



GP Strategies Training Ltd

Service Level Agreement – End point assessment (EPA)

between: **GP Strategies Training Ltd**

and:

from:

to:

version: **1.0**

Inspiring Success Developing Potential



Service Level Agreement

GP Strategies Training Ltd and xxxxxxxxxxxx/2017 v1.0

THIS AGREEMENT is made on

2017

BETWEEN:

[FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (the **Main Contractor**); and

[FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (the **Assessment Organisation**).

each 'a Party' and together 'the Parties'

1 Definitions and Interpretation

- 1.1 The definitions and rules of interpretation set out in Schedule 1 shall apply in this Agreement.
- 1.2 Subject to clause 1.3 the documents comprising this Agreement shall be construed in the following order of precedence:
- 1.2.1 the clauses of this Agreement;
 - 1.2.2 the provisions of each Order
 - 1.2.3 the Assessment Organisation's Conditions of Assessment.
- 1.3 To the extent that there is a conflict between the ESFA Rules and any provision of this Agreement, the ESFA Rules shall prevail.

2 Commencement and Duration

- 2.1 This Agreement shall commence on the Commencement Date and shall continue unless terminated in accordance with clause 11.
- 2.2 The Main Contractor may at any time provide the Assessment Organisation with a written order for Assessment Services substantially in the form set out in Schedule 3 or in any other form that the parties may agree from time to time (an **Order**).



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- 2.3 The Main Contractor shall be entitled to amend or withdraw an Order by giving the Assessment Organisation notice in writing in relation to any Services where performance has not commenced.
- 2.4 Unless clause 2.5 applies, each Order shall constitute a binding obligation on the Assessment Organisation to supply the Services in accordance with the terms of the Order and this Agreement.
- 2.5 The Assessment Organisation shall not accept any Order where the Order will cause the Assessment Organisation to exceed the Threshold Amount.
- 2.6 Where the Assessment Organisation receives an Order to which clause 2.5 applies, the Assessment Organisation shall notify the Main Contractor immediately in writing.

3 Agreement of the Assessment Organisation

- 3.1 The Assessment Organisation agrees to perform the Assessment Services in compliance with:
- 3.1.1 the terms of the Main Contract governing performance of the Training Services;
 - 3.1.2 the reasonable instructions of the Main Contractor;
 - 3.1.3 Good Industry Practice;
 - 3.1.4 the ESFA Rules; and
 - 3.1.5 all applicable laws.
- 3.2 The Assessment Organisation agrees to be bound by, and undertakes to the Main Contractor to comply with, all applicable terms of the Main Contract, as further defined and agreed in this Agreement, so that the Main Contractor is able to fulfil its obligations to the Employer under the Main Contract.
- 3.3 The Assessment Organisation shall collaborate and co-operate with the Main Contractor and the Employer including attending such meetings and providing such reports as the Main Contractor may require from time to time.
- 3.4 The Assessment Organisation shall allow the Main Contractor, the Employer and/or the ESFA or any of their authorised representatives or nominated persons such access to its premises, staff, accounts and records and any other information relating to their delivery of Apprenticeships or performance of the Assessment Services as may be requested from time to time for the purpose of monitoring performance of the Assessment Services, including (but not limited) for the purpose of audit pursuant to the ESFA Rules.



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- 3.5 The Assessment Organisation warrants and represents that it is and shall, for the duration of this Agreement be on the ESFA Register of Apprenticeship Assessment Organisations.
- 3.6 Without prejudice to the generality of clauses 3.1 to 3.4, the Assessment Organisation shall:
- 3.6.1 provide the Main Contractor with all ILR data so that the Main Contractor's returns to the ESFA accurately reflect delivery information;
 - 3.6.2 provide the Main Contractor such information in such form as the Main Contractor may reasonably require from time to time to enable the Main Contractor to:
 - (a) assess the Assessment Organisation's performance against Ofsted's Common Inspection Framework or the requirements of the QAA Quality Code (as defined in the ESFA Rules); and
 - (b) prepare its self-assessment report as required by ESFA Rules;
 - 3.6.3 ensure that all personnel engaged in performing the Assessment Services have the appropriate skills, training and qualifications to perform the tasks allocated to them;
 - 3.6.4 co-operate with the Main Contractor to ensure that there is continuity of learning for apprentices if this Agreement expires or terminates for any reason;
 - 3.6.5 Immediately notify the Main Contractor in writing if evidence of irregular financial or delivery issues arises, including, but not limited to, non-delivery of training when funds have been paid, sanctions imposed by an awarding organisation, allegations of fraud, an inadequate Ofsted grade, not meeting relevant QAA Quality Code indicators, allegations or complaints by apprentices, employers, staff members or other relevant parties;
 - 3.6.6 not use ESFA funding to make bids for, or claims from, any European funding on their own behalf or on our behalf; and
 - 3.6.7 not use payments made under this Agreement as match funding for ESF projects.

4 Changes to Services

- 4.1 If the Main Contractor wishes to change this Agreement or the Assessment Services, it may at any time request such change in accordance with the Change Procedure set out in Schedule 7 to the Main Contract.
- 4.2 Notwithstanding any other provisions of this Agreement, where the Main Contractor reasonably considers that a change to the Assessment Services is required in order to comply with a



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change to the Main Contract or the Training Services, the Main Contractor shall be entitled by notice in writing to the Assessment Organisation ('a Mandatory Change Notice') to make such changes as it may reasonably decide are necessary to comply as specified in such Mandatory Change Notice with effect from a time specified in that notice, subject to the Main Contractor paying to the Assessment Organisation its reasonable additional costs (if any) of providing any additional services.

5 Invoicing and Payment

- 5.1 The Main Contractor agrees to pay the Assessment Organisation the Payments for the Assessment Services, subject to the Assessment Organisation performing its obligations under this Agreement satisfactorily and within the time scales set by the Main Contractor and subject to the Main Contractor having received payment under the Main Contract.
- 5.2 The Payments include all taxes and employers' contributions, and shall be payable against submission of invoices from the Assessment Organisation.
- 5.3 If the Employer or the ESFA:
- 5.3.1 refuses to pay the Main Contractor for any of the Assessment Services undertaken by the Assessment Organisation under this Agreement; and/or
 - 5.3.2 claims money back from the Main Contractor in respect of any of the Assessment Services ; and/or
 - 5.3.3 requires that any or all of the Assessment Services undertaken by the Assessment Organisation be performed again to such a standard as it may reasonably require under the Main Contract or the ESFA Rules;

the Assessment Organisation undertakes to indemnify the Main Contractor for any and all costs associated with such action by the Employer or the ESFA.

6 Ownership of intellectual property

- 6.1 Nothing in this Agreement shall affect the ownership of Intellectual Property Rights owned by either Party and existing prior to this Agreement or generated outside the Training Services or Assessment Services and which the respective Party agrees to make available to the other in the course of the Training Services or Assessment Services (**Background IPR**).
- 6.2 If one Party makes any Background IPR available to the other Party in the course of the Assessment Services, the Party receiving such Background IPR shall treat it as Confidential Information disclosed under clause 7.1 below, and shall not disclose it to a third party nor use



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it for any purposes other than that for which it was made available to that Party. Each Party agrees to make any Background IPR which is relevant to the Assessment Services available to the other solely for the purposes of undertaking the Assessment Services and the Training Services.

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

7 Confidential information

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

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

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

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

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

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

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

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

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



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- 7.4.4 has been independently developed or conceived by it.
- 7.5 If required to make a disclosure by Operation of Law, the Receiving Party will immediately notify the Disclosing Party in writing of any request or requirement for disclosure and of all relevant surrounding circumstances. If the Receiving Party is unable so to notify the Disclosing Party before such disclosure is required it will notify the Disclosing Party immediately after the disclosure has been made. The Receiving Party will use all reasonable endeavours to resist any requirement for disclosure (and to assist the Disclosing Party in resisting the requirement for disclosure) and to maintain the confidentiality of the Confidential Information.
- 8 Data Protection and Data Processing**
- 8.1 The Main Contractor shall be the Data Controller of all personal data obtained from each Apprentice or the Employer for the purpose of the Training Services including the Assessment Services (the **Training Data**).
- 8.2 Each Party shall process personal data only in accordance with the Data Protection Legislation
- 8.3 The Assessment Organisation shall process Training Data solely in accordance with this Agreement and in accordance with the Main Contractor's written instructions from time to time.
- 8.4 The Assessment Organisation shall use Training Data solely for the purpose of the Assessment Organisation's performance of the Assessment Services. The Assessment Organisation shall not use Training Data for any other purpose.
- 8.5 The Assessment Organisation shall provide such assistance as the Main Contractor reasonably requires to assist the Main Contractor to comply with any request or enquiry from a data subject or regulatory authority in relation to Training Data.
- 8.6 The Sub- Contractor warrants that it will have in place and will at all times maintain appropriate technical and organisational measures to protect the Training Data against a Security Breach.
- 8.7 If a Security Breach occurs in relation to Training Data processed by the Assessment Organisation, the Assessment Organisation shall, at the Assessment Organisation's cost:
- 8.7.1 notify the Main Contractor immediately on becoming aware of the Security Breach; and
- 8.7.2 take such steps and do all acts and things as the Main Contractor requires in order to mitigate the effects of the Security Breach; and



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- 8.7.3 without prejudice to any other rights or remedies of the Main Contractor under this Agreement, or at law or otherwise, restore to the last available backup any the Training Data that has been lost, damaged or destroyed by the Security Breach.
- 8.8 The Assessment Organisation shall ensure that the technical and organisational measures referred to in clause 8.3 ensure a level of security appropriate to:
 - 8.8.1 the harm that might result from a Security Breach; and
 - 8.8.2 the nature of the Training Data.
- 8.9 The Assessment Organisation shall not transfer Training Data to any territory outside the EEA
- 8.10 On termination or expiry of this Agreement howsoever caused the Assessment Organisation shall promptly return to the Main Contractor, or at the Main Contractor's discretion destroy all Training Data.
- 8.11 The Assessment Organisation shall allow the Main Contractor, the Employer and/or the ESFA or any of their authorised representatives or nominated persons such access to its premises, staff, accounts and records and any other information relating to their delivery of Apprenticeships or performance of the Assessment Services as may be requested from time to time for the purpose of monitoring compliance with this clause.

9 Limitation of Liability

- 9.1 Nothing in this Agreement shall limit or exclude either Party's liability for:
 - 9.1.1 death or personal injury caused by its negligence;
 - 9.1.2 fraud or fraudulent misrepresentation; or
 - 9.1.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); or
 - 9.1.4 any other liability which cannot be limited or excluded by applicable law.
- 9.2 Subject to Clause 9.3, no Party shall be liable to any other Party for any indirect, special or consequential Loss.
- 9.3 The Assessment Organisation agrees that it shall not exclude or limit its liability arising out of or in respect of any indemnity given pursuant to this Agreement.



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

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

9.4.2 the additional cost of procuring replacement services.

10 Sub-Contractor Indemnity

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

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

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

11 Termination

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

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

11.3 If the Assessment Organisation undergoes a change of circumstances that the Main Contractor, acting reasonably, believes will affect the Assessment Organisation's ability to continue to deliver the Assessment Services, the Main Contractor may on written notice to the Assessment Organisation suspend the Assessment Services and all related payments under any or all



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Orders, and make alternative delivery arrangements for each Apprentice affected by this, in agreement with their employer. “**Change of circumstances**” includes going into liquidation, administration, key delivery staff leaving the organisation, or removal from the register of apprenticeship training providers. The Assessment Organisation shall notify the Main Contractor in writing immediately on becoming aware of any actual or potential change of circumstances.

- 11.4 Without affecting any other right or remedy available to it, either Party may terminate this Agreement or any Order with immediate effect by giving written notice to the other Party if:
- 11.4.1 the other Party commits a material breach of any term of this Agreement and such breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;
 - 11.4.2 the other Party repeatedly breaches any of the terms of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement; and
 - 11.4.3 the other Party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986.
- 11.5 Without affecting any other right or remedy available to it, the Main Contractor may terminate this Agreement with immediate effect by giving written notice to the Assessment Organisation if there is a change of Control of the Assessment Organisation.
- 11.6 On termination or expiry of this Agreement howsoever caused the Assessment Organisation shall promptly return all of the Main Contractor’s Equipment and Materials including the Learner Records to the Main Contractor.
- 11.7 Termination or expiry of this Agreement shall not affect any rights, remedies, obligations or liabilities of the Parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiry.
- 11.8 Provisions which either expressly provide or by their very nature are intended to survive termination of this Agreement shall do so.



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12 Non-solicitation

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

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

13 General

- 13.1 Subject to 13.3, neither Party may assign, transfer, mortgage, charge, declare a trust over or deal in any other manner with any of its rights and obligations under this Agreement without the consent of the other Party (such consent not to be unreasonably withheld or delayed).
- 13.2 The Assessment Organisation shall not subcontract the Assessment Services or any part of its apprenticeship training and/or on-programme assessment services to a second level.
- 13.3 If the Assessment Organisation undergoes a change of circumstances that affects its ability to continue to deliver any of the Services, the Main Contractor shall be entitled to make such alternative delivery arrangements for each affected Apprentice as it may reasonably decide.
- 13.4 No variation of this agreement shall be effective unless it is in writing and signed by the Parties (or their authorised representatives).
- 13.5 A waiver of any right or remedy under this Agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default.
- 13.6 A failure or delay by a Party to exercise any right or remedy provided under this Agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this Agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.



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- 13.7 If any provision or part-provision of this Agreement is invalid, illegal or unenforceable, the Parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 13.8 This Agreement constitutes the entire Agreement between the Parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 13.9 Each Party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement. Each Party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.
- 13.10 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between either of the Parties, constitute either Party the agent of the other, or save as otherwise expressly provided authorise either Party to make or enter into any commitments for or on behalf of the other.
- 13.11 Each Party confirms it is acting on its own behalf and not for the benefit of any other person.
- 13.12 No one other than a Party their successors and permitted assignees, shall have any right to enforce any of its terms.
- 13.13 Any notice given to a Party under or in connection with this Agreement shall be in writing and shall be delivered by hand or by pre-paid first-class recorded or other next Business Day signed for delivery service at its registered office (if a company) or its principal place of business (in any other case). Any notice shall be deemed to have been received: on signature of a delivery receipt. This sub-clause does not apply to the service of any proceedings or any documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
- 13.14 If a dispute arises out of or in connection with this Agreement or the performance, validity or enforceability of it the Parties shall follow the procedure set out in the Main Contract.

14 Governing law and Jurisdiction

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



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

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

Signed by [insert full name of director/)
authorised signatory] for and on behalf of) [Director OR Authorised signatory]

and

Signed by [insert full name of director/)
authorised signatory] for and on behalf of) [Director OR Authorised signatory]



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SCHEDULE 1

DEFINITIONS

- 1.1 Except where expressly provided otherwise, the definitions and rules of interpretation set out in the Main Contract shall apply in this Agreement.
- 1.2 In this Agreement the following words shall have the following meanings:

Assessment Services	means the services set out in Schedule 3;
Commencement Date	means [insert date]
Confidential Information	means all non-public information (whether oral, written or electronic form) given by one Party to the other or otherwise obtained by the other's business, finance or technology, know-how, intellectual property, assets, strategy, products and clients, including without limitation information relating to management, financial, marketing, technical and other arrangements or operations of any person, firm, or organisation associated with that Party (or, in the case of the Main Contractor, the Employer);
Conditions of Assessment Services	the standard terms and conditions of the Assessment Organisation (if any) as appended to this agreement at Annexe B
Data Protection Legislation	means the Data Protection Act 1998 , the Privacy and Electronic Communications (EC Directive) Regulations 2003 and any legislation implementing the Data Protection Directive 95/46/EC of 24 October 1995 or the Privacy and Electronic Communications Directive 2002/58/EC of 12 July 2002 (as such legislation is amended, extended, re-enacted or consolidated or to such legislation as supersedes that legislation from time to time);
Employer	means [insert the name address and company number of the Employer] ;
Losses	means all losses, liabilities, damages, costs, expenses (including legal fees), disbursements, costs of investigation, litigation, settlement, judgement, interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise and "Loss" shall be interpreted accordingly;



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Main Contract	means the contract entered into between the Main Contractor and the Employer and dated [insert date of the main contract] as set out Annexe 1;
Order	has the meaning given in clause 2.2;
Payments	means the sums to be paid by Main Contractor and the Assessment Organisation as specified in Schedule 3;
Restricted Employee	means a person employed or engaged, or otherwise acting on behalf of either Party, for a continuous period of three months, or a person previously employed or previously engaged (provided that they had been employed or engaged for a continuous period of three months prior to the date on which their employment or engagement ceased), and such employment or engagement has ceased to exist for a continuous period of less than 6 months, who: (i) was employed or engaged in the provision of the Training Services or the Assessment Services pursuant to Schedule 2; or (ii) who had material contact with the other Party with respect to the Training Services or Assessment Services ; provided, however, such person is not an 'administrative' personnel;
Security Breach	means in relation to Training Data: <ul style="list-style-type: none"> (a) accidental or unlawful destruction, loss, damage and/or alteration; (b) unauthorised disclosure and/or access; and/or (c) all other unauthorised or unlawful forms of processing;
Threshold Amount	has the meaning given in clause Error! Reference source not found.
Training Services	means the training services contracted to be provided by the Main Contractor to the Employer under a Request for Services pursuant to the Main Contract.
Training Data	Has the meaning given in clause 8.1.

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



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SCHEDULE 2

The Assessment Organisation Services and Charges



SCHEDULE 3

Form of Order for End Point Assessment Services.

- 1 *Assessment Services: [LIST THE SERVICES TO BE PROVIDED].*
- 2 *Accreditation*
- 3 *Awarding Organisation/End Point Assessment Organisation*
- 4 *Employer Materials: [LIST THE MATERIALS TO BE PROVIDED BY THE EMPLOYER/MP, as applicable].*
- 5 *Timetable: [SET OUT THE TIMETABLE FOR EXAMINATION]*
- 6 *Charges: [INSERT THE TOTAL AMOUNT DUE AS STATED IN SCHEDULE 2 AND THE COMPLETION PAYMENT OR REFER TO THE PAYMENT SCHEDULE]*
- 7 *The name of the Contract Manager and the Services Manager.*
- 8 *Who will bear the costs of resits*
- 9 *Whether the Requested Services are Levy Funded.*



ANNEXE 1

The Main Contract.



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ANNEXE 2

Assessment Organisation Conditions of Assessment Services