from any amount:
- 14.2.1 held by us on your behalf; and/or
- 14.2.2 due to you from us.

- 14.3 We can decide, acting reasonably and pursuant to our rights under these Terms, which sums owed to us shall be deducted from the amounts we hold on your behalf and in what order we do so.
- 14.4 We shall account to you for any resultant balance after we have made any deductions under this clause 14.
- 14.5 We reserve the right to:
- 14.5.1 retain any documents, works and materials held by us; and/or
 - 14.5.2 retain any of your other assets held by us;
- whilst monies are due to us under the Agreement or where you are subject to any Sanctions imposed by us pursuant to the Agreement.

15. Limitation of Liability

- 15.1 Nothing in the Agreement shall limit or exclude:
- 15.1.1 either party's liability for death or personal injury caused by its negligence, or the negligence of its Workforce;
 - 15.1.2 either party's liability for fraud or fraudulent misrepresentation;
 - 15.1.3 any liability if and to the extent it cannot be limited or excluded by applicable law; or
 - 15.1.4 your liability under clause 16.
- 15.2 Subject to clause 15.1, we shall have no liability to you, whether in contract, tort (including negligence), breach of statutory duty, or otherwise arising under or in connection with the Agreement for:
- 15.2.1 loss of profits;
 - 15.2.2 loss of sales or business;
 - 15.2.3 loss of anticipated savings;
 - 15.2.4 loss of damage to goodwill or reputation;
 - 15.2.5 loss of use or corruption of data of information;
 - 15.2.6 any ex-gratia payments; or
 - 15.2.7 any special, indirect, consequential or pure economic loss.
- 15.3 Subject to clause 15.1, our liability for any claim or series of connected claims, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Agreement, shall be limited to a maximum sum equal to the Charges paid by you under the Agreement within the period of 12 months preceding the event (or first event if there are a number of events) giving rise to the claim or series of connected claims.

16. Indemnity

- 16.1 Subject to clause 16.2, you shall indemnify us and our Workforce on demand and hold us and our Workforce harmless from all claims and all direct, indirect or consequential liabilities (including loss of profits, loss of business, depletion of goodwill and similar losses), costs, proceedings, damages and expenses (including legal and other professional fees and expenses) awarded against, or incurred or paid by, us as a result of or in connection with:
- 16.1.1 any breach of the Agreement by you; or
 - 16.1.2 your negligent performance or non-performance of the Agreement; or
 - 16.1.3 any claim for any moral rights under Chapter IV of Part I of the Copyright Designs and Patents Act 1988 or any similar provisions of law in any jurisdiction in respect of the Qualifications, the Policies and/or any Relevant Regulations by any member of your Workforce; or
 - 16.1.4 the incurring of any liability which is not expressly authorised by us; or
 - 16.1.5 any alleged or actual infringement, whether or not under English law, of any third party's Intellectual Property Rights or other rights arising out of the delivery of the Qualifications; or
 - 16.1.6 any claim made against us in respect of any liability, loss, damage, injury, cost or expense sustained by our Workforce or by any Learner or other third party to the extent that such liability, loss, damage, injury, cost or expense was caused by, relates to or arises from the delivery of the Qualifications as a consequence of an act, omission, breach, negligent performance or failure or delay in performance of the Agreement by you or the Third Party Suppliers; or
 - 16.1.7 any claim from a third party that the Assigned Rights infringe a third party's Intellectual Property Rights.
- 16.2 The indemnity set out in clause 16.1 shall not cover us to the extent that a claim under it results from our breach of the Agreement or negligence.
- 16.3 During the term of the Agreement and for a period of one year thereafter, you shall maintain in force, with a reputable insurance company, professional indemnity insurance in an amount not less than £1million, or as otherwise agreed between the parties, and shall, on our request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium.

17. Force Majeure

- 17.1 We shall not be in breach of the Agreement, nor liable for any failure to perform or any delay in the performance of any of our obligations under the Agreement, if and to the extent that such failure or delay arises from or is attributable to acts, events, omissions or accidents beyond our reasonable control (a **Force Majeure Event**), including (but not limited to):
- 17.1.1 acts of God, including but not limited to fire, flood, pandemic, heatwave, earthquake, windstorm or other natural disaster; pandemic and imposition of associated restrictions or controls; war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, breaking off or diplomatic relations or similar actions;
 - 17.1.2 terrorist attack, civil war, civil commotion or riots;

- 17.1.3 nuclear, chemical or biological contamination or sonic boom;
 - 17.1.4 compliance with any Relevant Legislation, or any action taken by a Regulatory Body (including imposing an embargo, export or import restriction, quota or other restriction or prohibition);
 - 17.1.5 fire, explosion or accidental damage;
 - 17.1.6 extreme adverse weather conditions;
 - 17.1.7 collapse of building structures, failure of plant machinery, machinery, computers or vehicles; or
 - 17.1.8 interruption or failure of utility service, including but not limited to electric power, gas or water.
- 17.2 Where we are affected by a Force Majeure Event, we shall:
- 17.2.1 notify you of the nature and extent of the Force Majeure Event affecting the performance of our obligations under the Agreement; and
 - 17.2.2 use all reasonable endeavours to mitigate the effect of the Force Majeure Event on our ability to carry out our obligations under the Agreement and to resume the performance of such obligations as soon as reasonably practicable.

18. **Anti-Corruption**

- 18.1 You shall:
- 18.1.1 comply with all Relevant Legislation relating to anti-bribery and anti-corruption, including the Bribery Act 2010 and any equivalent laws in the Territory (**Anti-Corruption Laws**);
 - 18.1.2 not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
 - 18.1.3 comply with our Anti-Bribery Policy and any other policies that we may issue from time to time relating to customer ethics and anti-bribery;
 - 18.1.4 maintain in place your own policies and procedures, including adequate procedures under the Bribery Act 2010 and any equivalent laws in the Territory, to ensure compliance with the Anti-Corruption Laws and enforce them where appropriate;
 - 18.1.5 promptly report to us any request or demand for any undue financial or other advantage of any kind received by you in connection with the performance of the Agreement;
 - 18.1.6 immediately notify us if a foreign public official becomes an officer or employee of your business, acquires a direct or indirect interest in you or Controls you;
 - 18.1.7 ensure that all Third Party Suppliers are engaged on the basis of a written agreement which imposes on and secures from such person terms equivalent to those imposed on you in this clause 18; and
 - 18.1.8 be responsible for the observance and performance by the Third Party Suppliers of the terms referred to in clause 18.1.7 and be directly liable to us for any breach by

any of the Third Party Suppliers of any such terms.

18.2 You hereby warrant and represent to us that:

18.2.1 neither you nor any of your officers, employees or other persons associated with you:

18.2.1.1 has engaged in any activity, practice or conduct in respect of its involvement with us or its obligations under the Agreement which does not comply with the Anti-Corruption Laws; or

18.2.1.2 has been convicted of any offence involving bribery or corruption, fraud or dishonesty; or

18.2.1.3 has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or Regulatory Body regarding any offence or alleged offence under the Anti-Corruption Laws; or

18.2.1.4 has been or is listed by any government agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or other government contracts;

18.2.2 none of your officers or employees or any persons associated with you is a foreign public official; and

18.2.3 no foreign public official owns a direct or indirect interest in you or Controls you or any person associated with you (including your Workforce or the Third Party Suppliers) and no public official has any legal or beneficial interest in any payments made by us under the Agreement.

18.3 For the purposes of this clause 18, the meaning of 'adequate procedures' and 'foreign public official' and whether a person is 'associated' with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively. Without prejudice to the foregoing, for the purpose of this clause 18, a person associated with you shall be deemed to include all of the Third Party Suppliers.

19. **Dispute Resolution**

19.1 For the avoidance of doubt, nothing in this clause 19 shall affect our right to terminate the Agreement under clause 12.

19.2 In the event of either party considering it to be in dispute with the other, it shall formally notify the other party to that effect by written notice.

19.3 Each party shall then use reasonable endeavours to resolve the dispute, within the next 14 days or as otherwise agreed in writing by both parties.

19.4 If the dispute is not resolved within that period, each party shall use reasonable endeavours through notified senior officers, to resolve the dispute within the next 14 days or as otherwise agreed in writing by both parties.

19.5 Nothing in this clause 19 shall limit or affect the ability of either party to seek interlocutory or injunctive relief at any time.

20. Notices

- 20.1 Any notice or other communication given under or in connection with the Agreement shall be given in writing in English.
- 20.2 Subject to clause 20.3, any notice or communication to be served on a party under or in connection with the Agreement shall be sent to the main contact email address for the relevant party (as applicable at the relevant time) or to the relevant party's registered office.
- 20.3 Any notice or communication served on a Party in accordance with the provisions of Appendix 3 (Data Sharing Agreement) shall be sent to that Party's Contact Point.
- 20.4 Any such notice or communication shall be deemed to have been served:
- 20.4.1 if by email, at the time of delivery (provided that no error message indicating failure to deliver has been received by the sender);
 - 20.4.2 if delivered personally (including by courier service), at the time of delivery; and
 - 20.4.3 if sent by first class registered (signed-for) post, on the Business Day after it was posted.
- 20.5 The provisions of this clause 20 shall not apply to the service of any proceedings or other documents in any legal action.

21. Entire Agreement

- 21.1 The Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous drafts, agreements, arrangements and understandings between them, whether written or oral, relating to the subject matter.
- 21.2 Each party acknowledges that, in entering into the Agreement, it has not relied on, and shall have no right or remedy in respect of, any representation or warranty (whether made negligently or innocently) that is not set out in the Agreement.
- 21.3 Nothing in this clause 21 shall limit or exclude any liability for fraud.

22. Miscellaneous

- 22.1 We may make changes to the Agreement (including, for the avoidance of doubt, these Terms, the Centre Rules, the Policies or any Relevant Regulations) at any time in accordance with clause 4.1. Save if and to extent otherwise expressly agreed by us in writing and signed by our authorised representative, you shall not be entitled to make any changes to the Agreement.
- 22.2 Any terms which are not included in the Agreement but could be implied into the Agreement by law are excluded from the Agreement as far as the law permits.
- 22.3 You shall not without our prior written consent (and subject to clause 22.4, where applicable) assign, transfer, charge or deal in any other manner with the Agreement or your rights under it or part of it, or purport to do any of the same, nor sub-contract nor appoint sub-agents or delegates of any or all of your obligations under the Agreement.

- 22.4 For the avoidance of doubt but without prejudice to clause 22.3:
- 22.4.1 you must not sub-contract the provision of the Centre Services without our express permission in writing; and
- 22.4.2 in the event that we give permission for you to sub-contract, you are responsible for the management of such sub-contractors and you will remain fully liable to us for any acts, omissions, negligence or default of such sub-contractors.
- 22.5 Nothing in the Agreement shall preclude us from assigning, transferring, charging or dealing in any other manner with the Agreement or our rights under it or part of it, or from sub-contracting any obligation to any third party.
- 22.6 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the Parties, constitute any Party the agent of another Party, or authorise any Party to make or enter into any commitments for or on behalf of any other Party. Each Party confirms it is acting on its own behalf and not for the benefit of any other person.
- 22.7 The parties declare that they each have the right, power and authority and have taken all action necessary to execute and deliver, and to exercise their rights and perform their obligations under the Agreement.
- 22.8 No failure or delay by a party to exercise any right or remedy provided under the Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- 22.9 Any of our rights or remedies under the Agreement, or by operation of law, may at any time be enforced separately or concurrently.
- 22.10 If any court or competent authority finds that any provision of the Agreement (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Agreement shall not be affected.
- 22.11 If any invalid, unenforceable or illegal provision of the Agreement would be valid, enforceable and legal if some part of it were deleted, the parties shall negotiate in good faith to amend such provision such that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the parties' original commercial intention.
- 22.12 A person who is not a party to the Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Agreement.

23. Governing Law

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

23.2 The parties irrevocably agree, for our sole benefit that, subject as provided below, the courts of England and Wales shall have exclusive jurisdiction over any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Agreement or its subject matter or formation. Nothing in this clause shall limit our right to take proceedings against you in any other court of competent jurisdiction, nor shall the taking of proceedings by us in any one or more jurisdictions preclude us from taking proceedings in any other jurisdiction, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.

APPENDIX 1 - DEFINITIONS AND INTERPRETATION

1. Any terms used in the Agreement which are set out or defined in the Centre Recognition Form shall have the meaning so given to them (whether used in plural or singular form).
2. In the Agreement, unless the context otherwise requires, the following terms (whether used in plural or singular form) shall have the following meanings:

Access Validating Agency: an Access Validating Agency for “Access to Higher Education” Programmes, licensed by the QAA;

Adequate Country: means a country, territory or sector recognised by a decision by the UK Government or the European Commission (as applicable) from time to time which approves that country, territory or sector as providing adequate protection to Personal Data;

Agreed Purpose: to facilitate the delivery and award of Qualifications to Learners and to quality assure Qualifications;

Adverse Effect: has the meaning given in clauses 12.8 and 12.9;

Agreement: the agreement between you and us in respect of your Centre Recognition and Qualification Approval (and your application for Centre Recognition and Qualification Approval), comprising the Centre Recognition Form, each Qualification Approval Form (once finalised and approved), these Terms, the Appendices and their Schedules and Annexes, the Policies and any applicable documents expressly incorporated by reference (in each case as may be updated, modified or replaced from time to time in accordance with these Terms);

Anti-Bribery Policy: the policy issued by us entitled “Anti-Bribery Policy”, which details our policy relating to compliance with Anti-Corruption Laws;

Anti-Corruption Laws: has the meaning given in clause 18.1.1;

Appeals Policy: the policy issued by us entitled “Appeals Policy”, which details the Appeals Process and associated matters;

Appeals Process: the procedure set out in the Appeals Policy that can be used by you or your learner(s) to challenge a decision made by us in relation to the outcome of a monitoring process (such as, but not limited to, reasonable adjustments or special considerations, assessment results or the outcome of a malpractice or maladministration investigation);

Appendices: the appendices to these Terms;

Assigned Rights: has the meaning given to it in Clause 10.5 (Assignment);

Breached Party: means the Party subject to a Data Security Breach;

Business Day: any day (excluding Saturdays and Sundays) on which banks generally are open for business in London;

Centre Address: the main premises from which you deliver or propose to deliver the Qualifications, as stated within the Centre Recognition Form;

Centre Recognition: the granting of recognition that you are approved by us a potential provider of Qualifications, in accordance with clause 2.2;

Centre Recognition Form: the form completed and signed by you (incorporating these Terms) and submitted to us in connection with your application for Centre Recognition or (where applicable) any other form issued by us and completed and signed by you for similar purposes, together with (as the context shall permit or require) any further or associated forms or documents submitted by you to us from time to time, including the Qualification Approval Forms (once finalised) where applicable;

Centre Rules: the rules and requirements set out in Appendix 2 which you must comply with to deliver the Qualifications;

Centre Services: the services which you provide to the Learners and (if and to the extent applicable) to any other third parties;

Charges: the charges payable by you under the Agreement, as stated in the current Product Catalogue, together with any other applicable charges agreed between the parties;

Consent: means agreement which must be freely given, specific, informed and be an unambiguous indication of the Data Subject's wishes by which they, by a statement or by a clear positive action, signify agreement to the processing of Personal Data relating to them;

Controls: where a person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of the other person, whether through the ownership of voting shares, by contract or otherwise;

Complaints Policy: the policy issued by us entitled “Complaints Policy and Procedure”, which details our complaints policy and procedures;

Confidential Information: the provisions of the Agreement, all guidance or information issued or provided by us (including the Policies, the Relevant Regulations and the Qualification Specifications), all technical or commercial know-how, processes or initiatives which are of a confidential nature, details of our employees, agents, consultants or sub-contractors, the Shared Personal Data, and any other information of a confidential nature concerning our business or our services or products;

Data Discloser: will be interpreted in accordance with Appendix 3 (Data Sharing Agreement), Paragraph 1.2;

Data Subject: means individuals whose Personal Data is shared among Parties to this Agreement;

Data Protection Law means, as applicable, (i) the UK Data Protection Act 2018 (**DPA 2018**), (ii) the General Data Protection Regulation EU 2016/679 (**GDPR**), (iii) the GDPR as written into UK law (**UK GDPR**) (iii) the Privacy and Electronic Communications Directive 2002/58/EC (and any national implementing legislation) (**PECR**) and (iv) all other applicable laws and regulations relating to the processing of Personal Data and privacy in any jurisdiction (each as amended, updated and superseded from time to time);

Data Receiver: will be interpreted in accordance with Appendix 3 (Data Sharing Agreement), Paragraph 1.2;

Data Subject Request: means an actual or purported request, notice or complaint made by, or on behalf of, a Data Subject in exercise of their rights under Data Protection Law relating to their Personal Data;

Deletion Procedure: means the procedure set out in in Appendix 3, Paragraph 10 (Data Retention and Deletion);

Direct Claims Status: your status (as determined by us) of having appropriate resources (including an appropriately skilled and knowledgeable internal verifier and robust quality systems) which enable you to make accurate and appropriate decisions about awards to Learners without the requirement of external verification prior to certification claim;

EEA: means the European Economic Area which comprises the countries of the European Union plus Norway, Iceland and Liechtenstein;

EU Model Clauses: the model contract for the transfer of Personal Data from controllers to controllers in third countries as set out under European Commission Implementing Decision (EU) 2021/914 of 4 June 2021 (Module One) in Appendix 3, Schedule 2 (EU Restricted Transfers) in its current form, but which may be amended and updated in accordance with Appendix 3, Paragraph 5 (International Data Transfers);

External Quality Assurance: the process through which the marking of your assessments of Qualifications (whether internal or external assessments) is moderated and/or verified to make sure it meets the relevant required standards and through which (where required) adjustments are made to results of any such assessments to ensure that the results are based on the relevant required standards;

External Quality Assurance Requirements: the rules, requirements, guidelines and/or procedures we issue from time to time in respect of the External Quality Assurance;

Force Majeure Event: has the meaning given in clause 17.1;

General Conditions: the General Conditions of Recognition published by Ofqual, as applicable from time to time;

ICO: means the Information Commissioner's Office in the United Kingdom;

Intellectual Property Rights: all patents, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software (including source code), database right, topography rights, rights in confidential information (including know-how and

trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world;

Insolvency Event: has the meaning given in clause 12.4;

Invoicing Policy: the policy issued by us entitled “Invoicing Policy”, which details our policies and procedures relating to the issue and payment of invoices for the Charges;

Lawful Basis: means legal authority to process Personal Data, including a lawful basis under Article 6 UK GDPR and (if required) a condition for processing under Article 9 UK GDPR and/or Schedule 1 DPA 2018 (as applicable);

Learner: a person who is registered (or to be registered) with you to take a Qualification and to be assessed as part of that Qualification;

Learner Records: relevant records relating to Learners, including assessment and verification records, the award of Qualifications, certificate claims, Learner data for each Qualification and any other records required to be kept under the Centre Rules;

Maladministration and Malpractice Policy: the policy issued by us entitled “Malpractice & Maladministration Policy”, which details our policies and procedures relating to suspected or actual malpractice and maladministration on the part of Learners, your Workforce, the Third Party Suppliers and any others involved in providing the relevant Qualification, together with the guidance that we issue entitled “Centre Guidance for Investigations of Malpractice & Maladministration”;

Model Clauses: means the EU Model Clauses and the UK Addendum;

Ofqual: the Office of Qualifications and Examinations Regulation in England;

Personal Data Breach: means a breach or breaches of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to the Shared Personal Data;

Contact Point: means a Party’s Point of Contact appointed under Appendix 3 (Data Sharing Agreement), Paragraph 2.5;

Policies: all policies issued by us from time to time and all other documents, guidance and instructions which we issue from time to time in connection with the Agreement (including as may be published on the Website or Quartzweb), as may be (in each case) updated, modified or replaced from time to time;

Privacy Notice: means a notice setting out information that Data Subjects are required to be provided with by law when an organisation collects and/or Processes information about them, including under Articles 13 and 14 UK GDPR;

Product Catalogue: the publication we issue from time to time which sets out the applicable products and services we provide (including details of the qualifications and assessments which we have developed, services relating to the issue of replacement certificates and services relating to additional quality assurance visits and training), together with details of the applicable fees relating to those products and services;

QAA: the Quality Assurance Agency for Higher Education;

Qualification Approval: the approval for you to deliver any specific Qualification which is granted by us in accordance with clause 2.3;

Qualification Approval Form: the relevant form submitted by you to us requesting approval to deliver the Qualification set out in such form;

Qualification Guidelines: the guidelines which can be found in the Qualification Specifications, which provide core details of (including the minimum requirements for) Learner achievement of a specific Qualification;

Qualifications: the qualifications and assessments which we have developed and made available to Learners, to be delivered in whole or in part by you in accordance with the provisions of the Agreement (subject to Qualification Approval), as applicable from time to time;

Qualification Specifications: the standards, rules, syllabuses, guidance (including the Qualification Guidelines), requirements and specifications provided by us which are applicable to the relevant Qualification and/or which are required to enable you to deliver the relevant

Qualifications, as may be (in each case) updated, modified or replaced from time to time;
Quality Assurance Provision: the framework and procedures which enable you to demonstrate your compliance with Relevant Legislation and assure us that you have adequate and appropriate quality assurance arrangements in place for the Qualifications you have Qualification Approval for;

Quartzweb: our remote access e-portal (whether given this name or any other name from time to time) which we may provide you access to from time to time;

Reasonable Adjustments and Special Considerations Policy: the policy issued by us entitled “Reasonable Adjustments and Special Considerations Policy”, which sets out those reasonable adjustments and special consideration requests which, as a minimum, you must provide and accommodate to or for Learners (including those reasonable adjustments and special considerations you must seek approval from us for), with regard to the circumstances and matters specified therein;

Regulatory Bodies: those government departments and regulatory, statutory and other entities, committees and bodies which (whether under statute, rules, regulations, codes of practice or otherwise) are entitled to regulate, investigate, or influence the matters dealt with in the Agreement or any other affairs of a party, including (for the avoidance of doubt): the QAA; Ofqual; Qualifications Wales in Wales; the Council for Curriculum, Examinations and Assessment (CCEA Regulation) in Northern Ireland; the Scottish Qualifications Authority (SQA Accreditation) in Scotland; the Information Commissioner’s Office; Police; UK Border Agency and any successor bodies to any of the foregoing;

Relevant IPRs: has the meaning given in clause 10.1.1;

Relevant Legislation: means all laws, statutes, regulations, legally binding decisions and codes from time to time in force and applicable or relevant to the delivery of the Qualifications and the Centre Services including (but not limited to):

- any local laws in the Territory
- any relevant regulatory requirements that we or you are subject to, including the General Conditions and any other (general or specific) conditions imposed by any Regulatory Bodies from time to time
- decisions of any court, inspectorate, agency, or public or statutory person
- Data Protection Law.

Relevant Regulations: the Qualification Specifications, the External Quality Assurance Requirements, the Quality Assurance Provision, relevant Policies (including in particular the Sanctions Policy and the Complaints Policy) and any other applicable policies and procedures, guidance and instruction documents, forms, resources and publications issued by us, as may be (in each case) updated, modified or replaced from time to time;

Restricted Transfer: has the meaning given in Appendix 3, Paragraph 5 (International Data Transfers);

Sanctions Policy: the policy issued by us entitled “Centre Sanctions Policy”, which details the basis on which we may apply the Sanctions and the process to be followed relating to our application of the Sanctions;

Sanctions: any one, more or all of the following: suspension or removal of Direct Claims Status; the suspension of Learners’ registration and/or certification in relation to the Qualifications; withdrawal of Centre Recognition; withdrawal of Qualification Approval in relation to one, more or all of the Qualifications;

Satellite Site: any additional address, other than the Centre Address from which you deliver or propose to deliver the Qualifications and which is approved by us in writing;

Services: the services which we provide to you under the Agreement in connection with your Centre Recognition and Qualification Approval (depending on the Qualifications you have been granted Qualification Approval for), as set out in the Product Catalogue;

Shared Personal Data: the Personal Data received by the Data Receiver from the Data Discloser in relation to the activities carried out under this Agreement, including Personal Data relating to the Learners, as further detailed in Appendix 3, Schedule 1 (Particulars of the Shared Personal Data);

Storage Limitation Principle: the principle that Data Protection Law requires the Parties to retain the Shared Personal Data for no longer than necessary for the purposes for which it is processed.

Sub-contract Centre: an organisation to whom (with our prior written approval) you sub-contract part of the Qualification delivery or assessment;

Term: means the duration of this Agreement from the Commencement Date until its expiry or earlier termination;

Terms: these terms and conditions (including the Appendices);

Territory: means the geographical area(s) where you are approved to deliver and promote the Qualifications, as set out in the Centre Recognition Form;

Third Party Suppliers: any third parties who: (a) provide goods or services to the you which contribute to the delivery and/or assessment of the Qualifications; (b) otherwise perform any services for you or on your behalf in connection with the Agreement or the Centre Services; and/or (c) enters into partnership with you or who otherwise becomes affiliated to or associated with the Centre or the Centre Services;

Trade Marks: our name and any of our brands and associated logos and any other brands and logos developed or acquired by us or designated by us from time to time for use by you in connection with the Qualifications and as notified by us to you (from time to time);

UK Addendum: the International Data Transfer Addendum to the EU Standard Contractual Clauses of 21 March 2022 as approved by the United Kingdom and set out in Appendix 3, Schedule 3 (UK Restricted Transfers) in its current form, but which may be amended and updated in accordance with Appendix 3, Paragraph 5 (International Data Transfers);

Unique Learner Number: a unique 10-digit number. (Most learners aged 14+ have one and it's designed to work with their personal learning record (PLR) as proof of their learning and achievements).

Users: persons who have a legitimate interest in the Qualification, which may include Learners (or their representatives), teachers, employers (and their representatives), further and higher education establishments, schools, government departments and agencies and professional bodies;

we: Ascentis, a company incorporated in England under Company Number 6799564 and registered charity number 1129180 whose registered office is at Lancaster Business Park, Mannin Way, Caton Road, Lancaster LA1 3SW (and references to **us**, **our** and **Ascentis** shall be construed accordingly);

Workforce: all personnel employed or engaged by the relevant party, including its staff, employees, agents, consultants and contractors;

Website: our website at www.ascentis.co.uk (or such other website as we may specify from time to time), including all of its sub-pages; and

you: the person specified as the Centre in the 'Centre Information' section of the Centre Recognition Form (and references to **your**, **yours** and **yourself** shall be construed accordingly).

3. For the purposes of this Agreement, the terms "**Personal Data**", "**Special Category Data**", "**Criminal Offence Data**", "**Processing**", "**Process**", "**Controller**", "**Joint Controllers**", "**Processor**", "**Data Subject Rights**" and "**Supervisory Authority**" shall be interpreted in accordance with applicable Data Protection Law. If any of these terms has conflicting meanings under applicable Data Protection Law, it shall be interpreted in the way which most closely approximates the meaning of the term under the UK GDPR.

4. In these Terms and other applicable documents comprising the Agreement (except if and to the extent that the context otherwise requires):
 - 4.1. a reference to a numbered clause shall mean a clause of these Terms so numbered; and
 - 4.2. references to a numbered Appendix are to an appendix to these Terms so numbered and references to a numbered paragraph are to a paragraph in that Appendix (or in any other specified Appendix) so numbered;
 - 4.3. references to these Terms, the Agreement, the Policies or to any other document referred to in the Agreement mean these Terms, the Agreement, the Policies or such other document as issued, amended, varied, supplemented, modified or novated from time to time;
 - 4.4. the words 'including', and 'include' and words of similar effect shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term following them;
 - 4.5. the words 'other' and 'otherwise' are illustrative and shall not limit the sense of the words preceding them;
 - 4.6. references to a 'party' shall mean a party to the Agreement (and references to the 'parties' shall be construed accordingly);
 - 4.7. references to persons shall include natural persons, firms, companies, associations and corporate or unincorporated bodies (whether or not having separate legal personality);
 - 4.8. words importing the singular shall include the plural and vice versa;
 - 4.9. references to 'writing' or 'written' include email; and
 - 4.10. any reference to any legislative provision is a reference to it as it is in force from time to time (taking account of any amendment, extension or re-enactment) and includes any subordinate legislation for the time being in force made under it.
5. The Appendices (and their Schedules and Annexes) form part of these Terms and shall have full force and effect accordingly. Any reference to these Terms shall include the Appendices (and their Schedules and Annexes).
6. In the event of any inconsistency between the provisions of the Centre Rules and these Terms, then these Terms shall prevail.
7. The headings in these Terms and other applicable documents comprising the Agreement are for ease of reference only and shall not affect their construction or interpretation of their provisions.

APPENDIX 2 - CENTRE RULES

1. Resources and Arrangements

- 1.0 You shall, across the entirety of your Qualification delivery, including where you use Satellite Sites and/or Sub-contract Centres:
- 1.0.1 ensure that you retain at all times a Workforce in sufficient numbers and who are suitably qualified and experienced to undertake the proper delivery of the Qualifications and you shall ensure that they maintain the appropriate qualifications and experience for the job they perform;
 - 1.0.2 ensure that you have the full ability (including appropriate facilities, resources and Workforce), meeting any applicable standards set out in the Centre Rules and any Relevant Regulations, to enable you to undertake the efficient delivery of all Qualifications until the completion of such Qualifications by the relevant Learners;
 - 1.0.3 provide your Workforce (and the Third Party Suppliers where appropriate) with appropriate inductions and ongoing professional development (including a development plan) to ensure they can maintain the level of expertise and competence to fulfil your obligations under the provisions of the Agreement (including satisfying the requirements of the Centre Rules and any Relevant Legislation);
 - 1.0.4 manage and conduct your business and the Centre Services with professional care, skill and diligence;
 - 1.0.5 ensure that no act or omission by you or any Third Party Supplier renders (or is likely to render) us non-compliant with Relevant Legislation or renders (or is likely to render) you unsuitable to deliver any of the Qualifications;
 - 1.0.6 put in place effective quality assurance and management processes and monitor and keep such processes under review;
 - 1.0.7 regularly review your resource requirements and development plans, take appropriate action on the basis of each review and promptly provide the outcomes of each review to us upon request;
 - 1.0.8 promptly supply us with any information we may require relating to the Workforce and the Third Party Suppliers (including information and evidence relating to their qualifications, skills and experience);
 - 1.0.9 have in place a suitable Workforce and systems appropriate for delivering the Qualifications (including in accordance with the Relevant Regulations and the Centre Rules), together with all licences and consents required in the Territory, before delivery of such Qualifications commence;
 - 1.0.10 ensure that the Workforce and the Third Party Suppliers involved in delivering a Qualification have access to and comply with the Qualification Specifications;
 - 1.0.11 ensure that the Workforce and (to the extent applicable) the Third Party Suppliers are kept informed of and comply with the Centre Rules, the Policies and the Relevant Regulations;

1.0.12 ensure that quality assurance and management processes are in place and that these apply at the Centre Address, across all Satellite Sites and at the premises of all Third Party Suppliers.

1.1 You shall:

1.1.1 use buildings that provide suitable and full access for Learners for assessment purposes, in accordance with all Relevant Legislation;

1.1.2 obtain our prior written approval before opening, or offering delivery of the Qualifications from, any address other than the Centre Address;

1.1.3 ensure that the full range of relevant, current equipment required to assess the Qualification is supplied at all times;

1.1.4 adhere to all assessment requirements in respect of the relevant Qualification as set out in the Relevant Regulations;

1.1.5 maintain adequate systems and resources (including, if and to the extent appropriate, equipment, materials and software) to support the delivery of the Qualifications;

1.1.6 without prejudice to the generality of paragraph 1.1.5, provide the necessary resources in accordance with any requirements specified by us in respect of the relevant Qualification as set out in the Relevant Regulations;

1.1.7 ensure that all examination material in respect of any Qualification is kept confidential and secure at all times (including in respect of storage and handling processes) to no lesser standards as are stipulated in the Relevant Regulations (and in any event, to a reasonable standard);

1.1.8 have the necessary Workforce and level of financial and technical resources and systems necessary to support the delivery of the Qualifications to a high standard and in a professional manner; and

1.1.9 have the Workforce, resources and systems necessary to support the assessment of units and the award, accumulation and transfer of credits and, where necessary, the recording of exemptions.

2. Learner Registration and Certification

2.0 You shall:

2.0.1 have arrangements in place that allow for recognition of prior learning (where appropriate);

2.0.2 register each Learner in accordance with the Relevant Regulations to ensure that each Learner is uniquely identified;

2.0.3 register and enter Learners for assessment in an efficient manner and in accordance with all applicable timescales set out in the Relevant Regulations (and in any event in a timely manner);

2.0.4 confirm each Learner's identity prior to or properly following, registration (and in any event prior to any assessment taking place for that Learner);

- 2.0.5 seek to obtain each Learner's consent to use their record of previous achievements (where applicable) to ensure that opportunities for credit transfer and exemption are maximised and, where such consent is given, ensure that such opportunities are maximised accordingly;
- 2.0.6 comply with any restrictions set out in the Relevant Regulations regarding the minimum amount of time that Learners must be registered with us before certification, as well as the combination of units and/or qualifications allowed;
- 2.0.7 ensure that all relevant members of your Workforce (and the Third Party Suppliers where appropriate) understand how and when to apply for Learner registration and certification as set out in the Relevant Regulations;
- 2.0.8 take all reasonable steps to guard against fraudulent or erroneous claims for certificates;
- 2.0.9 have arrangements in place to obtain on behalf of Learners a Unique Learner Number and (unless the Learner chooses not to have one) a Learner Record;
- 2.0.10 answer accurately, with reasonable detail and within a reasonable time any reasonable enquiries received from Learners; and
- 2.0.11 assist and fully co-operate with us on request in respect of any reasonable enquiries which we receive from Learners.

3. Management of Satellite Sites and Third Party Suppliers

3.0 You shall:

- 3.0.1 implement and maintain an effective system for the management of the Centre Services at any Satellite Sites and the services performed by Third Party Suppliers;
- 3.0.2 ensure that where you wish to engage any Third Party Supplier, our prior written consent is obtained. In considering whether to provide such consent, we are entitled to assess the nature and extent of the proposed relationship and the Third Party Supplier in question and also require that the arrangement is subject to certain requirements or conditions, including a particular form of written agreement and an irrevocable licence to enter the premises of any such Third Party Supplier upon request;
- 3.0.3 ensure that where you enter into any permitted arrangement with Third Party Suppliers, the arrangement (including the respective roles and responsibilities of you and the relevant Third Party Supplier) are documented within a written agreement which is to be made available to us no later than 21 days prior to the intended commencement date of such arrangement, with such written agreement also containing provisions which ensure that that all of your obligations under the Agreement are enforceable against the relevant Third Party Supplier to the extent applicable;
- 3.0.4 ensure that you have effective communications systems in place with Third Party Suppliers to keep them up to date with our requirements and the requirements of the Regulatory Bodies.

4. Quality Assurance and Assessment

4.1 You shall:

- 4.1.1 work in accordance with the quality assurance processes specified in the Relevant Regulations in relation to delivery, assessment or grading;
- 4.1.2 assist us in carrying out any reasonable monitoring and quality assurance activities;
- 4.1.3 ensure that, in relation to the Qualifications, evidence purportedly generated by a Learner in an assessment is properly generated by that Learner (including if applicable, as a contribution to group work);
- 4.1.4 ensure where an assessment is required to be completed under specified conditions, Learners complete the assessment under those conditions as set out in the Centre Rules; and
- 4.1.5 ensure that the confidentiality and security of our external assessment materials is maintained at all times.

5. Reasonable Adjustments and Special Considerations

5.1 You shall:

- 5.1.1 provide appropriate information and support to enable Learners with disabilities and other difficulties, without compromising the assessment of the skills, knowledge understanding or competence being assessed; and
- 5.1.2 provide such reasonable adjustments and accommodate such special consideration requests as laid out in the Reasonable Adjustments and Special Considerations Policy.

6. Complaints and Appeals

6.0 You shall establish and operate an appeals process (which would be used in the event that a Learner wishes to appeal against an assessment decision) and a complaint handling process (which would relate to a complaint of any other nature made by a Learner) which are at all times fully compliant with all applicable Relevant Legislation.

6.1 You shall provide appropriate information and support to enable Learners to access the Appeals Process and our complaints process set out in our Complaints Policy, in the event that a Learner considers that a satisfactory resolution of their complaint or appeal has not been reached using the processes referred to in paragraph 6.0. Where the Learner escalates their complaint or appeal to us then you shall provide full cooperation and assistance to us in relation to the complaint or appeal.

7. External Quality Assurance

7.0 You shall observe and comply with all aspects of the External Quality Assurance Requirements, whether the relevant External Quality Assurance is undertaken by us (or by a third party on our behalf) or by you.

7.1 You shall promptly comply with any instruction issued by us as part of, or as a result of, any External Quality Assurance, to make such changes as we consider (in our absolute discretion) to be necessary for compliance with the General Conditions, to your marking of evidence generated by a Learner during an assessment.

8. **Withdrawal of Centre Recognition or Qualification Approval**

8.1 Withdrawal of **Centre Recognition** applies where:

- 8.1.1 we specifically withdraw Centre Recognition (and withdrawal shall take effect when we notify you of this or on such date specified in the notice); or
- 8.1.2 we apply a Sanction which results in withdrawal of Centre Recognition (and withdrawal shall take effect when we notify you of this or on such date specified in the notice); or
- 8.1.3 the Agreement terminates for any reason (and withdrawal shall take effect upon termination).

8.2 Withdrawal of **Qualification Approval** applies where:

- 8.2.1 you cease to have Qualification Approval for one or more or all of the Qualifications (including on termination of the Agreement for any reason); or
- 8.2.2 you cease to deliver a Qualification, and you shall promptly notify us of and provide reasonable advance notice of such cessation; or
- 8.2.3 we notify you of withdrawal of a Qualification Approval in circumstances where we have or will cease to develop or make available a Qualification (which we may do at any time and for any reason, including if in our opinion an event has occurred, or is likely to occur, which has or could reasonably be expected to have, an Adverse Effect).

8.3 Where any of the circumstances in paragraph 8.1 or 8.2 apply, you shall:

- 8.3.1 co-operate fully with us in order to effectively manage the withdrawal and shall follow our processes for the withdrawal of the affected Qualifications which will be set out by us at the time;
- 8.3.2 take all reasonable steps to protect the interests of Learners;
- 8.3.3 where required, work with us to protect the interests of Learners (including in the production of a written withdrawal plan); and
- 8.3.4 provide clear and accurate information about the withdrawal to Learners and Users who are likely to be affected by the withdrawal.

8.4 Where any withdrawal of Centre Recognition or any withdrawal of Qualification Approval in respect of any Qualifications will, or may, render us to be non-compliant with any Relevant Legislation you shall:

- 8.4.1 consult with the affected Learners and Users to formulate and take any action required to minimise the non-compliance before ceasing to deliver the relevant Qualifications and shall provide evidence of such consultation to us upon request; and
- 8.4.2 meet any unreasonable financial burden incurred by affected Learners caused by the withdrawal.

8.5 The obligations under paragraphs 8.3 and 8.4 shall survive termination of the Agreement.

8.6 For the avoidance of doubt, if all of your approved Qualifications have expired (due to not having any registrations over a two-year period as set out in the Qualification Approval Form), then your Centre Recognition shall lapse and the Agreement shall automatically terminate under clause 12.6.

9. Retention of Records, Access to Records, People and Premises

9.1 You shall keep all Learner Records and details of achievement in an accurate, timely, confidential and secure manner, both as requested by us and in compliance with the Data Protection Law and you shall make these records available for us or any third party for external quality assurance and auditing purposes, should we need to review the records, within the timescales specified by us (but promptly in any event).

9.2 You shall promptly comply with our requests (and the requests of any Regulatory Body) for relevant information, data or documents.

9.3 If we, or any Regulatory Body, ask to speak to your Workforce, the Third Party Suppliers or Learners, you shall provide (or procure the provision of) access and fully co-operate with these requests within the timescales specified by us (but promptly in any event).

9.4 You shall promptly provide us, our representatives and any Regulatory Body (on request) with access to the Centre Address and all your other premises including any Satellite Sites and you shall (on request) promptly procure access for us, our representatives and any Regulatory Body to the premises of all the Third Party Suppliers.

10. Provision of Information and Reporting

10.1 You shall:

10.1.1 comply with all requirements for the provision of information to us and/or any Regulatory Body within the time limits set out in the Centre Rules and meet any further reasonable requests for information from us within any timescales specified by us (but promptly in any event);

10.1.2 provide full assistance and cooperation to us and/or any Regulatory Body undertaking any investigation relating to you and (unless prohibited from doing so by the relevant Regulatory Body) you shall keep us fully informed about the progress of such investigation;

10.1.3 monitor activities relating to the delivery of the Qualifications;

10.1.4 promptly report to us any information resulting from the monitoring referred to in paragraph 10.1.3 which is likely to be relevant to us for the purposes of performing our functions;

10.1.5 promptly notify us in writing if you are, or if you have cause to believe that you are likely to be, subject to:

10.1.5.1 a material change in your governance structure or legal status;

10.1.5.2 a change affecting who Controls you; or

10.1.5.3 any Insolvency Event; and

10.1.6 ensure that all information you provide to us is accurate and complete.

11. Conflicts of Interest

You shall take all reasonable steps to avoid any conflict of interest which relates to you. Where, having taken all such reasonable steps, a conflict cannot be avoided you shall record, appropriately disclose, monitor and properly manage the conflict.

12. Identification and Management of Risks

You shall have in place appropriate systems for the identification and management of risks in relation to the delivery of the Qualifications in accordance with the relevant Centre Rules and any Relevant Legislation. You shall take all reasonable steps to prevent the occurrence of these risks. Where a risk cannot be prevented, you shall mitigate the risk as appropriate and you shall keep us fully informed.

13. Legal Obligations

13.1 You shall ensure that your Centre operates at all times in accordance with all Relevant Legislation (including with regard to the provision of the Centre Services and when undertaking delivery of the Qualifications).

13.2 For the avoidance of doubt, but without prejudice to the generality of paragraph 13.1, you shall ensure that you comply with the requirements of:

13.2.1 the Equality Act 2010 and/or any equivalent laws in the Territory;

13.2.2 any applicable health and safety legislation in the territory relevant to the Centre Services; and

13.2.3 the Data Protection Law.

14. Maladministration and Malpractice

14.1 You shall comply with our Maladministration and Malpractice Policy and ensure all relevant members of the Workforce and the Third Party Suppliers fully understand and comply with it.

14.2 You shall take all reasonable steps to prevent any maladministration or malpractice in the delivery of the Qualifications, including any practice which may bring us into disrepute.

14.3 We may enforce any sanction (including the Sanctions) as necessary where actual or potential maladministration or malpractice is suspected or identified.

15. Centre Requirements

15.0 You shall:

15.0.1 comply with all of the applicable Relevant Regulations in order to deliver Qualifications;

15.0.2 adhere to any relevant Qualification Guidelines made available by us and to ensure the attendance of appropriate members of your Workforce and Third Party Suppliers to any mandatory training events;

15.0.3 adhere to and be bound by the Quality Assurance Provision; and

15.0.4 without prejudice to paragraph 10.1.5, ensure that any fundamental changes to the details you provided to us within the Centre Recognition Form, the Qualification Approval Form or otherwise (including change of Centre Address, change of address of any Satellite Site, changes relating to any Third Party Suppliers, relevant changes relating to your Workforce, a change affecting who Controls you, your merger with another undertaking or the sale of part of your business) are notified to us within 14 days of such change.