

1. TERMS OF USE

- 1.1. These are the Terms of Use for the Skills Federation (trading style of Federation for Industry Sector Skills and Standards), a company incorporated in Scotland (registered number SC175918) with registered office at 14 – 18 Hill Street, Edinburgh, EH2 3JZ (the “Federation”) in relation to its ACE360 service (“**Service**”).
- 1.2. These Terms of Use, together with the Registration Form, the Payment System and any Client Terms form the agreement between the Federation and the Client for the Services (“**Agreement**”).

2. DEFINITION

- 2.1. Definitions used in the Registration Form will have the same meaning when used in these Terms of Use.
- 2.2. The following definitions apply to these Terms of Use.

ACE360: means the Federation’s ACE360 software as a service developed and operated by the Federation and more fully described on the ACE360 website.

AO: an independent awarding organisation body which conducts End-Point Assessments of government funded apprenticeships.

Business Day: any day which is not a Saturday, Sunday or public holiday in the UK.

Confidential Information: has the meaning provided in clause 10.1.

Client: means either (a) an AO who requires its apprentices to use the Service or (b) a Training Provider who subscribes to the Service.

Client Data: the data inputted by the Client or Users for the purpose of using the Services.

Client Terms: the specific terms and relationship management plan agreed between the Federation and an AO Client which provides guidance on their relationship in relation to the Service (as updated from time to time).

Core Service: any core element of the Service made available through the Website as more fully described in Documentation (and as updated or amended from time to time).

Documentation: the documents made available to the Client by the Federation (including by online means) which sets out a description of the Service and the user instructions for the Service.

Data Protection Legislation: means the Data Protection Act 2018, and related subordinate legislation, as may be amended, updated or re- enacted

from time to time together with the GDPR and the UK GDPR.

Effective Date: the date of the Client's acceptance of the Registration Form.

End-Point Assessment: the independent assessment that takes place at the end of an apprenticeship, to make sure apprentices have reached the necessary level to be awarded an apprenticeship.

Fees: the fees payable by the Client to the Federation under the Agreement, as set out in the Registration Form and on the Payment System.

GDPR: General Data Protection Regulation (2016/679) of the European Union.

Initial Licence Term: means a period of 12 months commencing on the Effective Date.

Intellectual Property Rights: patents, rights to inventions, copyright and related 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.

License Term: has the period given in clause 13.1 (being the Initial Licence Term (12 months), together with any subsequent Renewal Period).

Normal Business Hours: 9.00 am to 5.00 pm local UK time, each Business Day.

Payment System: the portal on the ACE360 website used to purchase tokens to be attributed to each apprentice.

Premium Service: any premium or enhanced elements of the Service made available through the Website as detailed in the Client Terms or otherwise agreement between the Parties (and as updated or amended from time to time).

Renewal Period: means a period of 12 months.

Results: means the results and data produced from the Client's use of the Service.

Registration Form: the transaction page of www.ACE360.org containing details of Fees and where these Terms of Use are accepted.

Software: the online software applications provided by the Federation as part of the Service.

Support Services Policy: the Federation's policy for providing support in

relation to the Service as notified to the Client from time to time.

Training Provider: an organisation authorised to deliver apprenticeship training.

Training Provider Agreements: the agreements between AOs and Training Providers to deliver End-Point Assessment for apprentices trained by their organisations, on behalf of an employer.

UK GDPR: has the meaning given to it in the Data Protection Act 2018.

Users: the Client or those employees, agents and independent contractors of the Client, who are authorised by the Client to use the Service and the Documentation in accordance with the Agreement.

User: the individual apprentices or other users which are attributed access to the System through a token.

User Subscriptions: the user subscriptions provided by the Federation which entitle Users to access and use the Services.

Website means www.ACE360.org or any replacement website through which the Federation provides ACE360.

3. USER PAYMENTS

The following terms shall apply to any Client who is responsible for purchasing tokens through the Payment System (either directly or on behalf of a Training Provider).

- 3.1. The Federation grants to the Client from the Effective Date a non-exclusive, non-transferable right to permit the Users to use the Service and the Documentation during the Licence Term, solely for the Client's internal business operations.
- 3.2. Where the Service involves access to analytical data and/or reports via a password protected section of the ACE360 Website, or such other website notified to the Client for this purpose, then the Client undertakes that:
 - 3.2.1. the maximum number of Users that it authorises to access and use the Service and the Documentation shall not exceed the number of User Subscriptions it has been provided with;
 - 3.2.2. it will not allow or suffer any User Subscription to be used by more than one individual User unless it has been reassigned in its entirety to another individual User, in which case the prior User shall no longer have any right to access or use the Service and/or Documentation;
 - 3.2.3. each User shall keep a secure password for their use of the Service and Documentation and that each User shall keep any password provided to them confidential;
 - 3.2.4. it shall provide an up-to-date list of current Users to the Federation within 5 Business Days of the Federation's written request at any time or times;

- 3.2.5. it shall permit the Federation to audit the Service in order to establish the total number of Users at any time during the Term and compliance with the obligations under this Agreement. Such audit may be conducted no more than once per quarter, at the Federation's expense, and this right shall be exercised with reasonable prior notice, in such a manner as not to substantially interfere with the Client's normal conduct of business; and
- 3.2.6. if any of the audits referred to in clause 3.2.5 reveal that the Service has been accessed or used by any individual who is not a User, then without prejudice to the Federation's other rights, the Federation shall be entitled to promptly disable such User access and the Client shall not issue any User accounts to any such individual.
- 3.3. A candidate cannot be registered on ACE360 unless the Client (where the Client is a Training Provider) has a token it has purchased through the Payment System. The price of a token is set out on the ACE360 website payments page. The charge for a token might be changed from time to time in accordance with clause 9.1.

4. SERVICES

- 4.1. The Federation shall, during the Licence Term, provide the Service and make available the Documentation to the Client on and subject to the terms of the Agreement.
- 4.2. The Federation shall use commercially reasonable endeavours to make the Services available 24 hours a day, seven days a week, except for:
 - 4.2.1. planned maintenance carried out during agreed maintenance windows; and
 - 4.2.2. unscheduled maintenance performed outside Normal Business Hours, provided that the Federation has used reasonable endeavours to give the Client at least 6 Normal Business Hours' notice in advance.
- 4.3. The Federation will provide the Client with the Federation's standard Client support services during Normal Business Hours in accordance with the Federation's Support Services Policy in effect at the time that the Services are provided. The Federation may amend its Support Services Policy in its sole and absolute discretion from time to time.
- 4.4. The Federation and the Client may agree additional set up and training services or service levels under the Client Terms. Any Premium Services shall be provided for a minimum of 12 months as more fully set out in the Client Terms.

5. CLIENT DATA AND RESULTS

- 5.1. The Client shall own all right, title and interest in and to all of the Client Data and all Results. The Client shall have sole responsibility for the

legality, reliability, integrity, accuracy and quality of the Client Data. Subject to clause 5.3, the Federation do not monitor any Client Data posted or provided by the Client as part of the Service.

- 5.2. During the provision of the Services, the Federation shall maintain any Client Data hosted on ACE360 and the Website in accordance with its normal back-up procedure and shall use reasonable endeavours to restore any lost Client Data from the latest back-up of such Client Data.
- 5.3. If the Client Data includes any Personal Data (as that term is defined in Data Protection Legislation), then the parties acknowledge that for the purposes of Data Protection Legislation, the Federation is the data processor and the Client is the data controller. Both parties will comply with all applicable requirements of Data Protection Legislation.
- 5.4. The Client warrants that it has an appropriate lawful basis to enable the sharing of the personal data with the Federation. The Federation shall process such personal data and Client Data in accordance with the data processing schedule set out in Schedule 1.
- 5.5. Notwithstanding this clause 5, the Federation shall have the right to perform statistical analysis of the Client Data and Results for the creation of anonymised statistical data. For the avoidance of doubt, such anonymised data shall belong to the Federation and may be licensed to third parties.
- 5.6. The Federation shall not be responsible for any loss, damage or disclosure of Client Data caused by any third party or as a result of the Client's failure to comply with its obligations under the Agreement.
- 5.7. Each Party acknowledges that AO Clients will have access to Training Provider Client Data where they are the Training Provider's AO, strictly for the purpose of fulfilling their contractual obligations with the applicable Training Provider.

6. CLIENT OBLIGATIONS

- 6.1. The Client shall provide the Federation with all necessary co- operation in relation to the Agreement and all necessary access to such information as may be required by the Federation in order to provide the Service, including but not limited to Client Data, security access information and configuration services.
- 6.2. The Client shall comply with all applicable laws and regulations with respect to its activities under the Agreement and shall carry out all other Client responsibilities set out in the Agreement in a timely and efficient manner.
- 6.3. The Client shall not access, store, distribute or transmit any computer

viruses, or any material during the course of its use of the Service that:

- 6.3.1. is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
- 6.3.2. facilitates illegal activity; or
- 6.3.3. in a manner that is otherwise illegal or causes damage or injury to any person or property; and the Federation reserves the right, without liability or prejudice to its other rights to the Client, to disable the Client's access to any material that breaches the provisions of this clause.
- 6.4. The Client shall not (and where the Client is a Training Provider it shall ensure any Users do not) (except to the extent expressly permitted under the Agreement):
 - 6.4.1. attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or Documentation (as applicable) in any form or media or by any means; or
 - 6.4.2. attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or
 - 6.4.3. access all or any part of the Service and Documentation in order to build a product or service which competes with the Service and/or the Documentation; or
 - 6.4.4. use the Service and/or Documentation to provide services to third parties; or
 - 6.4.5. subject to clause 15.5, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or Documentation available to any third party, or
 - 6.4.6. attempt to obtain, or assist third parties in obtaining, access to the Service and/or Documentation, other than as provided under this clause 6.4.
- 6.5. The Client shall keep all password and log-in details used in the relation to the Service secure, and shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Service and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify the Federation.
- 6.6. Where the Client is a Training Provider, the Client shall ensure that the Users use the Service and the Documentation in accordance with the terms of the Agreement and shall be responsible for any User's breach of the Agreement.
- 6.7. The Client shall obtain and shall maintain all necessary licences, consents, and permissions necessary to enable it to receive the Service from the Federation.
- 6.8. The Client shall ensure that its network and systems comply with any

relevant specifications provided by the Federation from time to time and be solely responsible for procuring and maintaining its network and internet connections.

7. THE FEDERATION OBLIGATIONS

- 7.1. The Federation undertakes that the Service will be performed substantially in accordance with the Documentation and with reasonable skill and care.
- 7.2. The undertaking at clause 7.1 shall not apply to the extent of any non-conformance which is caused by use of the Service contrary to the Federation's instructions, or modification or alteration of the Service by any party other than the Federation or the Federation's duly authorised contractors or agents. If the Service does not conform with this undertaking, the Federation will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Client with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Client's sole and exclusive remedy for any breach of the undertaking set out in clause 7.1.
- 7.3. Notwithstanding this, the Federation:
 - 7.3.1. does not warrant that the Client's use of the Service will be uninterrupted or error-free; or that the Service, Documentation and/or the information obtained by the Client through use of the Service will meet the Client's requirements; and
 - 7.3.2. is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Client acknowledges that the Service and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 7.4. The Agreement shall not prevent the Federation from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under the Agreement.
- 7.5. The Federation warrants that it has and will (for the duration of the Licence Term) maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under the Agreement and shall comply with all material applicable laws and regulations when providing the Services under the Agreement.
- 7.6. The Federation shall:
 - 7.6.1. If applicable, co-operate with the Client in accordance with the Client Terms and comply with any obligations therein which relate to it;
 - 7.6.2. ensure that the Service will be fit for any purpose expressly or implicitly

made known by the Federation to the Client;

- 7.6.3. co-operate with the Client in all matters relating to the Service, and comply with the Client's reasonable instructions in relation to the Service; and
- 7.6.4. not knowingly do or omit to do anything which may cause the Client to lose any licence, authority, consent or permission on which it relies for the purposes of conducting its business.

8. RIGHTS IN THE SERVICE

- 8.1. All Intellectual Property Rights in the Service are owned by or validly licensed to the Federation.
- 8.2. Software and Documentation provided in relation to the Service are provided solely in relation to the Client's use of the Services in accordance with the Agreement and are not provided, or to be used, for any other purpose.
- 8.3. The Federation warrants that the receipt and use of the Service by the Client shall not infringe the rights, including any Intellectual Property Rights, of any third party.

9. PAYMENT

Where the Client is a Training Provider, or an AO purchasing on behalf of the Training Provider:

- 9.1. The Client shall purchase tokens from the Federation through the Payment System for at least the minimum number of registrations on the ACE360 in accordance with this clause 9.
- 9.2. The Client shall provide to the Federation valid, up-to-date and complete debit or credit card details and any other relevant valid, up-to-date and complete contact and billing details.
- 9.3. The Client hereby authorises the Federation to receive payments when the Client specifies the number of tokens and clicks the payment button on the online payment system and the Federation will hold any unused tokens on account until such time as they are redeemed in ACE360. Where the Client purchases any Premium Service, the Client shall pay this annually in advance unless otherwise agreed between the Parties.
- 9.4. All amounts and fees stated or referred to in the Agreement shall be payable in pounds sterling, are non-cancellable and non-refundable, and are exclusive of value added tax, which shall be added to the Federation's invoice(s) at the appropriate rate.
- 9.5. If the Client disputes any payment, the Client shall notify the Federation in

writing within 60 days. The parties shall negotiate in good faith to attempt to resolve the dispute promptly and the Federation shall provide all such evidence as may be reasonably necessary to verify the request for payment.

- 9.6. The Federation shall also be entitled to increase the cost of a token upon a minimum of three (3) months' prior notice to the AO (but not more than once during any 12 month period during the Agreement and up to a maximum of 10% increase in any 12 month period). Where the Federation proposes an increase above the maximum amount stated, it shall notify the AO of the proposed increase and the reason for the increase and shall require the approval of the AO (not to be unreasonably withheld or delayed).

Where the Client is an AO.

- 9.7. The Parties agree that access to the Core Services shall be provided without charge to an AO but any access to Premium Services shall be charged in line with the provisions of this Agreement.

10. CONFIDENTIALITY

- 10.1. Each party (**Receiving Party**) shall keep in strict confidence any information that is proprietary or confidential and is either clearly labelled as such or which ought reasonably to be treated as confidential, including all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party (Disclosing Party), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain ("**Confidential Information**").
- 10.2. The Receiving Party shall restrict disclosure of such Confidential Information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Agreement, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. This clause "Confidentiality" shall survive termination of the Agreement.
- 10.3. Notwithstanding the terms of clause 10.1 and 10.2 above, and unless otherwise agreed between the Parties, the Federation shall be entitled to reference the Client as being a Client of the Federation in relation to its marketing activities.

- 10.4. The provisions of this clause shall not apply to any Confidential Information that:
- 10.4.1. is or becomes generally available to the public (other than as a result of its disclosure by the Receiving Party in breach of this clause);
 - 10.4.2. was available to the Receiving Party on a non-confidential basis before disclosure by the Disclosing Party;
 - 10.4.3. was, is or becomes available to the Receiving Party on a non-confidential basis from a person who, to the Receiving Party's knowledge, is not bound by a confidentiality agreement with the disclosing party or otherwise prohibited from disclosing the information to the receiving party.
- 10.5. A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible.
- 10.6. Each party reserves all rights in its Confidential Information. No rights or obligations in respect of a party's Confidential Information other than those expressly stated in this clause are granted to the other party, or to be implied from this agreement.
- 10.7. Subject to the limits set out in Clause 12.5, each party shall indemnify the other party in full against all liabilities, costs, expenses, damages and losses and all interest, penalties reasonable legal costs and expenses (calculated on a full indemnity basis) arising out of, or in connection with, a breach by a party of this clause 10.
- 10.8. The provisions of this clause 10 shall survive for a period of five years from termination or expiry of the Licence Term.

11. INDEMNITY

- 11.1. Subject to the limits set out in Clause 12.3, the Client shall defend, indemnify and hold harmless the Federation against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Client's use of the Service and/or Documentation, provided that:
- 11.1.1. the Client is given prompt notice of any such claim;
 - 11.1.2. the Federation provides reasonable co-operation to the Client in the defence and settlement of such claim, at the Client's expense; and
 - 11.1.3. the Client is given sole authority to defend or settle the claim.
- 11.2. Subject to the limits set out in Clause 12.5, the Federation shall defend,

indemnify and hold harmless the Client, and if applicable, its officers, directors and employees against any claim that the Service or Documentation infringes any United Kingdom patent effective as of the Effective Date, copyright, trade mark, database right or right of confidentiality, and shall indemnify the Client against any claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) in respect thereof, provided that:

- 11.2.1. the Federation is given prompt notice of any such claim;
 - 11.2.2. the Client provides reasonable co-operation to the Federation in the defence and settlement of such claim, at the Federation's expense; and
 - 11.2.3. the Federation is given sole authority to defend or settle the claim.
- 11.3. In the defence or settlement of any claim, the Federation may procure the right for the Client to continue using the Service, replace or modify the Service so that they become non- infringing or, if such remedies are not reasonably available, terminate the Agreement on 2 Business Days' notice to the Client without any additional liability or obligation to pay liquidated damages or other additional costs to the Client.
- 11.4. In no event shall the Federation, its employees, agents and sub-contractors be liable to the Client to the extent that the alleged infringement is based on:
- 11.4.1. a modification of the Service or Documentation by anyone other than the Federation; or
 - 11.4.2. the Client's use of the Service or Documentation in a manner contrary to the instructions given to the Client by the Federation; or
 - 11.4.3. the Client's use of the Service or Documentation after notice of the alleged or actual infringement from the Federation or any appropriate authority; or
 - 11.4.4. the Client's gross negligence or deliberate misconduct.
- 11.5. The foregoing and clause 12 state the Client's sole and exclusive rights and remedies, and the Federation's entire obligations and liability, for infringement of any patent, copyright, trade mark, or database right.

12. LIMITATION OF LIABILITY

- 12.1. This clause 12 sets out the entire financial liability of each Party (including any liability for the acts or omissions of its employees, agents, consultants and subcontractors) to the other Party in respect of:
- 12.1.1. any breach of the Agreement however arising;
 - 12.1.2. any use made by the Client of the Service (except where such Service

- has been used by the Client contrary to the terms of this Agreement; and
- 12.1.3. any representation, statement or delictual act or omission (including negligence) arising under or in connection with the Agreement.
- 12.2. Except as expressly and specifically provided in the Agreement:
- 12.2.1. the Client assumes sole responsibility for its use of all Results, and for conclusions drawn from such use. The Client acknowledges that the Federation has not undertaken any verification of Results and accepts no responsibility for, and makes no warranty or representation in respect of, the Results, their accuracy or completeness. Use of the Service does not guarantee the Client any improvement in its business efficiencies;
- 12.2.2. the Federation shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to the Federation by the Client in connection with the Service, or any actions taken by the Federation at the Client's direction;
- 12.2.3. all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from the Agreement; and
- 12.2.4. the Service and Documentation are provided to the Client on an "as is" basis.
- 12.3. Subject to clause 12.4 and 12.5, in no event shall either party be liable for any loss of business, loss of profit, or for any indirect or consequential loss and each party's total aggregate liability arising under the Agreement or otherwise relating to the Service shall be limited to the higher of (a) £100,000; or (b) total Fees paid during the 12 month period preceding the date on which the claim arose.
- 12.4. Nothing in these Terms of Use shall limit or exclude either party's liability for:
- 12.4.1. death or personal injury caused by negligence;
- 12.4.2. fraud or fraudulent misrepresentation; or
- 12.4.3. any other liability that cannot be excluded or limited by law.
- 12.5. The Federation's liability for any indemnities it provides under this Agreement or for the indemnity provided by the Client under clause 10 shall be capped at £1,000,000.

13. TERM AND TERMINATION

- 13.1. The Agreement shall, unless otherwise terminated under the remaining provisions of this clause 13, commence on the Effective Date and continue for the Initial Licence Term (12 months) and, thereafter, the Agreement shall be automatically renewed for successive Renewal

Periods unless:

- 13.1.1. either party notifies the other party of termination, in writing, at least three months before the end of the Initial Licence Term or a Renewal Period, in which case the Agreement shall terminate upon the expiry of the Initial Licence Term or applicable Renewal Period; or
- 13.1.2. otherwise terminated in accordance with the provisions of the Agreement.
- 13.2. Without prejudice to any other rights or remedies to which the parties may be entitled, either party may terminate the Agreement without liability to the other if:
 - 13.2.1. the other party commits a material breach of any of the terms of the Agreement and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; or
 - 13.2.2. the other party is insolvent within the meaning of section 123 of the Insolvency Act 1986; or
 - 13.2.3. the other party ceases, or threatens to cease, to trade.
- 13.3. Without limiting its other rights or remedies, the Federation may terminate the Agreement with immediate effect by giving written notice to the Client if:
 - 13.3.1. the Client fails to pay any amount due under the Agreement on the due date for payment; or
 - 13.3.2. the Client is, or is controlled directly or indirectly by, a direct competitor of the Federation.
- 13.4. On termination of the Agreement for any reason:
 - 13.4.1. the Client shall immediately pay the Federation all outstanding payments;
 - 13.4.2. all licences granted under the Agreement shall immediately terminate;
 - 13.4.3. each party shall return and make no further use of any equipment, property, Documentation and other items (and all copies of them) belonging to the other party; and
 - 13.4.4. the accrued rights of the parties as at termination, or the continuation after termination of any provision expressly stated to survive or implicitly surviving termination, shall not be affected or prejudiced.

14. DISPUTE RESOLUTION

- 14.1. If a dispute arises out of or in connection with this agreement or the performance, validity or enforceability of it ("**Dispute**") then the parties shall follow the procedure set out in this clause:
 - 14.1.1. either party shall give to the other written notice of the Dispute, setting out its nature and full particulars ("**Dispute Notice**"), together with relevant supporting documents. On service of the Dispute Notice, the Key Contacts named in the Client Terms shall attempt in good faith to resolve

the Dispute;

- 14.1.2. if the Key Contacts are for any reason unable to resolve the Dispute within 10 Business Days of service of the Dispute Notice, the Dispute shall be referred to the applicable executive director of the Client and Chief Executive Officer of the Federation who shall attempt in good faith to resolve it; and
- 14.1.3. In the event the parties are unable to resolve a dispute between them arising out of or relating to the Agreement, and except for claims for interdict or other similar relief, the parties will attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution Model Mediation Procedure. Unless otherwise agreed between the Parties, the mediator will be nominated by the Centre for Effective Dispute Resolution and the mediation will take place in England. The mediation agreement referred to in the Model Procedure shall be governed by English law.
- 14.2. If the dispute is not settled by mediation within 10 days of commencement of the mediation or within such a further period as the parties may agree in writing, the parties shall be free to seek to resolve the dispute by such other means subject always to clause 16.

15. GENERAL

- 15.1. The Federation reserves the right to amend the Agreement from time to time and will email any such changes to the Client and make such terms available on the ACE360 Website on 30 days' notice, provided such amendments do not materially detriment the Client's use of the Service or materially alter the Federations obligations under this Agreement.
- 15.2. If either party chooses to waive any particular right it may have under the Agreement on any particular occasion this does not prevent it from exercising that right on another occasion.
- 15.3. If any part of the Agreement is held by a court of law (or similar forum) to be invalid or unenforceable, this shall not affect the validity or enforceability of the rest of the Agreement.
- 15.4. Neither party shall have liability to the other party under the Agreement if it is prevented from or delayed in performing its obligations under the Agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control.
- 15.5. The Client is not entitled to transfer or assign its rights and obligations under the Agreement to anyone else without the Federation's prior written permission.
- 15.6. Nothing in the Agreement is intended to, or shall operate to, create a

partnership between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

- 15.7. All notices required or permitted under the Agreement will be in writing which shall include email. Any notice shall be deemed to have been duly received:
- 15.7.1. if delivered personally, when left at the address;
 - 15.7.2. if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second business day after posting; or
 - 15.7.3. if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed;
 - 15.7.4. if sent by email, at the time of transmission if no failed delivery message is received by the sender.

All notices shall be addressed to the parties at their respective addresses or email address to the primary corporate addresses set forth in the Agreement, or such other address or email address as advised subsequently by either party.

- 15.8. For the purposes of the Contracts (Rights of Third Parties) Act 1999, no person other than a party to the Agreement shall have any rights to enforce any term of the Agreement.

16. LAW AND JURISDICTION

- 16.1. The Agreement, including any Client Terms and the Registration Form referencing these Terms of Use, constitutes the complete and exclusive understanding and agreement between Client and the Federation regarding its subject matter and supersedes all prior or other agreements or understandings, written or oral, relating to its subject matter (including any proposal the Federation may have issued to the Client). Each party acknowledges that, in entering into the Agreement it does not rely on any statement, representation, assurance or warranty (whether it was made negligently or innocently) of any person (whether a party to the Agreement or not) other than as expressly set out in the Agreement.
- 16.2. If there are any disputes arising out of use of the Service or relating to the Agreement then these will be governed by the laws of England. If either party requires to raise court proceedings in relation to any such dispute then the courts of England shall have exclusive jurisdiction under the Agreement in relation to those proceedings.

Schedule 1
DATA PROTECTION

Words and definitions used in this Schedule shall unless defined separately below or the context otherwise requires, bear the meanings given to them in the Agreement.

DEFINITIONS

Annex A: means the Annex A (Details of Personal Data) as attached to the Agreement, and as otherwise updated from time to time.

Client Data: means the Personal Data or any part of such Personal Data provided or made available to the Federation or collected or created by them for the Client in connection with the Agreement, including any Personal Data which the Federation is Processing in performing its obligations under the Agreement or which the Federation has access to from time to time in performing the Services.

Controller, Processor, Data Subject, Personal Data, Personal Data Breach, processing and appropriate technical and organisational measures: as defined in the Data Protection Legislation.

EEA: means the European Economic Area and, should it no longer be a part of the EEA and, provided that it qualifies as a White Listed Country, the UK.

UK GDPR: has the meaning given in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

1. DATA PROTECTION

- 1.1. Both parties will comply with all applicable requirements of the Data Protection Legislation. This paragraph is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
- 1.2. The parties acknowledge that for the purposes of the Data Protection Legislation, in relation to any Personal Data which forms part of the Client Data, the Client is the Controller and the Federation is the Processor. Annex A sets out the scope, nature and purpose of processing by the Federation, the duration of the processing and the types of Personal Data and categories of Data Subject.
- 1.3. If and to the extent of any conflict or inconsistency between this Schedule and the Agreement arise, this Schedule shall take precedence.
- 1.4. Without prejudice to the generality of paragraph 1.1, the Client will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Client Data to the Federation for the duration and purposes of this Agreement.

2. PROCESSING OF CLIENT DATA

- 2.1. Without prejudice to the generality of paragraph 1.1, the Federation shall, in relation to any Personal Data processed in connection with the performance by the Provider of its obligations under this agreement:

- (a) process that Personal Data only on the documented written instructions of the Client (including any set out in the Client Terms) unless the Federation is required by applicable law to otherwise process that Personal Data. Where the Federation is relying on applicable law as the basis for processing Personal Data, the Federation shall promptly notify the Client of this before performing the processing required by applicable law unless prohibited by applicable law. Where the Federation believes that the instructions issued by the Client are not compatible with Data Protection Legislation, it will, as soon as reasonably practicable, revert to the Client for the purpose of seeking clarification or further instructions;
- (b) ensure that it has in place appropriate technical and organisational measures, which have been notified to the Client, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
- (c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
- (d) not transfer any Personal Data outside of the UK or EEA unless the prior written consent of the Client has been obtained and the following conditions are fulfilled:
 - (i) the Federation has provided appropriate safeguards in relation to the transfer;
 - (ii) the data subject has enforceable rights and effective legal remedies; and
 - (iii) the Federation complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred.
- (e) assist the Client, at the Client's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators, and shall promptly provide a copy of any communication received by the Federation in relation to the same;
- (f) notify the Client without undue delay on becoming aware of a Personal Data Breach, and in any event no later than 48 hours after becoming aware of a Personal Data Breach, providing such information as may reasonably be

requested by the Client on the circumstances of the Personal Data Breach and the Federation shall take reasonable steps to mitigate the effects and to minimise any damage resulting from the Personal Data Breach and cooperate with the Client in remediating or mitigating any potential damage from a Personal Data Breach;

- (g) at the written direction of the Client, delete or return Personal Data and copies thereof to the Client on termination of the agreement unless required by applicable law to store the Personal Data; and
- (h) maintain complete and accurate records and information to demonstrate its compliance with this Schedule and allow for audits by the Customer or the Customer's designated auditor and immediately inform the Customer if, in the opinion of the Provider, an instruction infringes the Data Protection Legislation.

2.2. The Federation may engage or permit a sub-processor to process the Client Data but only to the extent, and in such a manner, as is necessary for the purpose of performing its obligations under this agreement, and provided that the obligations in this paragraph have been adhered to:

- (a) Prior to engaging any new or replacement sub-processors to process Client Data, or changing the scope or nature of the processing a sub-processor performs, the Federation shall:
 - (i) notify the Client of any proposed additions, replacements or changes to the sub-processors listed in Annex A, by creating a marked-up version of Annex A, in which additions, replacements or changes are shown as tracked changes and sending the marked-up version to the Client for review;
 - (ii) ensure that any sub-processor is engaged under written contractual obligations which are the same in all material respects and in any case not less onerous than those contained in this Schedule.
- (b) The Client shall have 10 Business Days from receipt of any updated version of Annex A to object (on reasonable grounds) to any sub-processor. Where the Client raises a reasonable objection to any sub-processor, the Federation shall use reasonable endeavours to avoid the processing of Client Data by the objected-to sub-processor. If the Federation is unable to accommodate such change within ten (10) days of the objection from the Client, the parties shall meet to discuss options. If the Client has not raised any objections after 10 Business Days have elapsed from receipt of any updated version of it provided by the Federation, they shall be deemed to have consented to the sub-processor and any such changes.
- (c) The Federation shall remain fully liable to the Client for the performance, acts and omissions of its sub-processors in respect of its processing of Client Data to the same extent the Federation would be liable if performing the Services and/or processing of each sub-processor directly.

3. LIABILITY

3.1. The Federation shall indemnify the Client in full and on demand against all liabilities, costs, expenses, penalties, fines, sanctions, compensation awarded to a data subject, damages and losses of whatever nature suffered or incurred by the Client arising out of or in connection with:

3.1.1. any processing of any Client Personal Data by the Federation, any sub-processor, agents or any other third party that it permits to access the Client Personal Data; in breach of any Data Protection Legislation;

3.1.2. the Federation, any sub-processor agents or any other third party that it permits to access Client Personal Data acting outside or contrary to the lawful instructions of the Client; and/or

3.1.3. any breach by the Federation, any sub-processor agents or any other third party that it permits to access the Client Personal Data of this Schedule.

Annex A – Details of Personal Data

Subject Matter, Nature and Purpose of Processing	The transfer of personal data relating to apprentices under the Training Provider Agreements to enable the Federation to carry out the Services.
Type of Personal Data	• Apprentice title, first name and surname; • Apprentice date of birth; • Apprentice gender; • Any reasonable adjustments required for the Apprentice; • Unique Learner Number; • Apprenticeship Learning Aim Reference Service (LARS); • Apprentice email address • Apprentice home address; • Apprentice phone number; • Feedback from the end-point assessor on the outcomes of the end-point assessment, or from moderators on the assessment and grading decision; • Apprentice evidence required for the end-point assessment including for example portfolio, project, interview or panel discussion notes, employer reference and exam results; and • Responses from the Client to requests made by apprentices for reasonable adjustments, exam re-sits or appeals.

Categories of Data Subjects		i) Apprentices whose data has been collected by training providers pursuant to a contract between each of them individually and the Client; and ii) End-point Assessment assessors whose data has been collected by the Client in connection with the agreements between training providers and the Client. iii) Data shared with the external quality assurance body in order that their statutory function is exercised.	
Name and Contact details of Processor’s DPO or data protection representative		Managing Director Skills Federation (trading style of Federation for Industry Sector Skills and Standards) 14-18 Hill Street, Edinburgh, Scotland, EH2 3JZ	
Permitted Sub-Processors and Transfers			
Registered Name and Address of Sub-Processor	Services (detail of the services each Sub-processor will undertake in relation to the Client Data)	Location (Set out the location in which each Sub-processor entity will Process the Client Data)	Mechanism (set out the agree mechanism to ensure any transfer is compliant with Data Protection Legislation)
Nil	Nil	Nil	nil