

Newcross EPA

**End Point Assessment
Service Level Agreement**



The provision of Apprenticeship
End Point Assessment services

Newcross Healthcare Solutions Limited
trading as
Newcross Healthcare EPA (1)
(2)

Date

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THIS AGREEMENT is made on

BETWEEN:

, registered in England and Wales with company number whose registered office is at
(the **Training Provider**); and

Newcross Healthcare Solutions Ltd. Trading as Newcross Healthcare EPA, incorporated and
registered in England and Wales with company number 03184321 whose registered office is at
Waterside, Bery Pomeroy, Totnes, Devon, TQ9 6LH (the **End-Point Assessment Organisation**).

each 'a Party' and together 'the Parties'.

1. Definitions and Interpretation

1.1 The definitions and rules of interpretation set out in Schedule 1 shall apply in this Agreement.

1.2 Subject to clause 1.3 the documents comprising this Agreement shall be construed in the following order of precedence:

the clauses of this Agreement;

the provisions of each Order

the End-Point Assessment Organisation's Conditions of End-Point Assessment Services.

1.3 To the extent that there is a conflict between the ESFA Rules and any provision of this Agreement, the ESFA Rules shall prevail.

2. Commencement and Duration

2.1 This Agreement shall commence on the Commencement Date and shall continue unless terminated in accordance with clause 11.

2.2 The Training Provider may at any time provide the End-Point Assessment Organisation with a written order for End-Point Assessment Services substantially in the form set out in Schedule 3 or in any other form that the parties may agree from time to time (an **Order**).

2.3 The Training Provider shall be entitled to amend or withdraw an Order by giving the End-Point Assessment Organisation notice in writing in relation to any Services where performance has not commenced.

2.4 Unless clause 2.5 applies, each Order shall constitute a binding obligation on the End-Point Assessment Organisation to supply the End-Point Assessment Services in accordance with the terms of the Order and this Agreement.

2.5 The End-Point Assessment Organisation shall not accept any Order where the Order will cause the End-Point Assessment Organisation to exceed the threshold amount.

2.6 Where the End-Point Assessment Organisation receives an Order to which clause 2.5 applies, the End-Point Assessment Organisation shall notify the Training Provider immediately in writing.

3. Agreement of the End-Point Assessment Organisation

3.1 The End-Point Assessment Organisation agrees to perform the End-Point Assessment Services in compliance with:

3.1.1 the terms of the Main Contract governing performance of the Training Services;

3.1.2 the reasonable instructions of the Training Provider;

3.1.3 Good Industry Practice;

3.1.4 the ESFA Rules; the IfA Rules and

3.1.5 all applicable laws.

3.2 The End-Point Assessment Organisation agrees to be bound by, and undertakes to the Training Provider to comply with, all applicable terms of the Main Contract, as further defined and agreed in this Agreement, so that the Training Provider is able to fulfil its obligations to the Employer under the Main Contract.

3.3 The End-Point Assessment Organisation shall collaborate and co-operate with the Training Provider and the Employer including attending such meetings and providing such reports as the Training Provider may require from time to time.

3.4 The End-Point Assessment Organisation shall allow the Training Provider, the Employer and/or the ESFA or any of their authorised representatives or nominated persons such access to its premises, staff, accounts and records and any other information relating to their delivery of Apprenticeships or performance of the End-Point Assessment Services as may be requested from time to time for the purpose of monitoring performance of the End-Point Assessment Services, including (but not limited) for the purpose of audit pursuant to the ESFA Rules.

3.5 The End-Point Assessment Organisation warrants and represents that it is and shall, for the duration of this Agreement be on the ESFA Register of End-Point Assessment Organisations.

3.6 Without prejudice to the generality of clauses 3.1 to 3.5, the End-Point Assessment Organisation shall:

3.6.1 provide the Training Provider with all ILR data so that the Training Provider's returns to the ESFA accurately reflect delivery information;

3.6.2 provide the Training Provider such information in such form as the Training Provider may reasonably require from time to time;

3.6.3 ensure that all personnel engaged in performing the End-Point Assessment Services have the appropriate skills, training and qualifications to perform the tasks allocated to them;

3.6.4 co-operate with the Training Provider to ensure that there is continuity of learning for apprentices if this Agreement expires or terminates for any reason;

3.6.5 immediately notify the Training Provider in writing if evidence of irregular financial or delivery issues arises, including, but not limited to, non-delivery of training when funds have been paid, sanctions imposed by an external quality assurance organisation, allegations of fraud, , not meeting relevant ESFA conditions of the end point assessment register, IfA rules or

QAA Quality Code indicators, allegations or complaints by apprentices, employers, staff members or other relevant parties;

3.6.6 not use ESFA funding to make bids for, or claims from, any European funding on their own behalf or on our behalf;

3.6.7 not use payments made under this Agreement as match funding for ESF projects;

3.6.8 in relating to every apprentice whose learning is undertaken through an apprenticeship standard (within the meaning of the ESFA Rules) following the successful completion of the standard by that apprentice, obtain the applicable apprenticeship completion certificate from the ESFA; and

3.6.9 immediately notify the Training Provider in writing if it receives any intimation from the ESFA that has ceased to be or that it will or may cease be on the ESFA Register of End-Point Assessment Organisations.

4. Changes to Services

4.1 If the Training Provider wishes to change this Agreement or the End-Point Assessment Services, it may at any time request such change in accordance with the Change Procedure set out in Schedule 7 to the Main Contract.

4.2 Notwithstanding any other provisions of this Agreement, where the Training Provider reasonably considers that a change to the End-Point Assessment Services is required in order to comply with a change to the Main Contract or the Training Services, the Training Provider shall be entitled by notice in writing to the End-Point Assessment Organisation ('a Mandatory Change Notice') to make such changes as it may reasonably decide are necessary to comply as specified in such Mandatory Change Notice with effect from a time specified in that notice, subject to the Training Provider paying to the End-Point Assessment Organisation its reasonable additional costs (if any) of providing any additional services.

5. Invoicing and Payment

5.1 The Training Provider agrees to pay the End-Point Assessment Organisation the Payments for the End-Point Assessment Services, subject to the End-Point Assessment Organisation performing its obligations under this Agreement satisfactorily and within the time scales set by the Training Provider and subject to the Training Provider having received payment under the Main Contract.

5.2 The Payments include all taxes and employers' contributions and shall be payable against submission of invoices from the End-Point Assessment Organisation.

5.3 The End-Point Assessment Organisation shall bear the costs of External Quality Assurance.

5.4 If the Employer or the ESFA:

5.4.1 refuses to pay the Training Provider for any of the End-Point Assessment Services undertaken by the End-Point Assessment Organisation under this Agreement; and/or

5.4.2 claims money back from the Training Provider in respect of any of the End-Point Assessment Services; and/or

5.4.3 requires that any or all of the End-Point Assessment Services undertaken by the End-Point Assessment Organisation be performed again to such a standard as it may reasonably require under the Main Contract or the ESFA Rules;

the End-Point Assessment Organisation undertakes to indemnify the Training Provider for any and all costs and expenses suffered or incurred by the Training Provider arising out of or in connection with such action by the Employer or the ESFA.

6. Ownership of intellectual property

6.1 Nothing in this Agreement shall affect the ownership of Intellectual Property Rights owned by either Party and existing prior to this Agreement or generated outside the Training Services or End-Point Assessment Services and which the respective Party agrees to make available to the other in the course of the Training Services or End-Point Assessment Services (**Background IPR**).

6.2 If one Party makes any Background IPR available to the other Party in the course of the End-Point Assessment Services, the Party receiving such Background IPR shall treat it as Confidential Information disclosed under clause 7.1 below, and shall not disclose it to a third party nor use it for any purposes other than that for which it was made available to that Party. Each Party agrees to make any Background IPR which is relevant to the End-Point Assessment Services available to the other solely for the purposes of undertaking the End-Point Assessment Services and the Training Services.

6.3 Any Intellectual Property Rights arising out of, or generated by the End-Point Assessment Organisation solely for the purpose of undertaking, the End-Point Assessment Services shall be owned by the Training Provider. For the avoidance of doubt, the ownership of Intellectual Property Rights as described in this clause 6.3 shall apply whether such Intellectual Property Rights have been made by any one of the Training Provider and End-Point Assessment Organisation or by the two Parties. The provisions of this clause 6.3 shall be subject to the provisions of the Main Contract.

7. Confidential information

7.1 In the event of either Party ('the Disclosing Party') making available to the other ('the Receiving Party') Confidential Information, the Receiving Party shall maintain the confidentiality of such information, and shall not disclose it to any third party save as permitted by this clause 7.

7.2 Each Party may disclose the other Party's Confidential Information:

7.2.1 to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the Party's rights or carrying out its obligations under or in connection with this Agreement provided that such Party shall procure that its employees, officers, representatives or advisers to whom it discloses the other Party's Confidential Information comply with this clause 7 and

7.2.2 as may be required to be disclosed by law, regulation or order of a court of competent jurisdiction ('Operation of Law').

7.3 The Training Provider may disclose Confidential Information of the End-Point Assessment Organisation to the Employer or the ESFA if required to do so pursuant to the Main Contract or the ESFA Rules.

7.4 The obligations in clause 7.1 shall not apply to data or information which the Receiving Party can clearly demonstrate:

7.4.1 was known to the Receiving Party otherwise than under any obligation of confidentiality prior to disclosure; or

7.4.2 was in or enters the public domain through no fault of the Receiving Party; or

7.4.3 becomes available to the Receiving Party by an unconnected third party with the lawful right to make such a disclosure; and

7.4.4 has been independently developed or conceived by it.

7.5 If required to make a disclosure by Operation of Law, the Receiving Party will immediately notify the Disclosing Party in writing of any request or requirement for disclosure and of all relevant surrounding circumstances. If the Receiving Party is unable so to notify the Disclosing Party before such disclosure is required, it will notify the Disclosing Party immediately after the disclosure has been made. The Receiving Party will use all reasonable endeavours to resist any requirement for disclosure (and to assist the Disclosing Party in resisting the requirement for disclosure) and to maintain the confidentiality of the Confidential Information.

8. Data Protection and Data Processing

8.1 Each Party shall share with the other Party such information as may be reasonably required by the other Party to ensure the end-point assessment and certification of Apprentices can take place, including arrangements for retakes and payment, in accordance with the ESFA Rules.

8.2 The Parties shall comply with the Data Protection Wording set out at Schedule 4.

9. Limitation of Liability

9.1 Nothing in this Agreement shall limit or exclude either Party's liability for:

9.1.1 death or personal injury caused by its negligence;

9.1.2 fraud or fraudulent misrepresentation;

9.1.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); or

9.1.4 any other liability which cannot be limited or excluded by applicable law.

9.2 Subject to Clause 9.3, no Party shall be liable to any other Party for any indirect, special or consequential Loss.

9.3 The End-Point Assessment Organisation agrees that it shall not exclude or limit its liability arising out of or in respect of any indemnity given pursuant to this Agreement.

9.4 The End-Point Assessment Organisation acknowledges that Training Provider may, amongst other things, recover from the End-Point Assessment Organisation the following Losses incurred by the Training Provider to the extent that they arise as a result of a default by the End-Point Assessment Organisation:

9.4.1 any additional operational and/or administrative costs and expenses incurred by the Training Provider including costs relating to time spent by or on behalf of Training Provider in dealing with the consequences of the default; and

9.4.2 the additional cost of procuring replacement services.

10. Indemnity

10.1 Subject to clause 10.2, the End-Point Assessment Organisation shall indemnify and hold harmless the Training Provider and the Employer (the Indemnified Parties) and where applicable shall release and discharge the Indemnified Parties, on demand from and against all Losses suffered or incurred by such Indemnified Party (including without limitation as a result of third party actions, claims, or demands arising or brought against such Indemnified Party) which may arise out of, or in consequence of the performance or non-performance by the End-Point Assessment Organisation of the End-Point Assessment Services or any act, omission, breach, negligence or breach of statutory duty on the part of the End-Point Assessment Organisation in relation to this Agreement or the End-Point Assessment Services.

10.2 The End-Point Assessment Organisation shall not be responsible nor obliged to indemnify the Training Provider under clause 10.1 for any Loss caused solely and directly by the negligence or wilful misconduct of the Training Provider or by the breach by the Training Provider of its obligations under this Agreement.

10.3 The End-Point Assessment Organisation undertakes to maintain at its own cost an insurance policy to cover full liability in respect of any act, omission or default for which it may become liable in undertaking the End-Point Assessment Services or to indemnify the Training Provider under the terms of this Agreement.

11. Termination

11.1 Each Order shall continue unless terminated in accordance with this clause.

11.2 This Agreement will terminate forthwith if the Main Contract is terminated.

11.3 If the End-Point Assessment Organisation undergoes a change of circumstances that the Training Provider, acting reasonably, believes will affect the End-Point Assessment Organisation's ability to continue to deliver the End-Point Assessment Services, the Training Provider may on written notice to the End-Point Assessment Organisation suspend the End-Point Assessment Services and all related payments under any or all Orders, and make alternative delivery arrangements for each Apprentice affected by this, in agreement with their employer. "**Change of circumstances**" includes going into liquidation, administration, key delivery staff leaving the organisation, or removal from the ESFA Register of End-Point Assessment Organisations. The End-Point Assessment Organisation shall notify the Training Provider in writing immediately on becoming aware of any actual or potential change of circumstances.

11.4 Without affecting any other right or remedy available to it, either Party may terminate this Agreement or any Order with immediate effect by giving written notice to the other Party if:

11.4.1 the other Party commits a material breach of any term of this Agreement and such breach is irreparable or (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;

11.4.2 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; and

11.4.3 the other Party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986.

11.5 Without affecting any other right or remedy available to it, the Training Provider may terminate this Agreement with immediate effect by giving written notice to the End-Point Assessment Organisation if there is a change of Control of the End-Point Assessment Organisation.

11.6 On termination or expiry of this Agreement howsoever caused the End-Point Assessment Organisation shall promptly return all of the Training Provider's Equipment and Materials including the Learner Records to the Training Provider.

11.7 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.

11.8 Provisions which either expressly provide or by their very nature are intended to survive termination of this Agreement shall do so.

12. Non-solicitation

12.1 Except as otherwise expressly agreed between the Parties in writing, neither Party for the duration of this Agreement or for a period of 12 months after completion of the End-Point Assessment Services or termination of this Agreement shall, directly, by or through itself, its agent or otherwise, whether for its own benefit or for the benefit of any other person:

12.1.1 solicit or induce, or endeavour to solicit or induce any Restricted Employee of the other Party;
or

12.1.2 employ or engage or offer to employ or engage a Restricted Employee of the other Party without the written consent of the other Party save that either Party may employ or engage any Restricted Employee of the other Party who has responded directly to a bona fide recruitment drive, wither through an agency or advertisement in the press and not directly or indirectly as a result of any solicitation or inducement by the other Party.

13. General

13.1 Subject to 13.2, neither Party may assign, transfer, mortgage, charge, declare a trust over or deal in any other manner with any of its rights and obligations under this Agreement without the consent of the other Party (such consent not to be unreasonably withheld or delayed).

13.2 If the End-Point Assessment Organisation undergoes a change of circumstances that affects its ability to continue to deliver any of the Services, the Training Provider shall be entitled to make such alternative delivery arrangements for each affected Apprentice as it may reasonably decide.

- 13.3 No variation of this agreement shall be effective unless it is in writing and signed by the Parties (or their authorised representatives).
- 13.4 A waiver of any right or remedy under this Agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default.
- 13.5 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. No single or partial exercise of any right or remedy provided under this Agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- 13.6 If any provision or part-provision of this Agreement is invalid, illegal or unenforceable, the Parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 13.7 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.
- 13.8 Each Party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement. Each Party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.
- 13.9 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between either of the Parties, constitute either Party the agent of the other, or save as otherwise expressly provided authorise either Party to make or enter into any commitments for or on behalf of the other.
- 13.10 Each Party confirms it is acting on its own behalf and not for the benefit of any other person.
- 13.11 No one other than a Party their successors and permitted assignees, shall have any right to enforce any of its terms.
- 13.12 Any notice given to a Party under or in connection with this Agreement shall be in writing and shall be delivered by hand or by pre-paid first-class recorded or other next Business Day signed for delivery service at its registered office (if a company) or its principal place of business (in any other case). Any notice shall be deemed to have been received: on signature of a delivery receipt. This sub-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.
- 13.13 If a dispute arises out of or in connection with this Agreement or the performance, validity or enforceability of it the Parties shall follow the procedure set out in the Main Contract.

14. Governing law and Jurisdiction

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

14.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of, or in connection with, this Agreement, its subject matter or formation (including non-contractual disputes or claims).

AGREED by the parties on the date set out at the head of this agreement

Signed by _____ for and on behalf of [Director OR Authorised signatory]

and

Signed by Helen Soan for and on behalf of Newcross EPA.. [Director OR Authorised signatory]

SCHEDULE 1

DEFINITIONS

1.1 Except where expressly provided otherwise, the definitions and rules of interpretation set out in the Main Contract shall apply in this Agreement.

1.2 In this Agreement the following words shall have the following meanings:

End-Point Assessment Services	means the services set out in Schedule 3;
Commencement Date	means [<i>insert date</i>]
Confidential Information	means all non-public information (whether oral, written or electronic form) given by one Party to the other or otherwise obtained by the other's business, finance or technology, know-how, intellectual property, assets, strategy, products and clients, including without limitation information relating to management, financial, marketing, technical and other arrangements or operations of any person, firm, or organisation associated with that Party (or, in the case of the Training Provider, the Employer);
Conditions of End-Point Assessment Services	the standard terms and conditions of the End-Point Assessment Organisation (if any) as appended to this agreement at Annexe 3
Employer	means [<i>insert the name address and company number of the Employer</i>];
External Quality Assurance	means external quality assurance carried out by an external body (as agreed with the Institute of Apprenticeships) to ensure the consistency of quality and approach to the End Point Assessment Services.
Losses	means all losses, liabilities, damages, costs, expenses (including legal fees), disbursements, costs of investigation, litigation, settlement, judgement, interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise and "Loss" shall be interpreted accordingly;
Main Contract	means the contract entered into between the Training Provider and the Employer and dated [<i>insert date of the main contract</i>] as set out Annexe 2;
Order	has the meaning given in clause 2.2
Payments	means the sums to be paid by Training Provider and the End-Point Assessment Organisation as specified in Schedule 3;
Restricted Employee	means a person employed or engaged, or otherwise acting on behalf of either Party, for a continuous period of three months, or a person

previously employed or previously engaged (provided that they had been employed or engaged for a continuous period of three months prior to the date on which their employment or engagement ceased), and such employment or engagement has ceased to exist for a continuous period of less than 6 months, who: (i) was employed or engaged in the provision of the Training Services or the End-Point Assessment Services pursuant to Schedule 2; or (ii) who had material contact with the other Party with respect to the Training Services or End-Point Assessment Services ; provided, however, such person is not an 'administrative' personnel;

Training Services

means the training services contracted to be provided by the Training Provider to the Employer under a Request for Services pursuant to the Main Contract.

In the event of a conflict arising between the terms of this Agreement and those of the Main Contract the terms of this Agreement shall prevail.

SCHEDULE 2

The End-Point Assessment Organisation Services and Charges

	Standard	EPA Fee	Re-sit Fee SJT	Re-sit Fee PD	Cancellation Charge
Standard Terms	Adult Care Worker	£450.00 No registration fee	£30 for Situational Judgement Test	£100 for Professional Discussion	£100.00 per learner, per EPA element
	Lead Adult Care Worker	£450.00 No registration fee	£30 for Situational Judgement Test	£100 for Professional Discussion	£100.00 per learner, per EPA element
	Lead Practitioner in Adult Care	£1000 No registration fee	£100 for Situational Judgement Test	£100 for Professional Discussion	£100 per learner per element
	Leader in Adult Care	£1000 No registration fee	£100 for Situational Judgement Test	£100 for Professional Discussion	£100 per learner per element
Agreed Terms	Adult Care Worker	£425.00 No registration fee	No Re-sit fee	No Re-sit fee	Discussed on case by case basis between Newcross and Training Provider
	Lead Adult Care Worker	£425.00 No registration fee	No Re-sit fee	No Re-sit fee	Discussed on case by case basis between Newcross and Training Provider
	Lead Practitioner in Adult Care (Remote Delivery)	£775 No Reg Fee	No Re-sit fee	No Re-sit fee	Discussed on case by case basis between Newcross and Training Provider
	Lead Practitioner in Adult Care(Face to face delivery)	£925 No reg fee	No re-sit fee	No re-sit fee	Discussed on case by case basis between Newcross and Training Provider
	Leader in Adult Care (Remote Delivery)	£775 No registration fee	No Re- sit fee	No Re-sit fee	Discussed on case by case basis between Newcross and Training Provider
	Leader in Adult Care	£925 No registration fee	No Re-sit fee	No Re-sit fee	Discussed on case by case basis between Newcross and

	(Face to Face Delivery)				Training Provider
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SCHEDULE 3

DATA PROTECTION WORDING

The definitions set out at Schedule 0 of this Agreement shall apply to this Schedule 4. In addition, the following definitions shall also apply:

Agreed Purposes: means the purposes set out in Annexe 1 to this Schedule and such other purpose as the Parties may agree in writing from time to time;

Apprentice Personal Data: means Personal Data about apprentices of the Employer;

Data Breach: means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data transmitted, stored or otherwise Processed;

Data Controller: means the natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the Processing of Personal Data; where the purposes and means of such Processing are determined by Union or Member State law, the Data Controller or the specific criteria for its nomination may be provided for by Union or Member State law;

Data Discloser: a Party who discloses Personal Data to the other under or in connection with this Agreement;

Data Processor: means a natural or legal person, public authority, agency or other body which Processes Personal Data on behalf of the Data Controller;

Data Protection Law: means the General Data Protection Regulation EU 2016/679 (**GDPR**) and any national laws or regulations implementing or constituting a replacement or successor data protection regime to that governed by GDPR (including the Data Protection Act 2018);

Data Receiver: a Party who receives Personal Data from the other under or in connection with this Agreement;

Data Subject: means an identified or identifiable natural person about whom Personal Data is processed; an identifiable natural person is one who can be identified, directly or indirectly, by reference to the Personal Data;

Personal Data: means information relating to a Data Subject such as a name, an identification number, location data, online identifier or one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that person, including opinions about a Data Subject;

Processing: means any operation or set of operations which is performed on Personal Data or on sets of Personal Data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction;

Special Category Personal Data: Personal Data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership; genetic or biometric data processed for the purpose of uniquely identifying a natural person; data concerning health or data concerning a natural person's sex life or sexual orientation;

Shared Personal Data: the Personal Data to be shared between the parties for the Agreed Purpose, including the Apprentice Personal Data and the Staff Personal Data and such other Personal Data as agreed from time to time between the parties for the purpose of giving effect to this Agreement;

Staff Personal Data: Personal Data about the employees, consultants, agents and others engaged by one of the parties;

1. This Schedule sets out the framework for the sharing of Personal Data between the Parties as Data Controllers.
2. Each Party agrees to only process Shared Personal Data for the Agreed Purposes and such other purpose as the Data Subjects may consent from time to time

3. Each Party shall comply with all applicable requirements of the Data Protection Law with respect to its Processing of the Shared Personal Data.
4. Each party agrees to only Process the Shared Personal Data for the Agreed Purposes on the terms set out in this Agreement. This clause is in addition to, and does not relieve, remove or replace a Party's obligations under the Data Protection Law.
5. The Data Discloser shall, in respect of Shared Personal Data, ensure that its privacy notices are clear and shall provide sufficient information to the Data Subjects for them to understand what of their Personal Data the Data Discloser is sharing with the Data Receiver, the circumstances in which it will be shared, the purposes for the data sharing and the identity of the Data Receiver.
6. The Data Receiver undertakes to inform the Data Subjects the purposes for which it will Process their Personal Data and provide all of the information that it must provide in accordance with Data Protection Law, to ensure that the Data Subjects understand how their Personal Data will be Processed by the Data Receiver.
7. The Training Provider may, at its sole discretion, request that the End-Point Assessment Organisation provide evidence in a form acceptable to the Training Provider of the End-Point Assessment Organisation's compliance with Data Protection Law.

Use of Data Processors and Sub-Processors

8. The Data Receiver shall not engage a third party Data Processor to Process the Shared Personal Data without the prior written consent of the Data Discloser, provided that the Training Provider may appoint a Permitted Data Processor without requiring further consent from the End-Point Assessment Organisation.
9. Where the Data Receiver ('the Data Controller' for the purpose of paragraphs 9 and 10) appoints a third party as Data Processor for the purpose of Processing Shared Personal Data, it shall ensure that the Data Processor has in place appropriate technical and organisational measures to meet the requirements of Data Protection Law and protect Data Subjects rights.
10. The Data Controller shall enter into a written agreement which provides that the Data Processor shall Process Shared Personal Data only in accordance with the following:
 - 10.1 the Data Processor shall only Process the Shared Personal Data on documented instructions from the Data Controller, including with regard to transfers of Personal Data to a third country or an international organisation, unless required to do so by applicable law to which the Data Processor is subject; in such a case, the Data Processor shall inform the Data Controller of that legal requirement before Processing, unless that law prohibits such information on important grounds of public interest;
 - 10.2 the Data Processor shall ensure that persons authorised to Process the Personal Data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality;
 - 10.3 taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of Processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, the Data Processor shall implement appropriate technical and organisational measures to ensure a level of security appropriate to the risk, including inter alia as appropriate:

- (a) the pseudonymisation and encryption of Personal Data;
- (b) the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services;
- (c) the ability to restore the availability and access to Personal Data in a timely manner in the event of a physical or technical incident;
- (d) a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the Processing; and
- (e) any specific measures set out in Annexe 1 to this Schedule 4;

10.4 with reference to paragraph 10.3 in assessing the appropriate level of security, account shall be taken in particular of the risks that are presented by Processing, in particular from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to Personal Data transmitted, stored or otherwise processed;

10.5 in the event of an actual or suspected Personal Data breach involving the Shared Personal Data, the Data Controller shall take overall responsibility for any Personal Data breach obligations under Data Protection Law. The Data Processor shall conform to the reasonable requirements of the Data Controller in respect of Personal Data breach notification requirements under Data Protection Law, including;

- (a) notifying the Data Controller without undue delay, and not later than 48 hours after having become aware of the Personal Data breach, to enable the Data Controller to fulfil its notification requirements to the ICO; and
- (b) the notification described in paragraph 10.5(a) shall at least:
 - (i) describe the nature of the Personal Data breach, including where possible: the categories and approximate number of Data Subjects concerned and the categories and approximate number of Personal Data records concerned;
 - (ii) communicate the name and details of the Data Protection Officer or other contact point where more information can be obtained;
 - (iii) describe the likely consequences of the Personal Data breach; and
 - (iv) describe the measures taken or proposed to be taken to address the Personal Data breach, including, measures to mitigate its possible adverse effects;

10.6 each party shall be responsible for any obligation it has with regards to the rights of Data Subjects, save that if a Data Subject exercises, or purports to exercise any of their rights under Data Protection Law in respect of Personal Data then:

- (a) the Data Processor shall inform the Data Controller and the Data Controller may, at its discretion, provide any response to the Data Subject having regard to both the Data Controller's and the Data Processor's obligations under Data Protection Law;
- (b) the Data Processor shall not respond to the Data Subject unless instructed to do so by the Data Controller; and

(c) the Data Processor shall promptly provide all information in its possession or control that the Data Controller requires in order to respond to the Data Subject;

10.7 where the Data Controller seeks to implement a new type of Processing activity under this Agreement, in particular where the Data Controller is making use of new technologies, the Data Processor shall either:

(a) carry out a data protection impact assessment (**DPIA**) assessing the impact of the envisaged Processing activity on the protection of Personal Data; or

(b) provide the Data Controller with all such cooperation and reasonable assistance as required to enable the Data Controller to carry out the DPIA and implement measures to mitigate the risks to Personal Data and the rights and freedoms of the Data Subjects; and

(c) where the results of the DPIA indicate that the Processing activity will result in a high risk to the rights and freedoms of natural persons, the Data Processor shall assist the Data Controller in notifying the Processing activity to the Information Commissioner's Office (**ICO**) and implementing the agreed measures, prior to the commencement of the new Processing activity.

10.8 the Data Controller and Data Processor shall take steps to ensure that any natural person acting under the authority of the Data Controller or the Data Processor who has access to Personal Data does not Process them except on instructions from the Data Controller, unless he or she is required to do so by applicable law;

10.9 the Data Processor shall not engage another Data Processor without first informing the Data Controller of any intended changes concerning the addition or replacement of other Data Processors, thereby giving the Data Controller the opportunity to object to such changes;

10.10 where a Data Processor engages another Data Processor for carrying out specific Processing activities on behalf of the Data Controller, the same data protection obligations as set out in this Agreement shall be imposed on that other Data Processor by way of a contract or other legal act under applicable law, in particular providing sufficient guarantees to implement appropriate technical and organisational measures in such a manner that the Processing will meet the requirements of Data Protection Law. Where that other Data Processor fails to fulfil its data protection obligations, the initial Data Processor shall remain fully liable to the Data Controller for the performance of that other Data Processor's obligations;

10.11 taking into account the nature of the Processing, the Data Processor shall assist the Data Controller by appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of the Data Controller's obligation to respond to requests for exercising the Data Subject's rights laid down in Data Protection Law;

10.12 at the choice of the Data Controller, the Data Processor shall delete or return all the Personal Data to the Data Controller after the end of the provision of the Agreed Services relating to Processing, and delete existing copies unless applicable law requires storage of the Personal Data;

10.13 the Data Processor shall make available to the Data Controller all information necessary to demonstrate compliance with the obligations laid down under Data Protection Law and allow for and contribute to audits, including inspections, conducted by the Data Controller or another auditor mandated by the Data Controller; and

10.14 the Data Processor shall immediately inform the Data Controller if, in its opinion, an instruction infringes Data Protection Law.

11. Where in the provision of Services under this Agreement the End-Point Assessment Organisation is acting as a Data Processor on behalf of the Training Provider (or as a Sub-processor on behalf of the Training Provider where the Employer is the Data Controller), the provisions of paragraph 10 shall apply directly between the Parties with the Training Provider being the Data Controller and the End-Point Assessment Organisation being the Data Processor.

ANNEXE 1

Data Processing Particulars

Scope:	Processing of Personal Data by the End-Point Assessment Organisation under the terms of this Agreement whereby the End-Point Assessment Organisation provides the End-Point Assessment Services to the Training Provider.
Nature:	<p>The collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of Apprentice Personal Data in connection with the End-Point Assessment Organisation providing the End-Point Assessment Services to the Training Provider.</p> <p>The collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of Training Provider Staff Personal Data in connection with the End-Point Assessment Organisation providing the End-Point Assessment Services to the Training Provider.</p>
Purpose:	<p>The provision by the End-Point Assessment Organisation of the End-Point Assessment Services.</p> <p>Communication between the End-Point Assessment Organisation and the Training Provider in relation to the provision by the End-Point Assessment Organisation of the End-Point Assessment Services.</p>
Period for which Personal Data will be retained:	<p>Apprentice Personal Data - until the End-Point Assessment Services have been completed, or until the Agreement terminates, whichever is earlier.</p> <p>Training Provider Staff Personal Data - for the period of time for which the information is required to facilitate the delivery of the End-Point Assessment Services or until this Agreement terminates, whichever is earlier.</p>
Categories of Data Subject:	<ul style="list-style-type: none">• Apprentices of the Employer.• Staff of the Training Provider.• Staff of the End-Point Assessment Organisation.



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