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Guidance

# Ofqual terms and conditions for external experts

Published 23 May 2022

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## This Agreement is between

**The Office of Qualifications and Examinations Regulation** of Earlsdon Park, 53 to 55 The Butts, Coventry, CV1 3BH ('Ofqual' or "Us")

and

**The Contractor** (or Organisation where permitted), whose details are set out in the Application Form ('the Contractor' or 'You')

## Background

A. Ofqual has sought subject matter experts to provide consultancy services and You applied and following completion of Ofqual's approval process You were successful

and are or soon will be appointed on Ofqual's List of External Experts ('the List'). As a condition of Your appointment You agree that these Standard Terms and Conditions ("**Agreement**") will apply to You during the period You remain on the List.

B. It is the parties' intention that the Contractor's provision of Services under this Agreement will have the status of services provided by an independent contractor. The IR35 rules for working through an intermediary do not apply to services provided by External Experts in accordance with these terms and conditions. For further information on IR35, see [HMRC's content on IR35](#).

C. You agree to provide the Services (as defined below) in accordance with the provision of this Agreement.

## **It is agreed**

### **1. Definitions**

The definitions set out in Schedule 1 will apply to this Agreement and to any Services provided.

### **2. Appointment**

2.1 Your consultancy will be to provide to Ofqual the Services as an External Expert as notified on appointment upon the terms and conditions of this Agreement.

2.2 Ofqual does not guarantee that it will request any Services from You during the period You are on the List of External Experts. Ofqual will aim to allocate work fairly to those on its List depending on the area of expertise required, potential Conflict of Interest and whether a Contractor has previously advised in respect of a matter.

2.3 Ofqual may appoint more than one Contractor to advise in respect of specific issues and at Ofqual's request You agree to liaise with or otherwise work with other appointed Contractors to achieve consistent advice.

2.4 In the event that Ofqual receives enquiries or complaints in relation to the Services provided You agree to provide such assistance as is reasonably required, at no additional Fee.

2.5 You have the right to refuse any request to provide Services without providing reasons, although giving reasons will assist us in making future requests for Services.

### **3. Independent Contractor Status**

3.1 It is the express intention of the parties that the Contractor is an independent contractor and not an employee, agent, joint venture or partner of Ofqual. Nothing in this Agreement shall in any way be interpreted or construed as creating or establishing the relationship of employer and employee between Ofqual and the Contractor or between Ofqual and any employee or agent of the Contractor. Both parties acknowledge that the Contractor is not an employee of Ofqual for UK tax purposes.

3.2 You may choose a suitably qualified substitute **from the Ofqual Expert list** to

carry out the work/provide the Services in the event that you are unable or unwilling to do so, and provided that they comply with the same security checks to which you are subject to and you ensure that they carry out the work and Services to the same standard and in accordance with the terms and conditions of this Agreement.

## **4. Term and reappointment**

4.1 This Agreement shall commence on Your acceptance of your appointment onto the List and shall continue for a period of three (3) years unless and until terminated in accordance with clause 23 (Termination).

4.2 Your appointment to the List shall commence on the date notified and will be for the period of three (3) years, which may be renewed for a further period or periods subject to Your continuing to hold expertise in the relevant subject and Your compliance with this Agreement.

## **5. Availability and Method of performing the Service**

5.1 You agree to be available at reasonable times upon request by Ofqual during the term of this Agreement to perform the Service.

5.2 You will determine the method, details and means of performing the Services and Ofqual shall have no right to, and shall not control the manner or determine the method of accomplishing the Services. You are at liberty to deliver Services at a time and place to suit Yourself, with the exception of any site visits, meetings or events that You are required to attend as part of the delivery of Services and subject to Your meeting the timescales for completion of the Services required and the ability to comply with this Agreement. It is anticipated that the majority of information or documents You will need to review in order to deliver Services will be available through Ofqual's secure data base.

## **6. Skill and care**

You will procure that any Worker will use reasonable care and skill in providing the Services; perform the Services in a professional and timely manner in accordance with the Specification and Good Industry Practice and be properly trained, qualified, skilled and competent for the purposes of performing the Services.

## **7. Attendance at Briefings and Feedback**

7.1 Ofqual may require the Contractor to attend workshops or briefings and development events to be arranged at reasonable times in connection with Services to be delivered.

7.2 Where a Service has been provided by You, the Ofqual Contact may complete feedback, which will cover timeliness, and the quality of the Service provided.

7.3 You will be provided with a copy of this feedback upon request and it will be entered onto a secure database. Access to information about the List will be limited to Ofqual officers who are involved in requesting Services.

## **8. Your other work**

8.1 You will give reasonable priority to completing the provision of the Services by the timescale and within the resources requested and will notify the Ofqual Contact as soon as practicable if You anticipate having a problem with meeting the completion date, e.g. in case of an accident or ill health.

8.2 You are entitled to carry out work for other third parties, but shall advise the Ofqual Contact if You have been invited to review any document prepared by or on behalf of Ofqual, or You consider that a potential or actual Conflict of Interest has arisen.

8.3 In carrying out work for third parties You shall comply at all times with Clause 16 (Confidential information).

## **9. Fees and payments**

9.1 Ofqual will pay You a Fee which shall be set out in the Commissioning Documents. The Fee shall be calculated on the amount of work it is anticipated will be required, including any requirement to attend site visits, briefings, meetings or events.

9.2 If You are required to attend briefing sessions or workshops in relation to Services provided, a Fee will be payable for Your attendance.

9.3 The Fee will be paid following successful completion of each Specific Assignment, unless specifically agreed in writing by the Ofqual Contact. Some Services may have phased payments and payment will be dependent on meeting each milestone as set out in the Specification. Ofqual reserves the right to reduce the Fee amount for milestones no longer required by Ofqual in part or full. Ofqual will provide you with 14 days' notice in writing where any milestone as set out in the Specification is withdrawn. The Fee for that milestone may be reduced in part or full.

9.4 Unless otherwise agreed by Ofqual in writing the Fees shall be paid in pounds sterling (£) and shall be exclusive of VAT and any other applicable duties and taxes.

9.5 You shall submit invoice(s) to Ofqual, quoting Ofqual's purchase order number (to be notified by the Ofqual Contact), on delivery of the Services (or agreed milestones).

9.6 Fees properly due under this Agreement shall be paid by BACS and will normally be made within 10 Working Days of receipt of Your invoice and all relevant original receipts, but we may defer payment where there is a query which will be notified to You as soon as practicable.

9.7 Ofqual shall only reimburse reasonable incidental costs or expenses for attendance at events which are agreed in writing with the Ofqual Contact in advance and are necessary for the proper performance of the Services. Reimbursements will be made in line with Ofqual's External Claim Form Guidance which may be updated from time to time.

9.8 Where the Services provided are subject to VAT You will be required to provide a valid VAT receipt.

9.9 Ofqual is entitled to deduct from any sums payable to You any sums that You may owe Ofqual at any time.

## **10. Tax Compliance**

10.1 Where the Contractor is contracting in his or her personal capacity and not through an Employer or intermediary the parties agree that the Contractor is liable to comply at all times with the Income Tax (Earnings and Pensions) Act 2003 ('ITEPA') for income tax, the Social Security Contributions and Benefits Act 1992 ('SSCBA'), and all other statutes and regulations relating to income tax and National Insurance Contributions ('NICs'). In particular Ofqual will not withhold income tax, SSCBA or NICs from the Contractor's Fees and the Contractor shall be solely responsible for these tax liabilities or similar contributions or liabilities that arise in consequence of this Agreement.

10.2 Where the Contractor is an Employer or is providing services through another entity (including for example a personal service company, university, or limited company) the parties agree that the Contractor is liable to comply at all times with the ITEPA for income tax, to comply with the SSCBA, and all other statutes and regulations relating to income tax and NICs. In particular Ofqual will not withhold income tax, SSCBA or NICs from the Contractor's Fees and the Contractor shall be solely responsible for these tax liabilities or similar contributions or liabilities that arise in consequence of this Agreement.

10.3 The Contractor shall indemnify Ofqual against any income tax, national insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made (whether before or after the making of a demand pursuant to this indemnity) in connection with the provision of the Services by the Contractor.

10.4 The Contractor authorises Ofqual to supply any information which it receives under clause 10 ( Tax Compliance) to the Commissioners of Her Majesty's Revenue and Customs for the purposes of the collection and management of revenue for which they are responsible.

10.5 Where the Contractor is an Employer and there is no direct contract between the Worker and Ofqual the Employer shall ensure the flow down of clauses 10.2 to 10.4 of clause 10 (Tax Compliance), and clause 11 of this Agreement by inclusion of the following requirements in its contract with the Worker as follows:

(a) that Ofqual may, at any time during the term of contract request that the Worker provides information which demonstrates how the Worker complies with the requirements in clause 10 (Tax Compliance), or why those requirements do not apply to it. In such case, Ofqual may specify the information which the Worker must provide and the period within which that information must be provided;

(b) that the Worker's contract may be terminated at Ofqual's request if:

(i) the Worker fails to provide the information requested by Ofqual by the time specified by Ofqual under clause 11; and/or

(ii) the Worker provides information which Ofqual considers is inadequate to demonstrate how the Worker complies with the requirements of clause 10 or confirms that the Worker is not complying with those requirements; and

(c) that Ofqual may supply any information it receives from the Worker to HMRC for the purpose of the collection and management of revenue for which they are responsible.

## **11. Provision of information in relation to Tax compliance**

11.1 Ofqual shall be entitled, at its discretion, at any time during the term of this Agreement to request that the Contractor provide information which demonstrates how the Contractor complies with clauses 10.1 and 10.2 above or why those clauses do not apply to it.

11.2 A request under this clause 11 may specify the information which the Contractor must provide and the period within which that information must be provided.

## **12. Publicity and Publication of List of Contractors**

12.1 You may refer to the fact that You have been appointed to Ofqual's List of External Experts but are not entitled to make any comment or announcement on behalf of Ofqual, or which You may reasonably believe will be attributed to Ofqual.

12.2 Ofqual, as part of its duty as an open and transparent public body, may publish a list of its contractors or External Experts with details of their background experience in accordance with Schedule 2 (Arrangements for the publication of the List of External Experts). Ofqual will not publish other personal information without consulting you.

## **13. Dealing with Conflicts of Interest**

13.1 The Contractor must disclose to Ofqual any interests which it holds where a potential Conflict of Interest with Ofqual's objectives (set out in section 128 of Apprenticeships Skills Children and Learning Act 2009), or the Services to be provided, may arise.

13.2 You must update the Register of Interests annually should Your circumstances change or when reasonably requested, and if Your circumstances have changed prior to accepting any Specific Assignment.

13.3 When You are requested to provide Services You shall inform the Ofqual Contact if You consider You may have a Conflict of Interest in the subject matter and the nature of that interest, so that Ofqual can at its sole discretion consider whether it is appropriate to continue to request the Services from You, or suggest additional arrangements which may be required to mitigate the Conflict of Interest.

13.4 You must also notify the Ofqual Contact if a Conflict of Interest arises during the provision of Services.

## **14. Confirmation of and Changes to Your tax status or situation**

14.1 You confirm that You have the relevant background and experience set out in Your application and You confirm the declaration of tax status set out in your application and that You intend to maintain Your status as independent contractor for the purposes of this Agreement.

14.2 You must notify the Ofqual Contact as soon as practical and in any event within 10 Working Days if Your status as a Contractor changes, for example You have not carried out any direct work in the Relevant Subject during the last 3 years; if You have had a contract terminated for poor performance or misconduct, if You have been accused or convicted of any crime (other than road traffic offences), are the subject of any professional disciplinary proceedings, have been declared bankrupt or entered into any agreement with creditors.

## **15. Variation of and publication of this Agreement**

15.1 Ofqual will [publish this Agreement on its website](#) and may update these from

time to time. You will be notified of any significant amendments and consent to such changes.

15.2 No other changes to these Terms and Conditions will be made without the specific written agreement of Ofqual.

15.3 The Ofqual Contact has authority to agree variations to these Terms and Conditions for the purpose of providing agreed Services. Any variations must be agreed in writing.

15.4 You are liable for any employment-related claim or any claim based on Worker status (including reasonable costs and expenses) brought by third parties against Ofqual arising out of or in connection with the provision of the Services except where such claim is as a result of any act or omission by Ofqual. Ofqual may satisfy such indemnity (in whole or in part) by way of deduction from any payment due to You.

## **16. Confidential Information**

16.1 Information provided to You and which You reasonably obtain for the purposes of providing the services shall be treated as Confidential.

16.2 You shall not use or disclose to any third party either during or at any time after Your engagement by Ofqual any confidential information about the business or affairs of Ofqual, any of its contacts, any awarding organisation or any other confidential matters which may come to Your knowledge in the course of providing the Services. For the purposes of this clause, confidential information means any information or matter which is not in the public domain to which You gain access through the provision of the Services.

16.3 The restriction in clause 16.2 does not apply to:

- (a) any use or disclosure authorised by Ofqual or as required by law; or
- (b) any information which is already in Your possession through legitimate sources, or comes into the public domain otherwise than through Your unauthorised disclosure.

## **17. Data Processing**

17.1 For the purposes of the remainder of this clause 17, the terms “Data Protection Impact Assessment”, “Data Subject”, “Information Commissioner’s Office”, “Personal Data”, “Process” (including any derivatives thereof), and “Processor” shall each have the same meaning as defined in “Data Protection Legislation” where “Data Protection Legislation” shall mean any law applicable relating to the processing, privacy and use of personal data, including, without limitation: (i) the Data Protection Act 2018; (ii) Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data as supplemented by the Data Protection Act 2018 (“UK GDPR”); (iii) the Privacy and Electronic Communications (EC Directive) Regulations 2003; and / or (iv) any judicial or administrative implementation of any of the above, any guidance, guidelines, codes of practice, codes of conduct or approved certification mechanisms issued by the Information Commissioner’s Office, or other regulatory or supervisory authority.

17.2 The parties acknowledge that during the term of this Agreement and for the purposes of carrying out the Services, You may be required to process Personal Data on behalf of Ofqual. A description of the Personal Data and the processing activities You will be required to undertake are set out in Schedule 3.

17.3 Ofqual will use Personal Data relating to you from time to time. This will be:

- (a) when it is necessary for the purposes of fulfilling its obligations under this Agreement, namely contacting You
- (b) in relation to work Commissioned by Ofqual and processing payments due to You; and
- (c) when Ofqual is acting as part of its functions and in the public interests in doing so, for the purposes of transparency and in line with its legal obligations to publish your name and position on our website [www.ofqual.gov.uk](http://www.ofqual.gov.uk) as set out in Schedule 2 or any online publication produced by Ofqual in order to promote the work of the Subject Experts.

For further information on how Ofqual uses Your Personal Data please see our privacy notice a copy of which is provided on our website.

Additional copies are available from our Data Protection Officer at [dp.requests@ofqual.gov.uk](mailto:dp.requests@ofqual.gov.uk).

17.4 If You receive or have access to any personal information You do not consider is necessary, You should inform the Ofqual Contact as soon as practicable and take steps to ensure that the information is retained securely before being returned to Ofqual.

17.5 You shall comply with the requirements under the Data Protection Legislation which arise in connection with this Agreement (including notification requirements).

17.6 You shall not delete or remove any proprietary notices contained within or relating to any data (in physical and/or electronic form) provided to You by Ofqual under this Agreement ("Ofqual Data").

17.7 You shall not carry out any Processing, and shall not allow the Processing by any third party ("sub-processor") of any Ofqual Data (as defined in clause 17.6 above) except:

- (a) where necessary for the performance of Your obligations under this agreement;
- (b) in accordance with written instructions of Ofqual;
- (c) as otherwise agreed in writing by the parties; or
- (d) to the extent that is required by any law or regulatory body (in which case You shall inform Ofqual of that legal requirement before Processing that Ofqual Data, unless that law prohibits such information being provided on important grounds of public interest).

17.8 In the case of each approved sub-processor You shall provide Ofqual with full details of the Processing to be undertaken by the relevant sub-processor, include terms in the contract between You and the sub-processor which are the same as those set out in this clause 17 and ensure compliance on the part of the relevant sub-processor with such terms.

17.9 You shall provide to Ofqual for its approval a Data Protection Impact Assessment when requested by Ofqual and in any case prior to Processing any Personal Data under this Agreement. Once approved by Ofqual (such approval not to be unreasonably withheld), such Data Protection Impact Assessment shall be treated as forming part of this Agreement. You shall ensure that You also provide to Ofqual for its approval (such approval not to be unreasonably withheld) an updated Data Protection Impact Assessment if and when necessary from time to time to reflect any relevant changes to Processing activities under this Agreement and, if necessary, update the contents of Schedule 3 for Ofqual's approval to reflect any changes to the Processing activities.

17.10 You shall keep a record of all Processing activities carried out on behalf of



Ofqual, including (subject to clause 17.16) any transfers of Ofqual Data outside of the UK.

17.11 You shall preserve the integrity and prevent the unlawful Processing, accidental loss, destruction, or damage to, corruption or loss of any Ofqual Data, by having in place appropriate technical and organisational measures as required by Data Protection Legislation, including by making accessible back-ups stored in an agreed off-site location, copies of which shall be delivered to Ofqual every six (6) Months.

17.12 You shall provide a written description of the measures taken to comply with clause 17.11 and the Data Protection Legislation (including records, procedures, guidance, training and manuals).

17.13 You shall ensure that any system on which You hold Ofqual Data, including back-up data, is a secure system that complies with Good Industry Practice.

17.14 You must be able to state to Ofqual at all times the physical locations in which any Ofqual Data may be stored, Processed and managed from and the law that the Ofqual Data will be subject to.

17.15 You must request Ofqual's consent to transfer any Ofqual Data to or Process any Ofqual Data in any location outside of the UK.

17.16 Subject always to clause 17.7, Ofqual shall not unreasonably withhold or delay consent to a request to transfer any Ofqual Data to or Process any Ofqual Data in:

- (a) the European Economic Area (EEA); or
- (b) another country or territory outside the EEA if that country or territory ensures an adequate level of protection by reason of its domestic law or of the international commitments it has entered into which have been defined as adequate by the EU Commission or the UK Information Commissioner's Office.

17.17 If at any time You suspect or have reason to believe that the Ofqual Data provided to You under this Agreement is corrupted, lost or sufficiently degraded so as to be unusable, then You shall notify Ofqual and immediately propose remedial action required.

17.18 If any Ofqual Data is corrupted, lost or sufficiently degraded so as to be unusable, Ofqual may:

- (a) require You to restore or procure the restoration of the relevant Ofqual Data as soon as practicable but not later than five (5) working days from the earlier of the date of receipt of Ofqual's notice or Your knowledge of the issue; and/or
  - (b) itself restore or procure the restoration of the relevant Ofqual Data.
- 17.19. The reasonable costs of complying with clause 17.18 shall be borne by You unless Ofqual is at fault.

17.19 You shall take reasonable steps to ensure the reliability and integrity of any personnel used by You and/or any sub-processor who have access to any Ofqual Data and ensure that such personnel are subject to confidentiality undertakings or professional or statutory obligations of confidentiality and are aware of and, adequately trained on the use, care and handling of Personal Data in accordance with the Data Protection Legislation and this clause 17.

17.20 You shall notify Ofqual immediately and in any event no later than twelve (12) hours of becoming aware of a Data Loss Event and shall:

- (a) describe the nature of the event including the categories and approximate number of Data Subjects concerned;
- (b) co-operate fully with the Ofqual investigation into the actual or potential cause and effect of the Data Loss Event;

- (c) take all necessary actions to remedy the causes and effect of the Data Loss Event;
- (d) not make any statement public without approval of Ofqual; and
- (e) provide necessary assistance to enable Ofqual to fulfil its obligations to notify the Information Commissioner within seventy-two (72) hours of becoming aware of the Data Loss Event.

17.21 You shall:

- (a) provide Ofqual with all Ofqual Data within ten (10) working days of a written request, in an agreed open format;
- (b) have documented processes to guarantee prompt availability of Ofqual Data in the event You cease to trade;
- (c) securely destroy all storage media that has held any Ofqual Data at the end of life of that media in line with Good Industry Practice;
- (d) securely erase any or all Ofqual Data held by You when requested to do so by Ofqual;
- (e) provide such assistance as Ofqual may reasonably request from time to time in order for Ofqual to be able to comply with its own obligations under Data Protection Legislation, taking into account the nature of the Processing (to be) carried out by You on behalf of Ofqual;
- (f) upon request allow Ofqual, the Information Commissioner's Office and their respective representatives access to Your premises, records and personnel for the purposes of assessing Your compliance with Your obligations under Data Protection Legislation, and this clause 17.
- (g) indemnify Ofqual against any and all liabilities, losses damages, costs and expenses (including legal expenses) incurred by Your breach of this clause 17 and/or any Data Protection Legislation.

## 18. Intellectual Property Rights

18.1 The Contractor grants to Ofqual a royalty-free, irrevocable, worldwide, non-exclusive licence (with a right to sub-license) to use any Intellectual Property Rights that the Contractor owned or developed prior to the commencement of the Agreement and which Ofqual reasonably requires in order to receive the benefit of this Agreement.

18.2 All Intellectual Property Rights in any guidance, specifications, instructions, toolkits, plans, data, drawings, database, patterns, models, designs or other material which is:

- (a) furnished to or made available to the Contractor by or on behalf of Ofqual ("Background IPR");
- (b) prepared by the Contractor on behalf of Ofqual for use, or the intended use, in relation to the performance by the Contractor of its obligations under the Agreement; or
- (c) the result of any work done by the Contractor or the Worker in relation to the provision of the Services,

(all together the "**IP Materials**"),

shall vest in Ofqual and the Contractor shall not, and shall ensure that any Worker if relevant, shall not use or disclose any IP Materials without prior approval of Ofqual save to the extent necessary for performance by the Contractor of its obligations under this Agreement.

18.3 The Contractor hereby assigns to Ofqual with full title guarantee all Intellectual Property Rights which may subsist in the IP Materials prepared in clause 18.2(b) and

18.2(c). This assignment shall take effect on the date of commencement of the Agreement or in the case of rights arising after the date of Agreement as a present assignment of future rights that will take effect immediately on the coming into existence of the Intellectual Property Rights produced by the Contractor. The Contractor shall execute all documentation and do all acts as are necessary to execute this assignment.

18.4 For the avoidance of doubt the Contractor hereby irrevocably waives all moral rights under the Copyright, Designs and Patents Act 1988 (and all similar rights in other jurisdictions) which it has or will have in any existing or future works resulting from the provision of the Services.

18.5 If the Contractor in providing the Services uses any materials in which there are pre-existing Intellectual Property Rights owned by a third party the Contractor shall itself provide, or procure from such third party a non-exclusive licence (or sub-licence) allowing Ofqual to use, reproduce, modify, adapt and enhance those materials as Ofqual sees fit. Such licence (or sub-licence) shall be perpetual, worldwide, and irrevocable and granted at no cost to Ofqual.

18.6 The Contractor shall not infringe any Intellectual Property Rights of any third party in supplying the Services and the Contractor shall, during and after the term indemnify and keep indemnified Ofqual from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which it may suffer or incur as a result of or in connection with any breach of this clause 18.

## **19. Liability**

If You perform the Services or any Specific Assignment other than in accordance with the terms of this Agreement then, without prejudice to all other remedies and rights available to Ofqual, if requested by Ofqual You agree to re-perform the Services, or the relevant part of the Services, without additional charge to Ofqual; or Ofqual may assess the cost of remedying the defective Services (or the relevant part of the Services) and deduct from any Fees due to You these costs; or Ofqual may engage another person or organisation to carry out the defective Services (in whole or in part) and You agree to reimburse Ofqual for all additional expenditure properly incurred by having a third party carry out any such defective Services.

## **20. Bribery Act 2010 and Professional Conduct**

20.1 You must comply with the Bribery Act 2010 including refusing any offer or inducement from any person regarding the provision of the Services, and reporting to Your Ofqual Contact or a designated Ofqual whistleblowing officer any offer of bribery or inducement relating to the provision of Services.

20.2 In providing the Services You must comply with the seven Nolan principles of public life (Selflessness, Integrity, Objectivity, Accountability, and Openness, Honesty and leadership / promoting these principles).

## **21. Whistleblowing and reporting concerns**

21.1 If You have any concerns regarding any actions or inactions of Ofqual or any of the awarding organisations whose work You are advising Ofqual on You must notify the Ofqual Contact, or if Your concerns relate to that officer You may contact Ofqual's Head of Customer Services or a designated whistleblowing officer for assistance.

## **22. Force Majeure**

Neither You or Ofqual shall be liable to the other for any default under this Agreement where the default is due to causes beyond the control of the party in default provided that the party seeking to rely on this provision shall give written notice to the other party containing full details of the facts or matters which it claims has put the due performance of its obligations under this Agreement beyond its control.

## **23. Termination**

23.1 Without affecting any other right or remedy available to it, either party may terminate this Agreement, or any Specific Assignment, at any time, by giving the other party 28 days' notice in writing. Termination by the Contractor shall not be effective until completion of any Specific Assignment commenced before issuance of a notice of termination.

23.2 Without affecting any other right or remedy available to it, Ofqual may, at any time, terminate this Agreement, or any Specific Assignment, with immediate effect by giving written notice to the Contractor with no liability to pay any further Fees (other than in respect of any accrued Fees or incidental costs at the date of termination) if:

- (a) the Contractor is in material breach of any of its obligations set out in this Agreement; or
- (b) other than as a result of illness or accident, the Contractor fails to provide the Services or fails to remedy any default in providing the Services; or
- (c) the Contractor's professional conduct, outside of their work for Ofqual, presents a reputational risk to Ofqual; or
- (d) in the circumstances of a request for information mentioned in clause 11:
  - (i) the Contractor fails to provide the information within a reasonable time; or
  - (ii) the Contractor provides information which is inadequate to demonstrate either how the Worker complies with clauses 10.1 and 10.2 (Tax Compliance) or why those clauses do not apply to it; or
  - (iii) Ofqual receives information which demonstrates that, at any time that clauses 10.1 and 10.2 of this Agreement (Tax Compliance) applied to the Worker that the Worker is not complying with those clauses; or
  - (iv) the Contractor 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 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply.

23.3 Any delay by Ofqual in exercising its rights to terminate shall not constitute a waiver of those rights.

## **24. Clauses remaining in force after termination**

Following termination of this Agreement, however arising, clauses 2.4 (complaints), 9.9 (deductions of sums owed to Ofqual), 16 (confidential information), 17 (Data Processing), 18 (IPR), 23 (Termination), 24 (Clauses remaining in force), 25 (Consequences of termination), 26 (Third party rights), 30 (Governing Law) and 33 (Insurance) shall continue to have effect.

## 25. Consequences of Termination

25.1 Upon termination of this Agreement for any reason, the Contractor shall:

- (a) return to the Ofqual Contact any Ofqual Data (whether original documents or copies made for the purposes of performing the Services) together with any notes You have prepared in connection with the purposes of providing the Service;
- (b) irretrievably delete any copy of Ofqual Data held by You or on Your behalf including on any computer system, electronic record or device which is in Your possession or under Your control; and
- (c) delete and do not use or disclose to any persons any access key or password allowing You access to any Ofqual system.

## 26. Third Party Rights

26.1 Where the Contractor is an Employer and the Specific Assignment will be carried out by a Worker then the Contractor agrees to replicate the following provisions and confer rights under the Contracts (Rights of Third Parties) Act 1999 on Ofqual to enforce clauses 9.9, 16, 17, 18, 19, 20, 23.3, 25, 26, 29, 32 and 33 in this Agreement between the Contractor and the Worker.

26.2 A person who is not a party to this Agreement shall have no right, whether under the Contracts (Rights of Third Parties) Act 1999, or otherwise, to enforce any provision of this Agreement.

## 27. Notices

27.1 All notices under this Agreement shall be in writing and shall be:

- (a) sent electronically to your Gateway account;
- (b) delivered by hand or by tracked courier at its registered office (if a company) or its principal place of business (in any other case); or
- (c) sent by email to its main email address.
  - (i) **Ofqual**: the address given within the Application documentation;
  - (ii) **Contractor**: the email given in the Contractor's Application form or subsequently formally notified amendment;

27.2 Any notice or other communication shall be deemed to have been duly received:

- (a) if sent electronically to your Gateway account, at 9:00 am on the next Working Day after transmission;
- (b) if sent by email, at 9.00 am on the next Working Day after transmission;
- (c) if sent by tracked delivery service, at the time recorded by the delivery service of delivery to the address subject to 27.3;
- (d) if delivered by hand, on signature of a delivery receipt subject to clause 27.4;

27.3 In the case of notices sent by tracked delivery service, the notice shall be deemed to have been delivered if delivery is attempted but cannot be signed for and is returned to the depot, and is subsequently not collected by the recipient, providing that it is sent to the External Expert's last notified address.

27.4 Delivery by hand will only be used in exceptional circumstances, in particular where there is a potential security issue.

27.5 In the commissioning process: Notices shall be sent to the address of the

Ofqual Contact notified to the Contractor in the Commissioning Documents.

## **28. Dispute Resolution**

28.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with this Agreement within [20] Working Days of either Party notifying the other of the dispute. If necessary such efforts shall involve the escalation of the dispute to the finance director (or equivalent) of the Contractor and the relevant Ofqual department head responsible for commissioning External Experts.

28.2 If the dispute cannot be resolved by the Parties pursuant to clause 29.1 the parties will attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure. Unless otherwise agreed between the parties within 14 days of notice of the dispute, the mediator will be nominated by CEDR. To initiate the mediation a party must give notice in writing to the other party. A copy of the request should be sent to CEDR. The commencement of mediation will not prevent the parties commencing or continuing court proceedings.

## **29. General**

29.1 You will not use the name of Ofqual or the Ofqual logos in any promotional literature or press announcement without Ofqual's prior written approval.

29.2 A reference to any Act of Parliament or to any Order, Regulation, Statutory Instrument or the like shall include a reference to any amendment or re-enactment thereof.

## **30. Governing law and Jurisdiction**

30.1 This Agreement and any dispute or claim arising out of or in connection with it shall be governed by and construed in accordance with English law.

30.2 Each party irrevocably agrees 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 or its subject matter or formation (including non-contractual disputes or claims).

## **31. Severability**

If any part of this agreement is found to be void or unenforceable by a competent court, that part shall be considered to be deleted so as to ensure that the remaining parts of the agreement remain valid and enforceable.

## **32. Sites**

32.1 If required by the Commissioning Documents, the Contractor shall undertake a Site visit with skill, care, diligence as is reasonably expected of skilled, competent and properly qualified professionals undertaking quality assurance of apprenticeship end point assessments of similar size, scope and complexity.

32.2 The Contractor shall comply with all reasonable health and safety instructions and any applicable Site rules provided to the Contractor by either Ofqual or the owner or occupier of a Site prior to the commencement of any Services or Specific Assignment at a Site.

32.3 The Contractor shall perform the Services or any Specific Assignment in accordance with all applicable Law regarding health and safety whilst at a Site.

32.4 The Contractor shall notify Ofqual as soon as practicable of any health and safety incidents or material health and safety hazards at a Site, of which it becomes aware and which relate to or arise in connection with the performance of the Services or any Specific Assignment. The Contractor shall or shall instruct its personnel to adopt any necessary associated safety measures in order to manage any such material health and safety hazards.

32.5 The Contractor agrees that Ofqual shall not be responsible for acts or omissions of the Contractor or Contractor personnel at a Site and the Contractor shall indemnify Ofqual against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities that may arise as a result of any claims brought against Ofqual by any person where such claim arises from any act or omission of the Contractor or any Contractor personnel at a Site.

32.6 The duty of confidentiality set out at clause 16 (Confidential Information) shall apply to any confidential information obtained by the Contractor or any Contractor personnel at a Site.

32.7 Ofqual shall only reimburse reasonable incidental costs or expenses for attendance at Sites which are agreed in writing with the Ofqual Contact in advance and are necessary for the proper performance of the Services or any Specific Assignment. Reimbursements will be made in line with Ofqual's External Claim Form Guidance which may be updated from time to time.

32.8 The Contractor agrees not to cause or permit nuisance, damage, disturbance, annoyance, inconvenience or interference to owners, adjoining owners or occupiers of a Site. The Contractor agrees to make good any damage to a Site whether caused by the Contractor or its personnel.

### **33. Insurance**

33.1 Without prejudice to clause 19 (Liability), the Contractor shall take out and maintain, or procure the taking out and maintenance of insurances as may be required by applicable Law (together the "**Insurances**"). The Contractor shall ensure that each of the Insurances is effective no later than the date on which the relevant risk commences.

33.2 The Contractor shall ensure that the public liability policy shall contain an indemnity to principals clause under which Ofqual shall be indemnified in respect of claims made against Ofqual in respect of death or bodily injury or third party property damage arising out of or in connection with the provision of the Services at a Site and for which the Contractor is legally liable.

33.3 Where the Contractor has failed to purchase any of the Insurances or maintain any of the Insurances required in accordance with clause 33.1 in full force and effect, Ofqual may elect (but shall not be obliged) following written notice to the Contractor to purchase the relevant Insurances, and Ofqual shall be entitled to recover the reasonable premium and other reasonable costs incurred in connection therewith as a debt due from the Contractor.

# Schedule 1 Definitions

In this Agreement, unless the context requires otherwise, the following provisions shall have the meanings given below.

## **“Application Form”**

Means the Application Form completed by the Contractor to be considered for appointment onto the List.

## **“Background IPR”**

Means any IPR which is owned or controlled by each party prior to the date of commencement of this Agreement.

## **“Commissioning Documents”**

Means an order for the provision of a Specific Assignment by Ofqual commissioning Services from the Contractor.

## **“Conflict of Interest”**

Means any interest or activity whether current, recently completed or planned by You, Your Employer, an organisation You work for or a person with whom You have a close relationship which may conflict with or cast doubt on whether the advice You provide to Ofqual is independent and impartial.

## **“Deliverables”**

Means the deliverables identified in the Specification, to be provided as part of the Services.

## **“Employer”**

Means any Contractor operating as a business, firm or organisation that employs a Worker to carry out the Services under this Agreement.

## **“List of External Experts”**

In terms of an expert's right of substitution, the 'List of External Expert is a list of individuals who appear on the List of External Experts, and who have been judged by Ofqual to meet the requirements to carry out the assignment in question. See also The List.



## **“External Expert”**

An individual who has been judged suitable for Ofqual to contract for subject expertise, assessment expertise, or both.

## **“External Expert Standard Terms and Conditions”**

Means these Standard Terms and Conditions which replace the “Subject Expert Standard Terms and Conditions”.

## **“Fee(s)”**

Means the Fees (exclusive of any applicable VAT), payable to the Contractor by Ofqual under the Agreement, as more specifically set out in the Commissioning Documents, for the full and proper performance by the Contractor of its obligations under the Contract.

## **“Good Industry Practice”**

Means standards, practices, methods and procedures conforming to the law and the requirements of any regulatory body which is responsible for regulating the Contractor and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in providing Services similar to the Services.

## **“Intellectual Property Rights” or “IPR”**

- a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, trade marks, rights in internet domain names and website addresses and other rights in trade or business names, designs, know-how, trade secrets and other rights in Confidential Information;
- b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and
- c) all other rights having equivalent or similar effect in any country or jurisdiction.

## **“Ofqual Contact”**

Means the person notified to You by Ofqual as the point of contact for each Service provided.

## **“Personal Data”**

Means any information relating to an identified or identifiable natural person (‘data subject’); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the

physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.

### **“Register of Interests”**

Means a list containing details of all conflicts of interests declared by External Experts and maintained for internal use.

### **“Relevant Subject”**

Means the subject area where You have expertise as described in your application to be appointed onto the List.

### **“Service(s)”**

Means specific advice, or the programme of work identified in the Specification, including the Deliverables, to be undertaken by the Contractor in accordance with this Agreement.

### **“Site(s)”**

Means any premises (including third party premises) where the provision of a Specific Assignment or Services commissioned by Ofqual is to be performed by the Contractor.

### **“Specific Assignment”**

Means any specific project which the Consultant is required to advise Ofqual as more particularly described in the Commissioning Documents.

### **“Specification”**

Means the specification of the Services (including Deliverables and timetable. Which particular Assignment specification applies to any Specific Assignment shall be set out the Commissioning Documents.

### **“The List”**

Ofqual’s internal database of individuals who have successfully applied to be considered for work as external experts in one or more specific areas of specialism and have accepted the published terms and conditions. An edited version of The List is published on Ofqual’s website, as per Schedule 2. See also The List of External Experts.

## **“VAT”**

Means value added tax in accordance with the provisions of the Value Added Tax Act 1994.

## **“Worker”**

Means any employees, agents, representatives employed and/or engaged by the Contractor to perform the Services under this Agreement which Ofqual, in its reasonable opinion, considers is an individual to which [Procurement Policy Note 0712 – Tax Arrangements of Public Appointees](#) applies in respect of the Services.

## **“Working Day”**

Means any day other than a Saturday, Sunday or public holiday in England and Wales

## **“You”, “Your” and “Yourself”**

Means the Contractor.

# **Schedule 2 – Arrangements for the publication of the List of External Experts**

Ofqual may publish the information in respect of Experts appointed to our List to ensure transparency in relation to who Ofqual is using as an advisor and the background and experience they hold.

We will publish a list of the experts which will contain the following information:

- a. Name of External Expert (together with name of employer where they have been engaged via their employer e.g. University)
- b. Academic qualifications held (degree level and above): type (e.g. BA), subject (but not the grade)
- c. Professional qualifications held: title
- d. Employment History, a generic title i.e.: Teacher, Examiner etc.

Under Government Transparency rules we are obliged to publish details of any contracts with a value of over £10,000.

We will not normally publish the following information:

- a. Home or work addresses and other contact details of the expert
- b. Other personal details (e.g. age, sex, nationality, etc.) and any data that we need to retain to enable us to meet Ofqual’s equalities duty
- c. Any qualifications below degree level
- d. Expert’s employer(s) (e.g. name of school or university- unless you are employed via your employer)

Amount paid by Ofqual to the External Expert (but we may publish the equivalent daily rates we pay our experts where these are used and we are obliged to publish details

of any contracts with a value of over £10,000).

## Schedule 3 – Data processing activities

### Categories of Data Subjects

To be completed by the contractor.

Please specify the categories of Data Subjects whose Personal Data will be Processed by Supplier

### Categories of data

To be completed by the contractor.

Please specify the Personal Data including any special categories of Personal Data that will be Processed by Supplier

### Processing Operations

To be completed by the contractor.

Please specify all Processing activities to be conducted by Supplier

### Location of Processing Operations

To be completed by the contractor.

Please specify all locations where the personal data will be Processed by Supplier

### Purposes

To be completed by the contractor.

Please specify all purposes for which the Personal Data will be Processed by Supplier

### Duration

To be completed by the contractor.

Please specify the length of time for which Processing activities will be carried out

### Retention periods

To be completed by the contractor.

Please specify the period for which categories of data will be retained and the purpose for retention

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