

CONDITIONS

INTERPRETATION

The following definitions and rules of interpretation apply in these Conditions:-

"Additional Funding" means either funding for Learners in need of functional skills or additional learner support.

"Agreement Details" means the Agreement Details section on the front page of this agreement.

"Apprenticeship" means a nationally recognised training programme combining work with learning and training via a qualification framework consisting of several components; to include evidence of new work, new skills, progression and skills outside the qualification framework.

"Apprenticeship Framework" means a framework approved by the Education & Skills Funding Agency and published by the Secretary of State and assessed through this agreement.

"Apprenticeship Standard" means a standard approved by the Education & Skills Funding Agency and published by the Secretary of State, and assessed through a standardised exam/assessment, more particularly described in the ESFA Rules.

"Apprenticeship Vacancies" means any vacancies which the Client is looking to fill by way of offering Apprenticeships.

"Awarding Organisation" anybody authorised from time to time to award the Qualifications.

"Business Day" means a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

"Business Hours" means the period from 9.00 am to 5.00 pm on any Business Day.

"Candidates" means learners registered with REMIT on a REMIT qualification, accreditation or quality assured programme (QAP) resulting in certification.

"Commencement Date" shall be the Commencement Date set out in the Agreement Details.

"Commitment Statement" means the statement agreed between the Client, Remit and the Learner as set out in the ESFA Rules.

"Client's Representative" means the individual nominated by the Client and whose name is in the Agreement Details and who shall have overall responsibility for monitoring the delivery of the Services under this agreement.

"Client Sites" means any of the Client's premises in the United Kingdom.

"Data Discloser" means the Party transferring the Personal Data to the Data Receiver.

"Data Protection Authority" means the relevant data protection authority in the territories where the Parties to this Agreement are established, here the Information Commissioner's Office (ICO).

"Data Receiver" means the Party receiving the Personal Data from the Data Discloser.

"Data Security Breach" means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to the Shared Personal Data.

"DPA" means the Data Protection Act 2018 (DPA), the Data Protection Directive (95/46/EC), the General Data Protection Regulation (2016/679) (GDPR), the Electronic Communications Data Protection Directive (2002/58/EC), the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2426/2003) (as amended) and all applicable laws and regulations relating to the processing of the Personal Data and privacy, including where applicable the guidance and codes of practice issued by the UK Information Commissioner or any other national data protection authority, and the equivalent of any of the foregoing in any relevant jurisdiction.

"End Point Assessment Organisation" means the approved qualification end point assessment body for the applicable Apprenticeship Standard.

"ESFA" means the Education & Skills Funding Agency.

"ESFA Rules" means the ESFA's funding rules as contained in: *Apprenticeship funding: - draft rules for training providers May 2017 to March 2018* dated October 2016 as amended from time to time.

"Fees" shall be the Fees described in the Agreement Details.

"Funding" means all grants, monies or other funding provided by the Funding Bodies and made available (subject to the Guidelines) to Remit as agent of the Client to enable the Client to give Learners access to the Training Programme, including funding via the Client's Digital Account.

"Funding Bodies" means the Education & Skills Funding Agency and all successor bodies and organisations with which Remit is accredited as a body able to provide the relevant qualifications, courses and/or training and **"Funding Body"** means any one of them.

"Guidelines" means the rules, regulations and guidelines issued by the Funding Bodies from time to time in relation to the Qualifications.

"Individual Learning Plan" means in relation to each Learner, a plan agreed between the Client, Remit and the Learner setting out how the Learner will develop the skills required under the Apprenticeship Standard or the Apprenticeship Framework.

"Initial Period" means the Initial Period specified in the Agreement Details.

"Intellectual Property Rights" means patents, rights to inventions, copyright and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of,

and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

"Learners" means those individuals (including full or part time employees and volunteers) who are put forward by the Client to undertake the Training Programme who have been approved as suitable learners by Remit and who are entitled to the Funding.

"OFSTED" means the Office for Standards in Education, Children's Services and Skills.

"Provider Materials" means all documents, products and materials developed by Remit.

"Qualifications" means any qualifications certified by an Awarding Organisation and offered for training by Remit from time to time, including without limitation, any NVQs, Certificate and Diploma level qualifications, Apprenticeships and Functional Skills qualifications.

"Services" shall be the Services set out in the Agreement Details.

"Shared Personal Data" means the Personal Data and Sensitive Personal Data/Special Category Data to be shared between the Parties under clause 4 of this Agreement.

"Subject Access Request" has the same meaning as "Right of access to personal data" in Appendix 7 of the DPA.

"Term" means the Initial Term and such period as is required to enable all learners enrolled in the Initial Period to complete their Training Programme.

"Training Programme" means the programme of training and assessment as set out in Appendix 1 of the Agreement Details and delivered by Remit.

"Unfunded Fees" means any fees which are not covered by Funding including but not limited to those fees identified as being without Funding in Appendix 2 of the Agreement Details.

Data Controller, Data Processor, Data Subject and Personal Data, Sensitive Personal Data, Special Category Data, processing, Right to Object and appropriate technical and organisational measures shall have the meanings given to them in the DPA and the GDPR.

- 1.1 Clause and paragraph headings shall not affect the interpretation of these Conditions and reference to clauses and paragraphs shall be to clauses of these Conditions and paragraphs of the schedule to these Conditions.
- 1.2 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.3 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.4 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.5 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time. A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.6 A reference to **writing** or **written** includes email.
- 1.7 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2 COMMENCEMENT AND DURATION

- 2.1 During the Term, Remit shall provide the Services to the Client in accordance with these Conditions.
- 2.2 Subject to clause 2.3, the agreement between Remit and the Client shall commence on the Commencement Date and shall continue, unless terminated earlier in accordance with its terms, until either party gives to the other not less than 6 months' written notice to terminate, expiring on or after the Initial Period ("**the Initial Term**").
- 2.3 No new Learners will be enrolled on a Training Programme by Remit after expiry of the Initial Term (unless otherwise agreed), that the terms of this agreement shall continue for all Learners enrolled on a Training Programme for the duration of their Training Programme.

3 Remit shall:-

- 3.1 deliver the Training Programme to the Learners identified to the Provider (including by way of e-learning and distance learning);
- 3.2 prepare and distribute the Individual Learning Plan and Commitment Statement at the outset of each Learner's programme;
- 3.3 where applicable, apply on behalf of the Client for any available Funding from the Funding Bodies and use its reasonable endeavours to secure on behalf of the Client any Additional Funding required for the provision of the Training Programme;
- 3.4 work collaboratively with the Client to help the Client align its internal practices and procedures to meet with Funding Body requirements and Guidelines as amended from time to time;
- 3.5 ensure that all new Apprenticeship Vacancies are advertised on the National Apprenticeship Service Website;
- 3.6 confirm that each Learner has an Apprenticeship Agreement prior to the start of an Apprenticeship;
- 3.7 discuss the training needs of the Learner against the Learner's role specification (if applicable) with the Client to enable the Client to explain the appropriate Qualification to the Learner and to enhance delivery of the Training Programme;
- 3.8 in respect of Apprenticeships, deliver the Training Programme in the period specified in Appendix 1;
- 3.9 register the Learners with the appropriate Awarding Organisation where a Qualification is being sought;
- 3.10 monitor, supervise and support the Learners in the course of the provision of the Training Programme including providing an initial induction and assessment and

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- checking Learners' portfolios at appropriate intervals to ensure that they meet the criteria of the relevant Awarding Organisation;
- 3.11 submit progress reports to the Client at agreed intervals and in a format to be agreed between the parties acting reasonably;
- 3.12 arrange and send to the relevant Awarding Organisation all of the course work completed by the Learners that is required for the relevant Qualification and/or certification to be awarded by the Awarding Organisation;
- 3.13 where a Learner is identified as having additional learning needs, Remit will produce a diagnostic assessment report to support the requirement and arrange additional monthly visits by the learning support coach;
- 3.14 complete individual Health and Safety assessments at all Client Sites at which learners will be working prior to enrolment of Learners (such assessments to be renewed if appropriate) to ensure that the Learners are safe in their workplace in accordance with the Guidelines; such assessment to include the examination of relevant insurance policies to ensure that there is appropriate cover in place;
- 3.15 when relevant, contract with an organisation which will carry out the final assessment for the Learner (End Assessment Organisation) of the Client's choosing, and agree with it the arrangements for end-point assessments, re-takes and payments and for this purpose the Client shall choose an End Assessment Organisation reasonably acceptable to Remit within 14 days of Remit requiring it to do so (and if the Client shall fail to do so Remit is hereby
- 3.16 authorised in the name and on behalf of the Client to choose such End Assessment Organisation as Remit thinks fit);
- 3.17 make payment to the End Assessment Organisation for conducting the end-point assessment and keep records of all such payments.
- 4 CLIENT'S OBLIGATIONS**
- 4.1 The Client acknowledges and understands that Remit will be using Funding (in whole or in part) to provide vocational training to the Learners and will necessitate access to the Learners and Client Sites as and when required so that:-
- 4.1.1 Remit may access the appropriate Funding;
- 4.1.2 Remit may undertake training and verification activities; and
- 4.1.3 Funding Bodies and OFSTED may verify that Funding is being used appropriately.
- 4.2 The Client shall:
- 4.2.1 co-operate with Remit in all matters relating to the Services including providing any assistance which Remit may require in connection with any audit by any Funding Body;
- 4.2.2 ensure that Remit can meet with Learners for an initial assessment and then at such times locations and frequency as necessary, in the reasonable opinion of Remit, to enable the Learner to complete the programme in a timely manner and in accordance with the training model;
- 4.2.3 inform Remit of all health and safety rules and regulations and any other reasonable security requirements that apply at any of the Client's Sites;
- 4.2.4 ensure that all the Client's Equipment is in good working order and suitable for the purposes for which it is used in relation to the Services and conforms to all relevant United Kingdom standards or requirements;
- 4.2.5 obtain and maintain all necessary licences and consents in relation to the Services before the date on which the Services are to start;
- 4.2.6 comply with all relevant legislation in relation to the Services (including without limitation, any legislation relating to health and safety and data protection (with respect to the In-put Material)) and any requirements of the Funding Bodies (with regards to health and safety or otherwise);
- 4.2.7 obtain and maintain any relevant insurances (including but not limited to employers' liability insurance, public liability) with a reputable insurer up to a limit of indemnity in accordance with normal industry practice and shall at Remit's request produce a copy of the insurances for inspection;
- 4.2.8 promptly pay all sums owed to Remit in relation to the Apprenticeship;
- 4.2.9 if required, work in conjunction with Remit to appoint an End Assessment Organisation to deliver end-point assessment from the Register of End Assessment Organisations and the Client hereby appoints Remit to record the required details of the Apprenticeship with the ESFA.
- 4.3 To allow Remit to carry out the Services, the Client shall:-
- 4.3.1 take all reasonable steps to ensure that a Learner completes the Training Programme and does not do anything to prevent commencement or completion of the Training Programme by the Learner;
- 4.3.2 ensure all Learners enrolled with Remit under this agreement are working with the Client for a minimum of 30 hours per week;
- 4.3.3 as a minimum, pay all Learners a weekly or monthly salary at rates in line with those specified for apprentices by the Department for Business, Energy and Industrial Strategy from time to time and account for all PAYE, National Insurance contributions and other statutory deductions in respect of such payments to Learners;
- 4.3.4 ensure that processes and procedures are in place for risk assessment, full learner induction, ongoing health and safety training for Learners (including job specific training) and that any PPE is provided (and Learners are trained on its use);
- 4.3.5 ensure that the Learner is spending at least 20% of his or her time on off-the-job learning and experience, and allow sufficient time for the Learner to undertake English and math's as required;
- 4.3.6 notify Remit as soon as possible if they become aware that any Learner is already in receipt of funding not sourced through Remit;
- 4.3.7 not apply directly for Funding from any Funding Body after the Commencement Date in respect of the Learners;
- 4.4 Information obligations**
- 4.4.1 The Client shall:
- 4.4.2 ensure that Remit is informed in writing of any Learner leaving a Training Programme for any reason as soon as reasonably practicable and in any event within five Business Days of the Learner leaving the Training Programme;
- 4.4.3 keep detailed, up to date and accurate records of the attendance of Learners and provide Remit with such records at such intervals as Remit may from time to time require (in an agreed format);
- 4.4.4 provide details of the Client Sites (if not already provided) to Remit and update Remit as soon as possible if there are any changes to those sites or additional premises;
- 4.4.5 notify Remit as soon as possible if a decision is made to take disciplinary action against a Learner or if a Learner is involved in an accident or other dangerous occurrence and provide such assistance as is reasonably required by Remit to investigate such incident.
- 4.5 Access and monitoring obligations**
- 4.5.1 The Client shall:-
- 4.5.2 allow Remit and its agents, subcontractors, consultants and employees full access by reasonable appointment and at no charge during Business Hours and on Business Days to each of the Client Sites for the purposes of monitoring, auditing and assessing the work of any or all of the Learners;
- 4.5.3 allow any Awarding Organisation, Funding Body, OFSTED or any inspector or auditor duly appointed by any of the foregoing full access during Business Hours and on Business Days to each of the Client Sites for the purposes of monitoring, auditing and assessing the work of any and all of the Learners, apprentice development coaches and Client's Representative and in doing so, the Client shall comply with the reasonable directions (if any) of such organisation or individual.
- 4.6 In accordance with the ESFA Rules, the Client warrants that it shall indemnify Remit against any loss, damages, costs, claims and expenses suffered or incurred by Remit as a result of the client incorrectly informing Remit that they have fewer than 50 employees.
- 4.7 The Client shall not, without the prior written consent of Remit, at any time during the Term and for a period of 6 months after the termination of this agreement solicit or entice away from or employ or attempt to employ any person who is, or has been, engaged as an employee, consultant or subcontractor of Remit in the provision of the Services.
- 5 FEES, PAYMENT AND PENALTIES**
- 5.1 Fees shall be payable for the Services as set out in Appendix 2 of the Agreement Details and the Client agrees to sign a Direct Debit in the form set out in Appendix 3 where appropriate at the request of Remit.
- 5.2 To the extent that Funding is available for a Learner, that element of the Fees for which such Funding is available shall be satisfied by Remit claiming such amount from the ESFA on behalf of the Client.
- 5.3 To the extent that Fees are not actually paid to Remit directly by the ESFA Remit shall invoice the Client for the Charges monthly for services rendered before the end of the previous month and Remit shall collect payment by Direct Debit for such invoices 28 days after the invoice date.
- 5.4 All amounts payable by the Client exclude amounts in respect of value added tax (VAT), which the Client shall additionally be liable to pay to Remit at the prevailing rate.
- 5.5 Should a Learner recruited by Remit on behalf of the Client either fail to commence the Apprenticeship programme or leave prior to achievement but who continues to be employed by the Client, then Remit will be entitled to charge the Client a recruitment fee of £750 + VAT.
- 5.6 If the Learner is required to re-take the End Point Assessment the Client will be charged the fee payable to the End Point Assessment Organisation and any other costs related to the End Point Assessment re-take.
- 5.7 If the Client fails to make any payment due to Remit under this agreement by the due date for payment, then, without limiting Remit's remedies under this agreement:-
- 5.7.1 the Client shall pay interest on the overdue amount at the rate of 4% per annum above Barclays Bank'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, whether before or after judgment. The Client shall pay the interest together with the overdue amount;
- 5.7.2 Remit may suspend all Services until payment has been made in full.
- 5.8 All amounts due under this agreement shall be paid by the Client to Remit in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 6 INTELLECTUAL PROPERTY RIGHTS**
- As between the Client and Remit, all Intellectual Property Rights and all other rights in Remit Materials shall be owned by Remit. Any Intellectual Property Rights created during the course of the provision of the Services under this agreement shall vest in Remit.
- 7 COMPLIANCE WITH LAWS AND POLICIES**
- In performing their respective obligations under this agreement, each party shall comply with all applicable laws, statutes and regulations from time to time in force.

8 CONFIDENTIALITY, PUBLICITY AND REMIT'S PROPERTY

- 8.1 The Client undertakes that it shall not at any time, disclose to any person the content of this agreement or any technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Client by the Remit or any of its employees, agents, consultants or subcontractors and any other confidential information concerning Remit's business or its products which the Client may obtain, except as permitted by clause 8.2.
- 8.2 The Client may disclose Remit's confidential information as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

9 LIMITATION OF LIABILITY

- 9.1 Nothing in this agreement shall limit or exclude Remit's liability for:
- 9.1.1 death or personal injury caused by its negligence;
- 9.1.2 fraud or fraudulent misrepresentation; or
- 9.1.3 any other liability which cannot be limited or excluded by applicable law.
- 9.2 Subject to clause 9.1, Remit shall not be liable to the Client, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with this agreement for:
- 9.2.1 loss of profits;
- 9.2.2 loss of sales or business;
- 9.2.3 loss of agreements or contracts;
- 9.2.4 loss of anticipated savings;
- 9.2.5 loss of or damage to goodwill;
- 9.2.6 loss of use or corruption of software, data or information; and
- 9.2.7 any indirect or consequential loss.
- 9.3 Subject to clauses 9.1 and 9.2, Remit's total liability to the Client, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with this agreement shall be limited to the limit of Remit's professional indemnity cover from time to time.
- 9.4 The terms implied by sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from this agreement.
- 9.5 Remit makes no representation or guarantee to the Client as to the availability of or the amount of funding which may be obtainable from the Funding Bodies.

10 TERMINATION

- 10.1 Without affecting any other right or remedy available to it, either party may terminate this agreement with immediate effect by giving written notice to the other party if:
- 10.1.1 the other party commits a material breach of any other term of this agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 10 days after being notified in writing to do so;
- 10.1.2 the other party repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement;
- 10.1.3 the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
- 10.1.4 the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- 10.1.5 the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under this Contract has been placed in jeopardy.
- 10.2 Without affecting any other right or remedy available to it, Remit may terminate this agreement with immediate effect by giving written notice to the Client if:-
- 10.2.1 the Client fails to pay any amount due under this agreement on the due date for payment and remains in default not less than 30 days after being notified in writing to make such payment; or
- 10.2.2 if there is a change of Control of the Client; or
- 10.2.3 Remit's contract with the Education & Skills Funding Agency is terminated and/or Remit loses its accreditation from the Awarding Bodies to deliver the Training Programme.
- ## 11 CONSEQUENCES OF TERMINATION
- 11.1 On termination or expiry of this agreement:
- 11.1.1 the Client shall immediately pay to Remit all of Remit's outstanding unpaid invoices and interest and, in respect of the Services supplied but for which no invoice has been submitted, Remit may submit an invoice, which shall be payable immediately on receipt;
- 11.1.2 the following clauses shall continue in force: clause 6 (Intellectual Property rights), clause 8 (Confidentiality, Publicity and the Provider's property), clause 9 (Limitation of liability), clause 18 (Conflict), clause 21 (Governing law) and clause 22 (Jurisdiction).
- 11.2 Termination or expiry of this agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry.

12 FORCE MAJEURE

Neither party shall be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.

13 VARIATION

No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

14 WAIVER

A failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy.

15 RIGHTS AND REMEDIES

The rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

16 SEVERANCE

If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this agreement.

17 ENTIRE AGREEMENT

This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

18 CONFLICT

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

19 NOTICES

- 19.1 Any notice or other communication given to a party under or in connection with this agreement shall be in writing and shall be:
- 19.1.1 delivered by hand or by pre-paid first-class post or other next Business Day delivery service to the address at the head of this agreement or as otherwise notified to the other party; or
- 19.1.2 sent by email to the email address notified by the other party;
- 19.2 Any notice or communication shall be deemed to have been received:
- 19.2.1 If delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;
- 19.2.2 If sent by pre-paid first class post or other next Business Day delivery service, at 9.00am on the second Business Day after posting or at the time recorded by the delivery service;
- 19.2.3 If sent by email, at the time of delivery of the email transmission.
- 19.3 This clause does not apply to the service of any proceedings or any documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

20 COUNTERPARTS

This agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

21 GOVERNING LAW

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

22 JURISDICTION

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle 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.

23 COMPLIANCE WITH NATIONAL DATA PROTECTION LAWS

- 23.1 Each Party must ensure compliance with applicable national data protection laws at all times during the Term.
- 23.2 Each Party has a valid registration with the Data Protection Authority if required which, by the time that the data sharing is expected to commence, covers the intended data sharing pursuant to this Agreement.
- (a) REMIT Registration Number Z1621503
- (b) ["Employer name"] Registration Number (if applicable)

24 SHARED PERSONAL DATA

- 24.1 The following types of Personal Data may be shared between the Parties during the Term: first name; middle name(s); surname; date of birth; personal email address; work email address; home address; employer details; employer address; product code; product name; unit or module details; registration status; data pertaining to Candidate performance data including progression/assessment details; attainment/gateway /certification details; Sensitive Personal Data/Special Category Data relating to physical and mental health status to facilitate reasonable adjustments under assessment conditions.
- 24.2 Personal data is shared for the following purposes; to support the efficient and effective registration of candidates onto Remit systems, claiming of certificates for all

eligible candidates, to provide online or on-premises support, to enable the Client's authorised personnel to effectively access Remit systems, to enable discussions about learning progress which may include personal information, to support any investigations, or matters pertaining to, malpractice or maladministration at the Client, to comply with any legal obligation to which either party is a subject.

- 24.3 In respect of clause 24.2, the Client will, as far as is reasonably practical, endeavour to keep all user account information up to date and accurate. Both parties will ensure all users with access to Personal Data will handle this in the strictest confidence and in compliance with the DPA and the terms of this Agreement.
- 24.4 In respect of clause 24.1, the Client will only provide Personal Data of Candidates.
- 24.7 The Shared Personal Data must not be irrelevant or excessive with regard to the Agreed Purposes as stated within clause 24.2.

25 FAIR AND LAWFUL PROCESSING

- 25.1 Each Party shall ensure that it processes the Shared Personal Data fairly and lawfully in accordance with clause 25.2 during the Term of this Agreement.
- 25.2 Each Party shall ensure that it Processes Shared Personal Data on the basis of the following legal grounds:
 - (a) processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party, except where such interests are overridden by,
 - (b) the interests or fundamental rights and freedoms of the data subject which require protection of personal data (GDPR Art 6.1(f)).
- 25.3 Personal Data and Sensitive Personal Data/Special Category data (as listed in clause 24.1) may be shared in addition to Personal Data relating to breaches of codes of conduct or regulations, only where one of the following lawful grounds apply:
 - (a) The processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data (GDPR Art 6.1(f)), or
 - (b) Where reasonable adjustments are required and details of Sensitive Personal Data/Special Category data must be shared then processing is necessary where the data subject has given explicit consent to the processing of those personal data for one or more specified purposes, except where Union or Member State law provide that the prohibition referred to in paragraph 1 may not be lifted by the data subject. (GDPR Art 9.2 (a)).
- 25.4 Both Parties shall, in respect of Shared Personal Data, ensure that their privacy notices are clear and provide sufficient information to Data Subjects in order for them to understand what of their Personal Data the Parties are sharing, the circumstances in which it will be shared, the purposes for the data sharing and either the identity with whom the data is shared or a description of the type of organisation that will receive the Personal Data.
- 25.5 Both Parties undertake to inform Data Subjects of the purposes for which it will process their Personal Data and provide all of the information that it must provide in accordance with its own applicable laws, to ensure that the Data Subjects understand how their Personal Data will be processed by the Data Controller.

26 DATA QUALITY

- 26.1 The Data Discloser shall ensure that Shared Personal Data is accurate.
- 26.2 Where either Party becomes aware of inaccuracies in Shared Personal Data, they will notify the other Party.
- 26.3 Shared Personal Data shall be Limited to the Personal Data described in clause 24.1

27 DATA SUBJECTS' RIGHTS

- 27.1 Data Subjects have the right to obtain certain information about the processing of their Personal Data through a Subject Access Request. Data Subjects may also request rectification, erasure or blocking of their Personal Data.
- 27.2 The Parties shall maintain a record of Subject Access Requests, the decisions made and any information that was exchanged. Records must include copies of the request for information, details of the data accessed and shared and where relevant, notes of any meeting, correspondence or phone calls relating to the request.
- 27.3 The Parties agree that the responsibility for complying with a Subject Access Request falls to the Party receiving the Subject Access Request in respect of the Personal Data held by that Party.
- 27.4 The Parties agree to provide such reasonable and prompt assistance (within 2 Business Days of such a request for assistance) as is necessary to each other to enable them to comply with Subject Access Requests and to respond to any other queries or complaints from Data Subjects.

28 DATA RETENTION AND DELETION

- 28.1 The Data Receiver shall not retain or process Shared Personal Data for longer than is necessary to carry out the Agreed Purposes.
- 28.2 Notwithstanding clause 28.1, the Parties shall continue to retain Shared Personal Data in accordance with any statutory or professional retention periods applicable in their respective countries and/or industry and in accordance with the data retention periods set out in the REMIT Data Retention Policy.
- 28.3 The Data Receiver shall ensure that any Shared Personal Data (excluding any data that the Data Receiver is required to retain by law) are returned to the Data Discloser or destroyed in the following circumstances:
 - (a) on termination of the Agreement for whatever reason;
 - (b) on expiry of the Term (unless extended further to the terms of this Agreement);

- (c) once processing of the Shared Personal Data is no longer necessary for the purposes it was originally shared for.

29 TRANSFERS

- 29.1 For the purposes of this clause, transfers of personal data shall mean any sharing of personal data by the Data Receiver with a third party, and shall include, but is not limited to, the following:
 - (a) sharing of the Shared Personal Data with any other third party
 - (b) publication of the Shared Personal Data via any medium, including, but not limited to; social media, websites, publicly available communications.
 - (c) storing Shared Personal Data on servers outside the EEA.
 - (d) subcontracting the processing of Shared Personal Data to data processors located outside the EEA.
 - (e) granting third parties located outside the EEA access rights to the Shared Personal Data.
- 29.2 The Data Receiver may share the Shared Personal Data with a third party without the express written permission of the Data Discloser, providing all applicable laws pertaining to data protection are complied with,
- 29.3 Where data is shared with a 3rd party, further to clause 29.2, the Data Receiver shall not disclose or transfer Shared Personal Data outside the EEA without ensuring that adequate and equivalent protections will be afforded to the Shared Personal Data.
- 29.4 Clause 29.2 will not apply to any data transfers carried out by the Data Discloser in respect of Shared Personal Data.

30 SECURITY AND TRAINING

- 30.1 The Data Discloser shall be responsible for the security of transmission of any Shared Personal Data in transmission to the Data Receiver by using appropriate technical methods. These are detailed below:
- 30.2 The Parties agree to implement appropriate technical and organisational measures to protect the Shared Personal Data in their possession against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure, including but not limited to:
 - (a) Ensuring IT equipment, including portable equipment is kept in lockable areas when unattended;
 - (b) Not leaving portable equipment containing the Personal Data unattended;
 - (c) Ensuring that staff use appropriate secure passwords for logging into systems or databases containing the Personal Data;
 - (d) Ensuring that all IT equipment is protected by antivirus software, firewalls, passwords and suitable encryption devices;
 - (e) Ensuring that any Sensitive Personal Data is stored and transferred (including where stored or transferred on portable devices or removable media) using industry standard 256-bit AES encryption or suitable equivalent and the information is contained within a password protected document;
 - (f) limiting access to relevant databases and systems to those of its officers, staff agents and sub-contractors who need to have access to the Personal Data, and ensuring that passwords are changed and updated regularly to prevent inappropriate access when individuals are no longer engaged by the Party;
 - (g) Conducting regular threat assessment or penetration testing on systems.
 - (h) Ensuring all staff handling Personal Data have been made aware of their responsibilities with regards to handling of Personal Data.
 - (i) Allowing for inspections and assessments to be undertaken by the other Party in respect of the security measures taken, or producing evidence of those measures if requested.

31 DATA SECURITY BREACHES AND REPORTING PROCEDURES

- 31.1 The Parties are under a strict obligation to notify any potential or actual losses of the Shared Personal Data to the other Party as soon as possible and, in any event, within 1 Business Day of identification of any potential or actual loss to enable the Parties to consider what action is required in order to resolve the issue in accordance with the applicable national data protection laws and guidance.
- 31.2 Clause 31.1 also applies to any breaches of security which may compromise the security of the Shared Personal Data.
- 31.3 The Parties agree to provide such reasonable assistance as may be necessary to each other to facilitate the handling of any Data Security Breach in an expeditious and compliant manner.

32 RESOLUTION OF DISPUTES WITH DATA SUBJECTS OR THE DATA PROTECTION AUTHORITY

- 32.1 In the event of a dispute or claim brought by a Data Subject or the Data Protection Authority concerning the processing of Shared Personal Data against either or both Parties, the Parties will inform each other about any such disputes or claims, and will cooperate with a view to settling them amicably in a timely fashion.
- 32.2 The Parties agree to respond to any generally available non-binding mediation procedure initiated by a Data Subject or by the Data Protection Authority. If they do participate in the proceedings, the Parties may elect to do so remotely (such as by telephone or other electronic means). The Parties also agree to consider participating in any other arbitration, mediation or other dispute resolution proceedings developed for data protection disputes.
- 32.3 In respect of breaches relating to this Agreement, each Party shall abide by a decision of a competent court of the Data Discloser's country of establishment or of any binding decision of the relevant Data Protection Authority.

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33 WARRANTIES

33.1 Each Party warrants and undertakes that it will:

- (a) Process the Shared Personal Data in compliance with all applicable laws, enactments, regulations, orders, standards and other similar instruments that apply to its personal data processing operations.
- (b) Make available upon request to the Data Subjects who are third party beneficiaries a copy of this Agreement, unless the Clause contains confidential information.
- (c) Respond within a reasonable time and as far as reasonably possible to enquiries from the relevant Data Protection Authority in relation to the Shared Personal Data.
- (d) Respond to Subject Access Requests in accordance with the terms of this Agreement and in accordance with the DPA.
- (e) Where applicable, maintain registration with all relevant Data Protection Authorities to process all Shared Personal Data for the Agreed Purpose.
- (f) Take all appropriate steps to ensure compliance with the security measures set out in *clause 30* above.

33.2 The Data Discloser warrants and undertakes that it will ensure that the Shared Personal Data is accurate.

33.3 The Data Recipient warrants and undertakes that it will not disclose or transfer Shared Personal Data to third parties either within or outside the European Economic Area (EEA) unless it complies with the obligations set out in clauses **29.2** and **29.3** above.

34 INDEMNITY

14.1 Both parties shall indemnify the other party and shall keep the other party indemnified against legal costs and other reasonable professional costs or compensation due to Data Subjects, but excluding any direct or consequential losses, loss of profit, loss of reputation and all interest, penalties and expenses suffered or incurred by either party arising out of or in connection with any claim made against it in relation to any breach by either party of the DPA, GDPR or either parties obligations under this Agreement.

35 LIMITATION OF LIABILITY

35.1 Neither Party excludes or limits liability to the other Party for

- (a) fraud or fraudulent misrepresentation;
- (b) death or personal injury caused by negligence;
- (c) a breach of any obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
- (d) any matter for which it would be unlawful for the Parties to exclude liability.

35.2 Subject to Clause 15.1 neither Party shall in any circumstances be liable whether in contract, tort (including for negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, for

- (a) any loss (whether direct or indirect) of profits, business, business opportunities, revenue, turnover, reputation or goodwill;
- (b) loss (whether direct or indirect) of anticipated savings or wasted expenditure (including management time); or
- (c) any loss or liability (whether direct or indirect) under or in relation to any other contract.

36 ROLES AND RESPONSIBILITIES

16.1 Each Party shall nominate a single point of contact within their organisation who can be contacted in respect of queries or complaints regarding the DPA, GDPR and/or compliance under the terms of this Agreement. The employer contact will be the person who signs the agreement. The Remit contact is

Alan Akester
Remit Group Limited
4 Orchard Place
NG8 6PX
Tel: 0115 9759550
E-mail: GDPR@remit.co.uk

37 THIRD PARTY RIGHTS

17.1 No one other than a Party to this Agreement shall have any right to enforce any of its term.