



Apprenticeship Employer Terms and Conditions



Contents

Clause		Page
1	DEFINITIONS AND INTERPRETATION	3
2	CONTRACT FORMATION	8
3	JOINT OBLIGATIONS OF THE PARTIES	8
4	QA'S OBLIGATIONS	10
5	YOUR OBLIGATIONS	10
6	APPRENTICE'S EMPLOYMENT.....	13
7	QUALITY ASSURANCE AND REVIEW	14
8	MARKETING	15
9	ENROLMENT	15
10	ASSESSMENT	15
11	EMPLOYER ENGAGEMENT	15
12	INTELLECTUAL PROPERTY RIGHTS.....	16
13	FUNDING	16
14	CHANGE OF CIRCUMSTANCES.....	17
15	EVIDENCE REQUIREMENTS	18
16	SUB-CONTRACTING.....	18
17	TERMINATION OF AN APPRENTICESHIP	18
18	WITHDRAWALS.....	19
19	TERM, TERMINATION AND CONSEQUENCES OF TERMINATION OF THIS AGREEMENT	20
20	EXCLUSIONS AND LIMITATIONS OF LIABILITY	20
21	FORCE MAJEURE EVENTS	21
22	CONFIDENTIALITY.....	21
23	CANCELLATIONS	22
24	SAFETY AND SAFEGUARDING.....	22
25	DATA PROTECTION.....	22
30	ASSIGNMENT	25
31	NOTICES.....	25
32	ENTIRE AGREEMENT	25
33	NO WAIVER.....	26
34	SEVERANCE.....	26
35	VARIATION	26
36	NO PARTNERSHIP OR AGENCY	26
37	RIGHTS OF THIRD PARTIES	26
38	CONFLICT	26
39	DISPUTES, LAW AND JURISDICTION.....	27

Schedules

1	Call Off	28
2	Apprenticeship Programme Confirmation Statement	31

Your attention is particularly drawn to the provisions of clauses 5.21 (Liquidated Damages), 17 (Termination of an Apprenticeship), 18 (Withdrawal of Apprentices), 20 (Exclusions and Limitations of Liability), 25.6 (Data Protection Indemnity) and 35.2 (Variation of these Terms and Conditions).

OPERATIVE PROVISIONS

1. DEFINITIONS AND INTERPRETATION

In these Terms and Conditions:

1.1 the following words and expressions have the following meanings unless the context otherwise requires:

“Academic Year” QA’s relevant academic year running for twelve months.

“Applicable Law” any:

- (a) statute, statutory instrument, bye-law, order, directive, treaty, decree or law (including any common law, judgment, demand, order or decision of any court, regulator or tribunal);
- (b) legally binding rule, policy, guidance or recommendation issued by any governmental, statutory or regulatory body; and/or
- (c) legally binding industry code of conduct or guideline

which relates to these Terms and Conditions and/or the Parties’ obligations under them.

“Apprentice” your employees who are on Apprenticeship schemes under these Terms and Conditions.

“Apprenticeship” the placement of an Apprentice by you with QA subject to these Terms and Conditions.

“Apprenticeship Agreement” the terms and conditions of employment between you and the Apprentice (for the avoidance of doubt, the Training Plan and the Apprenticeship Agreement must be separate documents).

“Apprenticeship Period” the period set out in the Call Off for each Apprentice, which shall last a minimum of 372 days (unless it is required to be longer or permitted to be shorter in accordance with the Funding Rules or the Apprenticeship terminated in accordance with these Terms and Conditions).

"Apprenticeship Programme"	the programme of training and learning undertaken by the Apprentice as provided by QA during the Apprenticeship pursuant to these Terms and Conditions.
"Apprenticeship Programme Confirmation Statement"	the document entered into by you in the form set out in Schedule 2.
"Apprenticeship Start Date"	the earlier of: <ul style="list-style-type: none"> (a) the date being the first day of the Apprenticeship Period; and (b) the date being the first day of learning carried out by QA with the Apprentice.
"Assessment Requirements"	the requirements set out in the approved and published assessment plan for the relevant standard.
"Background IPR"	all Intellectual Property Rights or other proprietary rights owned by QA, QA's subcontractors or any third party, the use of which is necessary for or incidental to the provision of the Apprenticeship.
"Business Day"	a day that is not a Saturday, Sunday or public or bank holiday in England and/or Wales.
"Call Off"	the contract in the form set out in Schedule 1 between you and QA which, together with the Apprenticeship Programme Confirmation Statement, sets out terms on which an Apprentice is employed by you and taught by QA under these Terms and Conditions.
"Commencement Date"	as defined at clause 2.1
"Confidential Information"	any and all materials and information of or relating to you or QA constituting or concerning products, services, contracts, business models, methods or practices, financial projections or results, know how, trade secrets, intellectual property or ideas which, at the time or times concerned, are not generally known to third persons and such other information as may be proprietary or confidential in nature or is identified by you or QA as confidential.
"Contract"	the contract between you and QA for the supply of Apprenticeship Programmes in accordance with these Terms and Conditions, incorporating the Apprenticeship Programme Confirmation Statement and any Call Off.
'Data Protection Legislation'	all Applicable Laws relating to data protection, the processing of personal data and privacy, including (but not limited to): <ul style="list-style-type: none"> (a) the Data Protection Act 2018; and

- (b) Regulation (EU) 2016/679 of the European Parliament and of the Council of 27th April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) as it forms part of the laws of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018.

“ESFA”

the Education and Skills Funding Agency (or the Department for Education where it is carrying out activities formerly carried out by the Education and Skills Funding Agency), or any other government agency which replaces the Education and Skills Funding Agency, or which assumes the responsibilities of the Education and Skills Funding Agency in relation to training or apprenticeships, from time to time.

“ESFA Funded Amount”

the amount of funding provided by the ESFA pursuant to the Funding Rules.

“Force Majeure Event”

- (a) act of God;
- (b) war, insurrection, riot, civil commotion, act or threat of terrorism;
- (c) lightning, earthquake, fire, flood, storm, or extreme weather condition;
- (d) theft, malicious damage;
- (e) strike, lockout, industrial dispute (whether affecting the workforce of QA or you and/or any other person);
- (f) breakdown or failure of plant or machinery;
- (g) inability to obtain essential supplies or materials;
- (h) change in Applicable Law;
- (i) any outbreak of epidemic or pandemic and any related government advice, legislation, rules or regulations directly affecting QA or you and/or a Learner in any jurisdiction; or
- (j) any event or circumstance to the extent it is beyond the reasonable control of the relevant party, in respect of which clause 21 of these Terms and Conditions will apply.

“Foreground IPR”

all Intellectual Property Rights arising, or which subsist in materials created, in relation to the delivery of the Apprenticeship under these Terms and Conditions and any Call Off.

“Funding Rules”	the ESFA Funding Rules for the delivery of apprenticeships as may be amended from time to time and any other relevant procedures, rules and requirements from time to time laid down by the ESFA or any other relevant funder of QA including through any guidance notes.
“Intellectual Property Rights”	all patents, petty patents, utility models, trademarks, design rights, applications for any of the foregoing, copyright, moral rights, database rights, trade or business names, domain names, website addresses whether registerable or otherwise (including applications for and the right to apply for registration of any such rights), and any similar rights in any country whether currently existing or created in the future, in each case for their full term together with any renewals or extensions.
“ILR”	Individualised Learner Record.
“Liability”	liability arising out of or in connection with these Terms and Conditions, whether in contract, tort, misrepresentation, restitution, under statute or otherwise, including any liability under an indemnity contained in these Terms and Conditions and/or arising from a breach of, or a failure to perform or defect or delay in performance of, any of a Party’s obligations under these Terms and Conditions, in each case howsoever caused including if caused by negligence.
“Periodic Review”	the periodic review and re-approval of schemes as per QA’s rules and Regulations as notified to you from time to time.
“QA”	QA Limited is registered in England and Wales under company number 02413137 with its registered office at International House, 1 St Katharine’s Way, London, E1W 1UN.
“Regulations”	QA’s general, academic and quality assurance regulations and procedures from time to time in force, as set out in its Academic and Quality Policies and Procedures.
“Safeguarding Legislation”	the Safeguarding Vulnerable Groups Act 2006, the Children’s Act 1989, Protection of Children Act 1999, the Education Act 2002 and all other legislation on the protection of children or vulnerable adults.
“Term”	the period during which these Terms and Conditions are in force in accordance with clause 19.
“Terms and Conditions”	these terms and conditions as amended from time to time in accordance with clause 35.
“Training Period”	the number of days between the Apprenticeship Start Date and the Withdrawal Date.

- “Training Plan”** a document entered into between the Apprentice, you and QA which meets the requirements relating to such documents under the Funding Rules (for the avoidance of doubt, the Training Plan and the Apprenticeship Agreement must be separate documents).
- “VAT”** value added tax.
- “Withdrawal”** when an Apprentice leaves or stops taking part in their Apprenticeship before they have completed it, which is the last evidence of on-programme participation with QA.
- “Withdrawal Date”** the date on which the last evidence of on-programme participation by the Apprentice with QA as determined by QA (acting reasonably).
- “you”** the person named as the Employer in the Apprenticeship Programme Confirmation Statement.
- 1.2 references to the background section, clauses and Schedules are to the background section and clauses of and schedules to these Terms and Conditions and references to paragraphs are to paragraphs of the relevant Schedule;
- 1.3 the Schedules form part of these Terms and Conditions and will have the same force and effect as if set out in the body of these Terms and Conditions and any reference to these Terms and Conditions will include the Schedules;
- 1.4 all headings are for ease of reference only and will not affect the construction or interpretation of these Terms and Conditions;
- 1.5 unless the context otherwise requires:
- 1.5.1 references to the singular include the plural and vice versa and references to any gender include every gender;
- 1.5.2 references to a “person” include any individual, body corporate, association, partnership, firm, trust, organisation, joint venture, government, local or municipal authority, governmental or supra-governmental agency or department, state or agency of state or any other entity (in each case whether or not having separate legal personality);
- 1.5.3 references to a “Party” means you and QA, each of whom being a “Party” and who may be collectively referred to as the “Parties”;
- 1.6 references to any statute or statutory provision will include any subordinate legislation made under it and will be construed as references to such statute, statutory provision and/or subordinate legislation as modified, amended, extended, consolidated, re-enacted and/or replaced and in force from time to time;
- 1.7 any words following the words “include”, “includes”, “including”, “in particular” or any similar words or expressions will be construed without limitation and accordingly will not limit the meaning of the words preceding them;

- 1.8 the rule known as the ejusdem generis rule will not apply and accordingly the meaning of general words introduced by the word "other" or a similar word or expression will not be restricted by reason of the fact that they are preceded by words indicating a particular class of acts, matters or things;
- 1.9 references to these Terms and Conditions are references to these Terms and Conditions as varied from time to time in accordance with clause 35 and as novated from time to time;
- 1.10 an obligation on a Party to procure or ensure the performance or standing of another person will be construed as a primary obligation of that Party; and
- 1.11 any obligation on a Party not to do or omit to do anything includes an obligation not to allow (whether expressly or by a failure to take reasonable steps to prevent) that thing to be done or omitted to be done by any other person.

2. **CONTRACT FORMATION**

- 2.1 A contract for the supply of Apprenticeship Programmes by QA to you on these Terms and Conditions will be formed when the Apprenticeship Programme Confirmation Statement is entered into by the Parties at which point and on which date the Contract shall come into existence ("**Commencement Date**").
- 2.2 These Terms and Conditions apply to the Contract to the exclusion of any other terms that you seek to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.

3. **JOINT OBLIGATIONS OF THE PARTIES**

- 3.1 The Parties will deliver their respective obligations to each other and to the Apprentice in accordance with all applicable Funding Rules.
- 3.2 The Parties will adhere to all applicable Assessment Requirements.
- 3.3 The Parties will enter into a Call Off, substantially in the form set out in **Schedule 1**, for each Apprentice or cohort of Apprentices before the commencement of that Apprenticeship.
- 3.4 The Parties will immediately inform each other in writing, and QA will inform the ESFA in writing, about any circumstances (for example where QA and a proposed subcontractor have common directors) which might give rise to an actual or perceived conflict of interest. The Parties will not proceed with any Apprenticeships connected to the conflict without the ESFA's permission in writing in these circumstances.
- 3.5 The Parties shall ensure that each Apprentice, the Employer and QA sign and hold a copy of a Training Plan setting out how they will support the successful achievement of the Apprenticeship:
- 3.5.1 The Training Plan must be signed by the Apprentice (and if required the Apprentice's guardian), the Employer and QA, and all three parties must keep a current signed and dated version on record;
- 3.5.2 The Training Plan must set out the planned content and schedule for training (including identifying which elements are off-the-job training and count towards the off-the-job training minimum requirement set out in the Funding Rules (as updated from time to time) and, when it is available to the parties, end-point assessment. This should be no later than 6 months before the learning planned end date. It must also set out what is expected and offered by the Employer, QA (and any subcontractors) and the Apprentice in achieving the Apprenticeship.
- 3.5.3 The Training Plan is intended to provide a short summary, typically no longer than two to three pages, and should include the following as a minimum:

- 3.5.3.1 The name of the Apprentice, their job role and their paid hours excluding overtime.
- 3.5.3.2 Details of the Employer and QA (and any subcontractors involved in the delivery of training).
- 3.5.3.3 Details of the Apprenticeship, including the name of the apprenticeship standard, the level, the start and end-dates for the Apprenticeship and the dates relating to the practical period of training. The start date set out in the Training Plan must align with the start date in the Apprenticeship Agreement and the ILR.
- 3.5.3.4 The volume of off-the-job training hours that will be delivered. This must at least meet the minimum policy requirement of the ESFA. The results of the Apprentice's initial assessment, including recognition of prior learning, must be taken into account before developing the Training Plan.
- 3.5.3.5 For the full programme, a brief description (2-3 sentences) to describe the delivery model (i.e. frequency and mode of delivery). Frequency may include regular delivery through day release or block release (including front loaded training). The mode of delivery may include 1:1 instruction, cohort attendance at QA, virtual classrooms or self-directed distance learning.
- 3.5.3.6 The planned content/units of delivery.
- (a) For standards without a mandatory qualification this must be a description of the activities that the Apprentice will undertake to develop occupational competency.
- (b) For standards with a mandatory qualification this must be, as a minimum, a list of the units, along with a description of any additional activities that the Apprentice will undertake to develop occupational competency.
- (c) Details of when content will be delivered. For longer Programmes (i.e. 12 months +) these details may not yet be finalised, and the Training Plan may initially only detail the first year; in these circumstances the Training Plan must be updated as the information becomes available. This equally applies where an Apprentice may have optional aspects available to them at a later point in the Apprenticeship.
- (d) Details of the Party responsible for each component's delivery; this may include QA, a sub-contractor or the Employer. Where this party is accessing apprenticeship funding for the delivery, they must be on the Register of Apprenticeship Training Providers (unless an exemption in the ESFA Rules applies).
- (e) It must be clear if the component has been used towards the off-the-job training calculation.
- 3.5.3.7 An agreement of what is required from, and offered by, the Apprentice and the Parties (and any delivery subcontractors) to achieve the Apprenticeship and details of how all parties will work together. This must include contact details of each party.
- 3.5.3.8 Written confirmation from the Employer that the Apprentice will be allowed to undertake off-the-job training within their normal working hours, in addition to English and maths training if

required. The Employer will provide evidence to QA of this on an ongoing basis for QA to keep in the evidence pack.

3.5.3.9 Summary details of tripartite progress reviews (QA, Employer, Apprentice), including the frequency and format, to discuss progress to date against the Training Plan and the immediate next steps required.

3.5.3.10 The process for resolving any queries or complaints regarding the Apprenticeship, including quality. This must include details of the escalation route within QA's own organisation and the escalation process to Apprenticeship Service Support on 08000 150 600 or by email to helpdesk@manage-apprenticeships.service.gov.uk).

3.6 The Parties will use commercially reasonable endeavours to meet yearly to discuss:

3.6.1 the level of fees for future cohorts required to support the programme;

3.6.2 the prospective number of Apprentices for the following year;

3.6.3 issues relating to retention of Apprentices;

3.6.4 health, safety and security concerns; and

3.6.5 achievement and satisfaction levels.

3.7 The Parties will collaborate to produce an Individual Learning Plan for each Apprentice.

3.8 The Parties will each send to the other Party a copy of any educational quality review report which may be carried out on it by an external or internal reviewer as soon as reasonably possible, and in any event no later than 2 weeks upon receiving the quality review report.

3.9 The Parties will ensure that each of their staff whether with or without a contract of employment, including agency, volunteer or contract workers who will come into contact with the Apprentice, has any necessary qualifications and/or checks, is medically fit and is not barred from employment as in their role and is bound to maintain the confidentiality of the Confidential Information.

3.10 Apprentices enrolled through QA by you cannot be enrolled elsewhere on any other Government funded programme with another provider if this contravenes funding or eligibility guidelines.

4. **QA'S OBLIGATIONS**

4.1 QA will be listed on the Register of Apprenticeships Training Providers (RoATP) or any successive register and will remain eligible for funding from the ESFA and/or holding a funding agreement with the ESFA throughout the Apprenticeship Period.

4.2 QA will provide relevant training and course materials to the Apprentice in respect of the Apprenticeship.

4.3 QA will be responsible for all disciplinary issues relating to the training of the Apprentice.

5. **YOUR OBLIGATIONS**

5.1 You will be, and shall remain, the employer of the Apprentice for all purposes during the period of these Terms and Conditions.

5.2 You will enter into an Apprenticeship Agreement with the Apprentice in a form which complies with all applicable Funding Rules. The Apprenticeship Agreement shall remain in

place throughout the Apprenticeship Period. The Apprenticeship Agreement shall give details of the ESFA's Apprenticeship helpline, the current telephone number for which is 08000 150 400. You will provide the Apprenticeship Agreement for each Apprentice to QA and you will not amend that Apprenticeship Agreement without QA's consent, such consent not to be unreasonably withheld.

- 5.3 You will pay the Apprentice's wages, which shall be at least the minimum wage to which the Apprentice is entitled by law.
- 5.4 You will ensure that the Apprentice is on the PAYE scheme declared in the apprenticeship service account.
- 5.5 You will ensure that the Apprentice undertakes work which is relevant to the Apprentice's studies and spends a large proportion of their apprenticeship developing the skills of their job, relevant to the attainment of a recognised qualification and in furtherance of the delivery of the Apprenticeship. You will ensure that the Apprentice's job has a productive purpose and provides the Apprentice with the opportunity to embed and consolidate the knowledge, skills and behaviours gained through the Apprenticeship.
- 5.6 You will be responsible for all disciplinary issues relating to the employment of the Apprentice. You will inform QA immediately if you have cause to believe that there may be any disciplinary issues relating to the employment of the Apprentice, and QA will provide you with reasonable assistance in investigating the issue.
- 5.7 You will provide the Apprentice with paid time to attend off-the-job training (as a minimum to meet the requirements of the Funding Rules), including additional support for English and maths, or support access for learning difficulties and/or disabilities.
- 5.8 You hereby acknowledge that the Apprentice must complete the Apprenticeship within their working hours. Time spent by the Apprentice at QA will be deemed to form part of the Apprentice's working hours.
- 5.9 You will facilitate the Apprentice to perform the Apprentice's obligations in the Training Plan.
- 5.10 You will deliver any on-the-job skills development as detailed within any ILP/Training Plan.
- 5.11 You will provide a mentor for the Apprentice and a key contact point for QA and the Apprentice.
- 5.12 You will obtain the Apprentice's express written consent that data relating to them (held by you) may be transferred to QA for the purposes of registration and in connection with the Apprenticeship and such consent to include the right for QA to transfer data and information (held by QA) relating to you or the Apprentice to third parties as required to fulfil its obligations under the Training Plan.
- 5.13 You will attend and contribute to the Apprentice's formal progress reviews and to provide your views on progress and performance in order to ensure that the targets and objectives agreed accurately reflect your and the Apprentice's needs. The minimum requirement of the progress review is that it will:
 - 5.13.1 Check progress against any actions agreed at the previous review, including any training that has been delivered since the last review;
 - 5.13.2 Check overall progress of the Apprentice against their agreed Training Plan, documenting any slippage against the volume of planned off-the-job training;

- 5.13.3 Allow for any off-the-job training evidence, that is outside of QA's control, to be discussed, agreed, collected, or documented;
 - 5.13.4 Discuss any concerns that QA, Employer, or the Apprentice has;
 - 5.13.5 Discuss any new information / potential changes of circumstance that might impact on the Training Plan. This could include any additional training required, or any additional prior learning or learning support needs that have come to light since the original initial assessment and / or the last progress review. Changes to the Training Plan may require the price to be renegotiated;
 - 5.13.6 Provide for an opportunity to update the Training Plan (e.g. where it is necessary to replan any off-the-job training); and
 - 5.13.7 Agree and document actions for the next review. The record of the progress review must be signed and dated by all parties (Apprentice, Employer, QA).
- 5.14 You will use reasonable efforts to provide at least 10 Business Days' notice to QA of any cancellation or postponement of workplace assessment visits, formal progress reviews or training sessions.
- 5.15 You will provide such information in relation to each Apprentice as QA may reasonably request and to fully support the completion of all registration documentation required by the ESFA to register the Apprentice on the Apprenticeship Programme.
- 5.16 You will, throughout the Apprenticeship Programme, fully co-operate with QA's staff in the completion of all documentation necessary to provide ongoing evidence of progression and completion as required by the ESFA, including without limitation:
- 5.16.1 a record of planned and delivered off-the-job training and any supporting evidence required by QA and, if the original volume of planned off-the-job training hours and the actual hours delivered to not align, a summary statement countersigned by you and the Apprentice and prepared in accordance with the Funding Rules;
 - 5.16.2 if you and the Apprentice wish to use keeping in touch (KIT) or shared parental leave in touch (SPLIT) days to continue off-the-job training and/or assessment during a period of maternity, adoption or shared parental leave, an agreement countersigned by you and the Apprentice and prepared in accordance with the Funding Rules;
 - 5.16.3 if the Apprentice is withdrawn, a record for part-completion of an apprenticeship prepared in accordance with the Funding Rules;
 - 5.16.4 written confirmation from you that the Apprentice will be allowed to complete the Apprenticeship Programme within their working hours, including any English and maths required.
- 5.17 You will provide feedback to QA on the Apprentice's experience, including surveys provided by QA for the purposes of its quality control and service evaluation.
- 5.18 You will allow QA to perform a health and safety assessment of your premises in line with the Management of Health and Safety at Work Regulations 1999 and recommend any changes necessary to ensure compliance with applicable laws regarding the health and safety of Apprentice(s) or reasonably requested by QA in order to ensure the safeguarding of Apprentice(s).

- 5.19 You will ensure that any Apprentices, especially below the age of 18, are protected at work from any risks to their health and safety and a risk assessment has been carried out in line with the Management of Health and Safety at Work Regulations 1999.
- 5.20 You will maintain employers' liability insurance as required by law.
- 5.21 You will use all reasonable endeavours to allow the Apprentice to remain with you once they have completed their Apprenticeship where a job opportunity continues to exist and where the Apprentice wishes to remain. Where this is not possible you and QA will support the Apprentice to seek alternative opportunities.
- 5.22 You will not use QA, or any of the activities covered by these Terms and Conditions, as a recruitment agency or service during the term of these Terms and Conditions. Should you offer any Apprentice or candidate (introduced by QA) employment otherwise than as envisaged by these Terms and Conditions then you will be liable to pay to QA liquidated damages of £1,500 (one thousand five hundred pounds). The Parties acknowledge that this figure is a genuine pre-estimate of the losses incurred by QA on a time and effort basis and is not a penalty of any kind.
- 5.23 You will make reasonable changes to the Apprenticeship requested by QA for the purpose of providing QA with up to date reporting and ensuring the appropriate delivery of education and training in accordance with the Funding Rules.

6. **APPRENTICE'S EMPLOYMENT**

- 6.1 The Apprenticeship Agreement shall remain in force during the Apprenticeship Period. You will comply with the terms of the Apprenticeship Agreement during the Apprenticeship Period. You will permit the Apprentice leave to undertake training at QA (or a venue agreed between you and QA).
- 6.2 QA will not, and will not require the Apprentice to do anything that shall, breach the Apprenticeship Agreement and shall have no authority to vary the terms of the Apprenticeship Agreement or make any representations to the Apprentice in relation to the terms of the Apprenticeship Agreement.
- 6.3 You will provide QA with such information and assistance as it may commercially reasonably require to carry out its obligations as the Apprentice's training provider.
- 6.4 QA will provide you with such information and assistance as you may commercially reasonably require to carry out your obligations as the Apprentice's employer.
- 6.5 All documents, manuals, hardware and software provided for the Apprentice's use by QA, and any data or documents (including copies) produced, maintained or stored on QA's computer systems or other electronic equipment (including mobile phones), remain the property of QA.
- 6.6 All documents, manuals, hardware and software provided for the Apprentice's use by you, and any data or documents (including copies) produced, maintained or stored on your computer systems or other electronic equipment (including mobile phones), remain your property.
- 6.7 Subject to clause 6.8, you will, where practicable, ensure that the Apprentice is employed for at least 30 hours per week.
- 6.8 You may employ the Apprentice for fewer than 30 hours a week provided that:

- 6.8.1 QA agrees that there is a case for the Apprentice to work fewer than 30 hours a week;
 - 6.8.2 you record the proposed number of hours each week;
 - 6.8.3 you keep a record of the circumstances which has led you to believe that a reduction in hours is appropriate; and
 - 6.8.4 the expected duration of the Apprenticeship is extended accordingly on terms satisfactory to QA.
- 6.9 You will review the Apprentice's salary on an annual basis to reflect the national statutory requirements. You will pay the Apprentice at least the minimum amount required by law.
- 6.10 You will make any National Insurance contributions which are required in relation to the Apprentice.
- 6.11 The Parties will each inform the other as soon as reasonably practicable of any other significant matter that may arise during the Apprenticeship Period relating to the Apprentice or their employment.
- 6.12 You will use your reasonable endeavours to procure that the Apprentice notifies QA if the Apprentice identifies any actual or potential conflict of interest between you and QA during the Apprenticeship Period.
- 6.13 You will notify QA if the Apprentice is or shall be absent from work for any reason as soon as reasonably practicable.
- 6.14 QA will notify you if the Apprentice is or shall be absent from study for any reason as soon as reasonably practicable.
- 6.15 If an Apprentice requests a break from study, the Parties will agree in advance of any break a plan for the Apprentice's leave and return to work and study. Unless the Parties agree otherwise, then the Apprentice's training from QA and ensuing payments to QA will restart on the Apprentice's return.
- 6.16 If the Apprenticeship Agreement is terminated before the end of the practical period because the Apprentice is dismissed by reason of redundancy, you will provide a copy of the Apprentice's dismissal notice (which cites the reason for dismissal as redundancy) to QA.
- 6.17 In addition to any other remedy or other action as provided under this Agreement, in the event that the Apprenticeship is terminated by reason of redundancy, you acknowledge and agree that (i) if the Apprentice was within six months of the final day of completion of the Apprenticeship Period; or (ii) has completed at least 75% of the Apprenticeship Period, then in each case, (i) and (ii), the ESFA will fund 100% of the remaining costs of the Training Period. The Parties also acknowledge and agree that in addition to any other remedy or other action as provided under this Agreement, if the Apprentice has completed less than 75% of the Training Period and the remaining training will take six months or more, the ESFA will fund 100% of the training costs of up to 12 (twelve) weeks while the Apprentice seeks a new employer.

7. **QUALITY ASSURANCE AND REVIEW**

- 7.1 The delivery of the Apprenticeships and the arrangements for managing these Terms and Conditions are subject to QA's Annual and Periodic Review procedures as specified in QA's Regulations.
- 7.2 QA will determine whether the outcome of the Annual Monitoring and Periodic Review of Apprenticeships is satisfactory after due consideration of the following:

- 7.2.1 the comments of any external examiners;
- 7.2.2 the feedback received from Apprentices via agreed apprentice feedback procedures that have been agreed between the parties;
- 7.2.3 the comments of QA's relevant committees and personnel;
- 7.2.4 the evidence presented within the annual monitoring reviews submitted to QA; and
- 7.2.5 the commentary on the operation of the relationship between the parties to these Terms and Conditions, prepared by QA.

8. **MARKETING**

All promotional material (including print and digital) referring to a Party, or that uses a Party's logo, must be approved in writing by that Party before it is published. Without prejudice to the generality of the foregoing, materials will not be approved unless they clearly and accurately specify the nature of the relationship between the Parties.

9. **ENROLMENT**

- 9.1 Once you have received details of a potential Apprentice, you will send QA any paperwork and make such other arrangements as deemed necessary in QA's reasonable opinion for QA to determine the Apprentice's eligibility for an Apprenticeship with you. Subject to QA confirming eligibility of the Apprentice, the Apprentice will be enrolled as an Apprentice by QA. You acknowledge that you are not QA's agent for the purpose of enrolment. Neither Party will enroll an Apprentice, or agree to enroll an Apprentice, unless both Parties have approved this.
- 9.2 The initial guidance and assessment of Apprentices and potential Apprentices shall be carried out by both Parties. The Parties will agree the form which the said initial guidance and assessment shall take, including the form of the Apprenticeship Agreement which will be entered into at that time.
- 9.3 Neither Party will make any representation to any potential Apprentice about their eligibility, likelihood of becoming enrolled or any conditions regarding enrolment save as expressly authorised by the other.

10. **ASSESSMENT**

- 10.1 QA will recommend an End Point Assessment Organisation on the ESFA's Register of Apprenticeship Assessment Organisations to you. You have the right, within two weeks of this notification, to require QA to use a different End Point Assessment Organisation on the ESFA's Register of Apprenticeship Assessment Organisations. Unless you exercise this right, QA will use the End Point Assessment Organisation which it has recommended. QA will make payments to the assessment organisation chosen by you. You must have selected and negotiated the price with End Point Assessment Organisation at least six months before the Apprentice reaches the gateway.
- 10.2 The Parties will both support the Apprentice in undertaking any assessments, including supporting the Apprentice through any relevant gateway required to carry out the assessment.

11. **EMPLOYER ENGAGEMENT**

Apprentices enrolled through QA by you cannot be enrolled elsewhere on any other Government funded programme with another provider if this contravenes funding or eligibility guidelines.

12. **INTELLECTUAL PROPERTY RIGHTS**

- 12.1 Use of either Party's name or logo by the other Party is prohibited except with the prior written consent except of that Party.
- 12.2 Except where explicitly otherwise stated, nothing in these Terms and Conditions nor in the Call Off nor in the Apprenticeship Programme Confirmation Statement shall act to transfer any intellectual property rights from one Party to the other. As such QA and its licensors will retain all right, title and interest in and to all Background IPR. You will not acquire any rights to the Background IPR nor to any materials in which Background IPR subsists, including any documents, training guides, instruction manuals, drawings, diagrams, videos or any other materials provided by QA.
- 12.3 QA hereby grants to you a licence to use its Background IPR in those materials which QA provides to the Apprentice solely to the extent necessary for the Apprentice to receive the Apprenticeship. Except as permitted by law you or the Apprentice will not copy, reproduce, sell, license, distribute, publish or otherwise circulate any Background IPR without QA's prior written consent.
- 12.4 All Foreground IPR shall vest in QA upon creation and you hereby assign with full title guarantee all Foreground IPR which relates to the Agreement. Such assignment shall take effect as a present assignment of future rights.
- 12.5 QA hereby grants to you a worldwide, royalty-free, perpetual licence to use its Foreground IPR for the fulfilment of the Apprenticeship only, and provided always that you will not commercialise Foreground IPR and in particular will not sell, license, distribute, publish or otherwise circulate Foreground IPR to any third party except with QA's prior written consent.
- 12.6 You will promptly inform QA in writing of any infringement or alleged infringement of Background IPR or Foreground IPR of which you become aware, and of any allegation coming to your attention that the Background IPR or Foreground IPR infringe any third party's intellectual property rights.
- 12.7 Where you require the Apprenticeship to be provided by QA to your specifications or require QA to incorporate your materials within the delivery of the Apprenticeship, you will fully indemnify QA from and against all losses or expenses (including reasonable legal expenses) it suffers or incurs as a result of a claim that the provision of the Apprenticeship and/or use of your materials infringes any third party's Intellectual Property Rights.

13. **FUNDING**

- 13.1 The Apprenticeship shall be funded in accordance with the Funding Rules.
- 13.2 You will pay such fees to QA on the dates and in the manner as are set out in the Call Off and the Apprenticeship Programme Confirmation Statement for each Apprentice. You will pay and be liable to QA without limitation for all fees, charges and lost funding from the ESFA in the event that you do not pay QA the fees and charges due in accordance with these Terms and Conditions the Call-Off and the Apprenticeship Programme Confirmation Statement.
- 13.3 The Parties will agree a price for the training and assessment required for an Apprentice to undertake and complete an apprenticeship. The agreed price must only include the training and assessment necessary to meet the relevant standard.
- 13.4 The Parties may only revise the agreed price for the training and assessment when both Parties agree that:
- 13.4.1 a specific gap in the required training or assessment for the Apprentice has been identified that was omitted in error from the original written agreement;

- 13.4.2 a specific element in the training or assessment agreed for the Apprentice has been identified as no longer required; or
 - 13.4.3 the original volume of planned off-the-job training hours materially exceeds the actual delivered off-the-job training hours.
- 13.5 If the Apprenticeship is to be co-funded, in accordance with the Funding Rules, by you, then your cash contributions to QA will be in the form of a transfer of funding visible in the financial systems of both you and QA. The value of each cash contribution must be recorded in the ILR along with documentation to support this.
- 13.6 In your digital account:
- 13.6.1 you will record the details of the apprenticeship required by the Funding Rules which must correspond with the information recorded on the ILR;
 - 13.6.2 you will give permission to QA to enter the details of the apprenticeship required by the Funding Rules on its behalf;
 - 13.6.3 you will promptly approve reasonable requests (and in any event within three (3) working days) made by QA with respect to its digital account;
 - 13.6.4 QA may, at its absolute discretion, agree to enter the details of the apprenticeship required by the Funding Rules onto your digital account; and
 - 13.6.5 you will authorise payments from your digital account to QA in accordance with the payment provisions set out in the Call Off and/or the Apprenticeship Programme Confirmation Statement.
- 13.7 You will meet the cost of all exam attempts and each resit of each exam per Apprentice (where applicable), in each case, prior to the Apprentice sitting the exam.
- 13.8 All fees are exclusive of VAT unless otherwise stated. You will pay QA any VAT properly chargeable, provided QA has delivered a correct VAT invoice as required by statute.
- 13.9 Where your accounting practices require the use of a purchase order number, you will provide a valid purchase order number to QA immediately upon signing each Call Off. Where applicable you will also provide a copy of your internal purchase order document to QA.
14. **CHANGE OF CIRCUMSTANCES**
- 14.1 The Parties must each inform the other as soon as possible and in any event within 48 hours of any change of circumstance (as defined in clause 14.2) which may affect the amount of government funding that can be claimed by you, or the Apprentice's ability to successfully complete their Apprenticeship as agreed under the Apprenticeship Agreement.
- 14.2 A change of circumstance includes, but is not limited to a change:
- 14.2.1 of employer, or employer circumstance (for example the employer goes into administration);
 - 14.2.2 of apprentice job role or employment status;
 - 14.2.3 in the apprentice's circumstances leading to a break in learning;
 - 14.2.4 in the apprentice's status; or
 - 14.2.5 involving the apprentice leaving their apprenticeship early.
- 14.3 Where there is a change of circumstance, QA will update the ILR in accordance with the ESFA's ILR guides and templates as soon as it is made aware of the change of circumstance.

- 14.4 If a change of circumstance means that training and/or assessment is no longer being delivered or capable of being delivered, neither Party will claim any further government funding contributions or incentive payments. You will ensure that any employer contribution for any training or assessment that has already been delivered is paid.

15. **EVIDENCE REQUIREMENTS**

- 15.1 For each Apprentice for which the Funding Rules require it, you will sign an eligibility declaration form (in the form required by QA from time to time), confirming both the eligibility of the Apprentice and your eligibility as an employer for incentive payments.

- 15.2 QA will retain a signed eligibility declaration for each Apprentice.

- 15.3 QA will hold evidence:

15.3.1 that the Apprentice exists;

15.3.2 the Apprentice is eligible for funding;

15.3.3 that you are eligible for any incentive payments;

15.3.4 of a written agreement with you;

15.3.5 that the education and training being delivered is eligible for funding;

15.3.6 that the training/assessment activity is taking place or has taken place; and

15.3.7 that, for elements of quality standards for which certification is required, the achievement of learning aims has been certified by way of a certificate being issued by an awarding organisation or assessment body for the apprenticeship standard, and to support other funding claimed, such as learning support and English and maths.

- 15.4 You will promptly provide to QA (and in any event within three (3) Business Days all information it reasonably requests to permit the onward payment of any incentive payments.

- 15.5 QA will retain employer incentive claim forms submitted by you.

16. **SUB-CONTRACTING**

- 16.1 QA will be entitled to sub-contract its obligations under these Terms and Conditions, provided that:

16.1.1 the information required by the Funding Rules relating to the use of subcontractors is contained in the Call Off; and

16.1.2 the use of the subcontractor does not breach the Funding Rules; and

16.1.3 you have provided written permission in advance.

- 16.2 QA will commit reasonable endeavours to resolve any disputes between you and any subcontractor of QA.

17. **TERMINATION OF AN APPRENTICESHIP**

- 17.1 You may terminate the Apprenticeship with immediate effect without notice:

17.1.1 on the termination of the Apprenticeship Agreement or as a result of the Apprentice's gross misconduct, or resignation;

- 17.1.2 if QA is guilty of any serious or (after warning) repeated breach of these Terms and Conditions; or
 - 17.1.3 if QA becomes bankrupt or makes any arrangement or composition with or for the benefit of its creditors.
- 17.2 QA may terminate the Apprenticeship with immediate effect without notice:
- 17.2.1 on the termination of the Apprenticeship Agreement or as a result of the Apprentice's gross misconduct, or resignation;
 - 17.2.2 if you are guilty of any serious or (after warning) repeated breach of these Terms and Conditions; or
 - 17.2.3 if you become bankrupt or make any arrangement or composition with or for the benefit of your creditors.
- 17.3 On termination of an Apprenticeship in accordance with either of clauses 17.2.2 or 17.2.3, you will pay to QA such fees as would otherwise have been payable by you to QA under these Terms and Conditions.
- 17.4 On termination of an Apprenticeship in accordance with clause 17.2.1 (and only if QA reasonably considers that you have not acted reasonably), you will pay to QA such fees as would otherwise have been payable by you to QA under these Terms and Conditions.
- 17.5 Any reasonable delay by either Party in exercising the right to terminate shall not constitute a waiver of such rights.
- 17.6 Notwithstanding any other provision of these Terms and Conditions, you acknowledge and agree during the period up to that date which is six (6) years from the later of:
- 17.6.1 the termination or expiry of these Terms and Conditions;
 - 17.6.2 termination of the Apprenticeship for any reason; or
 - 17.6.3 completion of the Apprenticeship

(the "**Limitation Period**")

that QA will be entitled to charge and you will pay all fees that would have been due to QA under these Terms and Conditions (whether or not the actual payment to QA falls outside the Limitation Period).

18. **WITHDRAWALS**

- 18.1 You acknowledge and agree that fees charged to your digital account by QA may not necessarily reflect services provided by QA in the relevant period because fees are paid to QA in equal monthly instalments according to the planned duration of the Apprenticeship, regardless of the proportion of services delivered in the applicable period. By way of example, you and Apprentice may seek to complete a larger proportion of off-the-job training at the start of the Apprenticeship Period and in this instance QA will be paid for such services over the duration of the Apprenticeship Period rather than when training is delivered.
- 18.2 In the event of a Withdrawal QA will no longer be entitled to fees from your digital account and, due to the circumstances detailed in clause 18.1, would not be entitled to recover fees from the digital account for services which have already been provided by QA prior to the Withdrawal and in this instance QA shall be entitled to recover directly from you and you

agree to pay an amount equal to the value of any services provided under this Agreement prior to a Withdrawal which QA is unable to recover from the your digital account.

19. TERM, TERMINATION AND CONSEQUENCES OF TERMINATION OF THIS AGREEMENT

19.1 These Terms and Conditions shall commence on the Commencement Date and shall continue unless and until terminated as provided by these Terms and Conditions.

19.2 Either Party may terminate these Terms and Conditions on three months' written notice to the other Party.

19.3 The termination of these Terms and Conditions is without prejudice to the rights, duties and liabilities of either Party accrued prior to termination.

19.4 The clauses in these Terms and Conditions which expressly or impliedly have effect after termination will continue to be enforceable notwithstanding termination.

19.5 On termination or expiry of these Terms and Conditions howsoever arising:

19.5.1 the Parties will cease to promote, market or advertise the Apprenticeships; and

19.5.2 the Parties will each honour any outstanding obligations due to the other at the date of termination.

19.6 Upon termination for any reason or expiry, the Parties will permit those Apprentices who are registered with them at the date of termination, to continue until the due completion date for such Apprenticeship and you will pay all such fees due to QA until the completion date for such Apprenticeship.

19.7 Upon termination or expiry of these Terms and Conditions, the Parties will continue to work together in good faith to conclude any outstanding administrative, audit or other Apprentice requirements that may exist prior to the commencement of the following Academic Year to ensure Apprentices are able to continue with or start new Apprenticeships with QA or any other third party. For the avoidance of doubt any actions required to conclude any outstanding administrative, audit or other requirements shall be considered a consequence of termination of these Terms and Conditions and shall not constitute a new agreement between the Parties.

20. EXCLUSIONS AND LIMITATIONS OF LIABILITY

20.1 Neither Party excludes or limits its liability (if any) to the other:

20.1.1 for personal injury or death resulting from its negligence;

20.1.2 for fraud or fraudulent misrepresentation and any matter for which it is not permitted by law to exclude or limit its liability; and

20.1.3 for breach of the Intellectual Property Rights of a third party.

20.2 Except as provided under clause 20.1, notwithstanding anything else contained in these Terms and Conditions and/or any Call Off and/or any Apprenticeship Programme Confirmation Statement, the aggregate liability of QA to you whether in contract, tort (including negligence), breach of statutory duty, restitution or otherwise will be the lower of £500,000 or the total fees paid by you under these Terms and Conditions in the previous 12 months.

20.3 Except as provided under clause 20.1, notwithstanding anything else contained in these Terms and Conditions and/or any Call Off and/or Apprenticeship Programme Confirmation Statement, the aggregate liability of you to QA whether in contract, tort (including negligence), breach of statutory duty, restitution or otherwise will be the lower of £500,000 or the total fees paid by you under these Terms and Conditions in the previous 12 months.

- 20.4 The exclusions from and limitations of liability contained in these Terms and Conditions will apply after as well as before the date of expiry or termination of these Terms and Conditions.
- 20.5 The exclusions from, and limitations of, liability set out in this clause 20 will be considered severally. The invalidity or unenforceability of any one sub-clause or clause will not affect the validity or enforceability of any other sub-clause or clause and will be considered severable from each other.
- 20.6 Except in the case of liability under clauses 20.1.1 to 20.1.3, neither Party will be liable to the other for any loss of profits, loss of business, loss of revenue, loss of goodwill, actual or potential business, reputation or opportunity, or loss of savings (whether anticipated) or otherwise).

21. **FORCE MAJEURE EVENTS**

- 21.1 Neither Party will be in breach of these Terms and Conditions or otherwise liable to the other Party for any failure to perform or delay in performing its obligations under these Terms and Conditions to the extent that such failure or delay is due to a Force Majeure Event.
- 21.2 If a Force Majeure Event occurs:
- 21.2.1 the Party affected will as soon as reasonably practicable of becoming aware of the Force Majeure Event give written notice to the other Party that the Force Majeure Event has occurred, giving details of the nature, extent and anticipated duration of the Force Majeure Event and the expected impact of the Force Majeure Event on its ability to perform its obligations; and
 - 21.2.2 the Party affected will use reasonable endeavours, without being required to incur additional expenditure, to mitigate the effects of the Force Majeure Event.

22. **CONFIDENTIALITY**

- 22.1 Each Party will, subject to clause 22.2:
- 22.1.1 only use the other Party's Confidential Information for the purpose of performing its obligations under these Terms and Conditions;
 - 22.1.2 keep the other Party's Confidential Information secret, safe and secure; and
 - 22.1.3 not disclose the other Party's Confidential Information to any other person.
- 22.2 Each Party may disclose the other Party's Confidential Information:
- 22.2.1 to the extent required by law or any court of competent jurisdiction or the rules of any governmental or regulatory body; and
 - 22.2.2 to those of its officers, directors, employees and professional advisers who need access to that Confidential Information so that it can perform its obligations under these Terms and Conditions. A Party disclosing the other Party's Confidential Information under this clause 22.2.2 will procure that each person to whom it discloses that Confidential Information will not do or omit to do anything which if done or omitted to be done by that party would be a breach of this clause 22.

- 22.3 For the purposes of this clause 22, "**Confidential Information**" means any information that relates to a Party (or any of its Group Companies or businesses) and which is disclosed to the other Party in connection with these Terms and Conditions, but excluding information that:
- 22.3.1 is at the relevant time in the public domain (other than by virtue of a breach of this clause 22);
 - 22.3.2 was received by the other Party from a third party who did not acquire it in confidence; or
 - 22.3.3 is developed by the other Party without any breach of these Terms and Conditions.

23. **CANCELLATIONS**

QA reserves the right, at its discretion, to change course schedules, change course content, discontinue courses, limit class size and cancel training courses or events, in which case it will use reasonable endeavours to notify you at the earliest possible opportunity and ensure that it does not negatively affect the Apprentice's ability to complete their Apprenticeship. In the event of cancellation of an element of the Apprenticeship, QA will use reasonable endeavours to reschedule the course at the first available opportunity, where possible.

24. **SAFETY AND SAFEGUARDING**

- 24.1 The Parties will each:
- 24.1.1 carry out their responsibilities under these Terms and Conditions in accordance with all relevant legislation, regulations and formal guidance for the protection of children and vulnerable adults including the Safeguarding Legislation;
 - 24.1.2 make every effort to assure and promote the safeguarding of Apprentices during their employment and to comply with QA's Safeguarding Policy Statement. A copy of the full policy can be downloaded from QA's website: <https://www.qa.com/media/13982/qa-safeguarding-policy-and-procedure-jan-2019.pdf>.
- 24.2 The Parties hereby acknowledge that they have a duty of care to ensure that there are adequate safeguarding processes and checks in place, particularly for those Apprentices aged 18 and under.

25. **DATA PROTECTION**

- 25.1 For the purposes of this clause 25:
- 25.1.1 "**Data Subject**", "**Controller**", "**Processor**" and "**Processing**" have the same meaning as in the Data Protection Legislation;
 - 25.1.2 "**Personal Data**" has the meaning set out in the Data Protection Legislation in relation to data Processed under these Terms and Conditions; and
 - 25.1.3 "**Regulator**" means any independent public authority responsible for monitoring the application of the Data Protection Legislation in the UK or any other member state of the European Union.
- 25.2 The Parties hereby acknowledge and agree that they will share Personal Data under these Terms and Conditions and as such will each ensure that, prior to providing any Personal Data to the other Party, they have all appropriate legal bases (whether consent or otherwise) necessary to enable lawful transfer of Personal Data to the other Party. Once such Personal Data has been provided to the other Party, the Parties hereby acknowledge

and agree that they will act as separate Data Controllers when Processing such Personal Data and:

- 25.2.1 you will be a Data Controller where you are Processing Personal Data for the purpose of your relationship with each Apprentice as his or her employer;
 - 25.2.2 QA will be a Data Controller where it is Processing Personal Data for the purpose of its role as the provider of Apprenticeships to each Apprentice and delivering education and training to Apprentices;
 - 25.2.3 the Parties do not anticipate that either will act as a Data Processor on behalf of the other Party and neither Party is authorised or instructed to act as a Data Processor on behalf of the other Party; and
 - 25.2.4 the Parties will not act as joint Data Controllers in common.
- 25.3 Each Party will ensure that it complies with its respective obligations under Data Protection Legislation.
- 25.4 In the event that either Party:
- 25.4.1 receives a Data Subject Request; or
 - 25.4.2 receives a request for information from a Regulator in relation to the Processing of Personal Data;

it will notify the other Party and if required, the other Party will provide all reasonable co-operation and assistance required by the notifying Party (at the notifying Party's expense) in relation to any such Data Subject Request or request for information from a Regulator.

- 25.5 If either Party becomes aware of a Personal Data breach it will notify the other Party promptly, providing details of the breach.
- 25.6 Each Party will indemnify and keep indemnified (the "**Indemnifying Party**") the other Party (the "**Indemnified Party**") against all costs, claims, damages, expenses, fines and/or penalties incurred by or imposed on the Indemnified Party due to any failure by the Indemnifying Party to comply with its obligations under Data Protection Legislation. The liability of QA under this clause 25.6 shall be limited and capped to the lesser of (i) the sum of £5,000,000 (five million pounds) or (ii) 200% of the fees payable in the contract year in which the indemnification obligation occurs. The contract year means the 12 month period commencing on the Commencement Date or any anniversary of it.

26. **MODERN SLAVERY AND HUMAN TRAFFICKING**

- 26.1 Each Party will:
- 26.1.1 comply with the Modern Slavery Act 2015 and all applicable anti-slavery and human trafficking laws, statutes, regulations and codes of practice in force from time to time; and
 - 26.1.2 develop and maintain policies and procedures aimed at ensuring that slavery and human trafficking is not taking place in any of its supply chains and in any part of its own business.
- 26.2 Each Party warrants to the other that:
- 26.2.1 so far as it is aware (having undertaken reasonable enquiries) slavery and human trafficking is not taking place: (i) in any of its supply chains, and (ii) in any part of its own business;

- 26.2.2 in the event it becomes aware that slavery or human trafficking is taking place in any of its supply chains or in any part of its own business, it will notify the other Party as soon as reasonably and practicably possible;
- 26.2.3 if and to the extent that it is covered by the requirements of section 54 of the Modern Slavery Act 2015, it has complied fully with its legal obligations under that section; and
- 26.2.4 it has not been convicted nor is currently being investigated by the police or any other public body in respect of any alleged offences under or breaches of the Modern Slavery Act 2015.

27. **ANTI-BRIBERY**

27.1 Each Party undertakes to the other that:

- 27.1.1 it will fully comply with, and will procure that all of its personnel and sub-contractors fully comply with the Bribery Act 2010 ("**Anti-Bribery Requirements**");
- 27.1.2 it will not do, or omit to do, any act that will cause the other Party to be in breach of the Anti-Bribery Requirements;
- 27.1.3 it has in place, and will maintain in place throughout the Term of these Terms and Conditions, policies and procedures to ensure compliance with the Anti-Bribery Requirements, it will enforce them where appropriate and, at the other Party's request, it will disclose such policies and procedures to the other Party; and
- 27.1.4 it will make it clear to those providing services to it, including its staff and sub-contractors, that it does not accept or condone the payment of bribes on its behalf.

28. Each Party will indemnify, keep indemnified and hold harmless the other Party, its affiliates and each of its officers, directors, employees and agents, from and against all loss, cost, harm, expense (including reasonable legal fees), liabilities or damage suffered or incurred by the other Party as a result of its, or any of its staff or sub-contractor's breach of the Bribery Act 2010.

29. **HEALTH AND SAFETY**

29.1 Each Party will perform its obligations under these Terms and Conditions in accordance with:

- 29.1.1 all Applicable Laws regarding health and safety; and
- 29.1.2 the health and safety policy of the other Party whilst at the other Party's premises (to the extent it has been made known to the visiting Party by the other Party).

29.2 The Parties will each notify the other Party 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 these Terms and Conditions. The Parties will adopt any necessary associated safety measures in order to manage any such material health and safety hazards.

29.3 You will maintain a full record of all incidents relating to health, safety and security and will make such records available to QA on reasonable notice and you will immediately inform QA of the death of any Apprentice.

30. **ASSIGNMENT**

30.1 QA is entitled to assign, transfer, charge, hold on trust for any person or deal in any other manner with any of its rights under these Terms and Conditions.

30.2 You will not be entitled to assign, transfer, charge, hold on trust for any person or deal in any other manner with any of its rights under these Terms and Conditions without the prior written consent of QA, with such consent not to be unreasonably withheld.

31. **NOTICES**

31.1 Any notice or other communication given under or in connection with these Terms and Conditions will be in writing, in the English language, marked for the attention of the specified representative of the party to be given the notice or communication and:

31.1.1 sent by pre-paid first class post or recorded delivery or airmail post to that party's address; or

31.1.2 delivered to or left at (but not, in either case, by post) that party's address.

31.2 The address and representative for each Party are set out in the Apprenticeship Programme Confirmation Statement and may be changed by that Party giving at least 7 Business Days' notice to the other Party in accordance with this clause 31.

31.3 Any notice or communication given in accordance with clause 31.1 will be deemed to have been served:

31.3.1 if given as set out in clause 31.1.1 at 9:00 am on the 2nd Business Day after the date of posting; and

31.3.2 if given as set out in clause 31.1.2 at the time the notice or communication is delivered to or left at that party's address;

provided that if a notice or communication is deemed to be served before 9.00am on a Business Day it will be deemed to be served at 9.00am on that Business Day and if it is deemed to be served on a day which is not a Business Day or after 5.00pm on a Business Day it will be deemed to be served at 9.00am on the immediately following Business Day.

31.4 To prove service of a notice or communication it will be sufficient to prove that the provisions of clause 31.1 were complied with.

32. **ENTIRE AGREEMENT**

32.1 The Contract constitutes the entire agreement between the Parties and supersedes any prior agreement or arrangement in respect of its subject matter and:

32.1.1 neither Party has entered into the Contract in reliance upon, and it will have no remedy in respect of, any misrepresentation, representation or statement (whether made by the other Party or any other person and whether made to the first Party or any other person) which is not expressly set out in the Contract;

32.1.2 the only remedies available for any misrepresentation or breach of any representation or statement which was made prior to entry into this Agreement and which is expressly set out in the Contract will be for breach of contract; and

32.1.3 nothing in this clause 32 will be interpreted or construed as limiting or excluding any liability for fraud or fraudulent misrepresentation.

33. **NO WAIVER**

A delay in exercising or failure to exercise a right or remedy under or in connection with these Terms and Conditions will not constitute a waiver of, or prevent or restrict future exercise of, that or any other right or remedy, nor will the single or partial exercise of a right or remedy prevent or restrict the further exercise of that or any other right or remedy. A waiver of any right, remedy, breach or default will only be valid if it is in writing and signed by the party giving it and only in the circumstances and for the purpose for which it was given and will not constitute a waiver of any other right, remedy, breach or default.

34. **SEVERANCE**

If any of these Terms and Conditions are found by any court or body or authority of competent jurisdiction to be illegal, unlawful, void or unenforceable, such term will be deemed to be severed from these Terms and Conditions and this will not affect the remainder of these Terms and Conditions which will continue in full force and effect.

35. **VARIATION**

35.1 Save as otherwise expressly provided in these Terms and Conditions, no variation to these Terms and Conditions will be effective unless it is in writing and signed by a duly authorised representative on behalf of each of the Parties.

35.2 QA reserves the right to modify these Terms and Conditions without prior notice to the extent that such changes are required due to changes in laws, rules or regulations that would apply to the services covered in these Terms and Conditions. For the avoidance of doubt, you acknowledge and agree that if there is an update or change in Applicable Law, then such changes are deemed to be automatically applicable to this Agreement and You are obligated to comply with such changes.

36. **NO PARTNERSHIP OR AGENCY**

Nothing in these Terms and Conditions and no action taken by either Party in connection with them will create a partnership or joint venture or relationship of employer and employee between the Parties or give either Party authority to act as the agent of or in the name of or on behalf of the other Party or to bind the other Party or to hold itself out as being entitled to do so.

37. **RIGHTS OF THIRD PARTIES**

The Parties do not intend that any of these Terms and Conditions will be enforceable under the Contracts (Rights of Third Parties) Act 1999 by any person.

38. **CONFLICT**

In the event and to the extent of any conflict or inconsistency between the clauses of these Terms and Conditions and the Schedules and/or any annexures to the Schedules or between any of those clauses, Schedules or annexures to these Terms and Conditions, and any other agreement or contract entered into between the Parties, e.g. a dynamic purchasing agreement or employer framework agreement, then the conflict or inconsistency shall be resolved in accordance with the following descending order of precedence (from high priority to low priority):

38.1 first, these Terms and Conditions;

38.2 second, any Call Off;

38.3 third, any Apprenticeship Programme Confirmation Statement;

- 38.4 fourth, the schedules or annexures to these Terms and Conditions; and
- 38.5 fifth, any other agreement.

39. **DISPUTES, LAW AND JURISDICTION**

- 39.1 These Terms and Conditions and any non-contractual obligations arising out of or in connection with them will be governed by the law of England.
- 39.2 The Parties hereby agree that the courts of England have non-exclusive jurisdiction to determine any dispute arising out of or in connection with these Terms and Conditions (including in relation to any non-contractual obligations).

SCHEDULE 1

Call Off

[EMPLOYER] (the “**Employer**”)

[DATE]

Dear [NAME],

CALL OFF NOTICE

Pursuant to an Agreement between the Employer and QA Limited (the “**Training Provider**”) dated [DATE] (the “**Contract**”), this notice confirms the engagement of [APPRENTICE NAME] (the “Apprentice”) with the Employer as an employee on the terms of an Apprenticeship Agreement (a copy of which you have delivered to us).

I have set out below a summary of the principal terms which will apply under the Contract in respect of that Apprentice. Defined terms shall have the same meaning as in the Contract.

Apprentice

The Apprentice’s name is [NAME].

[INSERT ANY OTHER RELEVANT DETAILS ABOUT THE APPRENTICE, E.G. AGE, COURSE OF STUDY ETC. HERE]

Date Of Commencement of Apprenticeship

The commencement of the engagement will be from [DATE].

Duties as employee of Employer

The Apprentice’s job title is [POSITION].
The Apprentice’s duties will be [INSERT DETAILS].

Place Of Work as employee of Employer

The Apprentice will be based at [LOCATION (COUNTY AND POSTCODE REQUIRED)].

Hours Of Work as employee of Employer

The Apprentice’s standard working week will be [DETAILS].

Training and Learning provided by the Training Provider

[Specify training and learning provided by the Training Provider and location, timings.]

Eligibility for Funding

[Confirmation and signatory from the Employer for eligibility of the Apprentice for apprenticeship funding and 16 to 18 incentive payments, if applicable.]

[Confirmation and signatory from the Employer of their eligibility for the small employer incentive payment, if applicable.]

Services

[Details of any services by either Party which differ from the contract.]

Subcontracting

[Include details of:

1. The Apprenticeship training and/or on-programme assessment that the Training Provider will directly deliver.
2. The amount of funding that the Training Provider will retain for its direct delivery.
3. The Apprenticeship training and/or on-programme assessment that each delivery subcontractor will contribute to the Employer's apprenticeship programme.
4. The amount of funding that the Training Provider will pay each delivery subcontractor for their contribution.
5. The specific amount of funding that the Training Provider will retain to manage and monitor each delivery subcontractor.
6. The specific amount of funding that the Training Provider will retain for each other support activity that the Training Provider will provide to each delivery subcontractor.
7. The specific amount of funding that the Training Provider will retain for the monitoring that the Training Provider will undertake to ensure the quality of the Apprentice training and/or on-programme assessment that the Training Provider has contracted each delivery subcontractor to carry out.
8. A detailed description of how the funding retained for each activity detailed in (5) to (7) contributes to delivering high quality training and how the funding retained is reasonable and proportionate to delivery of the apprenticeship training described in (3).
9. Any actual or perceived conflict of interest between the Training Provider and any delivery subcontractors. For example, where the Training Provider and a delivery subcontractor are part of the same group, share common directors or senior personnel, or where the Training Provider will benefit financially from using a particular delivery subcontractor.]

Payment

[Payment schedule for the Employer cash contribution, setting out the dates for claiming any eligible incentive payments.]

[details of any eligible, evidenced Employer costs for direct grant employers.]

[details of any incentive, completion, or any other payments by the Training Provider to the Employer.]

[confirmation that learning support is available to support apprentices with additional learning needs. Where learning support has been specifically identified and agreed, clearly set out what this is being used for.]

Complaints

Our complaints procedure is outlined here:

<https://www.qa.com/legal-privacy/apprenticeships-complaints-policy>

Please sign and return a copy of this letter to [PERSON], to confirm that the Employer is able to accept the Apprentice in accordance with the terms set out in this letter and under the Contract.

I look forward to hearing from you.

Yours sincerely,

[PERSON]

On behalf of QA LIMITED

I have read and understood this letter and accept the terms of the engagement.

Signature: Date:

On behalf of [EMPLOYER]

Name:

SCHEDULE 2

Apprenticeship Programme Confirmation Statement

[INSERT APPLICABLE APC]

