



Version 2.1
Published September 2024

CENTRE AGREEMENT

Between:

1. **NCFE**, a charitable company limited by guarantee.
Registered Office:

Q6, Quorum Park, Benton Lane, Newcastle upon Tyne, NE12 8BT;

Incorporated and registered in England and Wales with Company Number: 02896700 (England and Wales) and registered Charity Number: 1034808; (hereinafter *us* and variously *we* and *our*);

and
2. You as an Approved Centre, as named on our Centre Approval Application Form (hereinafter *you* and variously *your*).

together the “parties” and each a “party”.

Background:

We are an Awarding Organisation operating in different regulatory jurisdictions, offering Services to Approved Centres in relation to our Products. Our Products comprise both Regulated and Unregulated Products.

As an Approved Centre you may deliver some or all our Products. This Agreement contains the rights and responsibilities of both parties to ensure compliance with all applicable Regulatory Conditions and the requirements set out below.

It is hereby agreed as follows:

1. Interpretation

- 1.1 The definitions set out in Schedule 1 apply to this Agreement.
- 1.2 The Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Schedules.
- 1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.3 Wherever appropriate, words used in the singular shall be considered to include the plural and words used in the plural shall be considered to include the singular.
- 1.4 A reference to a statute, statutory provision is a reference to it as amended, extended or re-enacted from time to time and shall include subordinate legislation made from time to time under that statute or statutory provision.
- 1.5 A reference to Regulatory Conditions is a reference to such Regulatory Conditions as may be amended, extended or re-enacted from time to time.
- 1.6 A reference to writing or written includes email.
- 1.7 Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2. Scope of Agreement

- 2.1 This Agreement together with your Centre Approval Application Form, Approval Criteria and the Mandatory Documentation constitute the terms of our agreement with you to the exclusion of any other terms that you seek to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.2 If there is an inconsistency between the provisions of this Agreement, the Centre Approval Application Form, Approval, Criteria and/or any of the Mandatory Documentation, the following order of priority shall apply:
- 2.2.1 The provisions of this Agreement;
 - 2.2.2 Any Approval Criteria;
 - 2.2.3 Our Mandatory Documentation; and
 - 2.2.4 The Centre Approval Application Form.
- 2.3 As an Approved Centre you shall deliver Products for which you meet our Approval Criteria and as notified to you from time to time, in accordance with our Mandatory Documentation and the terms of this Agreement.
- 2.4 Depending on the Products you wish to deliver, we may provide some or all the Services, as appropriate. You shall pay the Charges (where applicable) for Services you receive.

3. Date of Agreement and Duration

This Agreement shall come into effect and become binding and enforceable on both parties on the Commencement Date and will continue, unless terminated by either party in accordance with the terms of this Agreement.

4. Compliance with Regulatory Bodies' requirements and our Mandatory Documentation

- 4.1 You shall:
- 4.1.1 ensure you are familiar with the requirements of all relevant Regulatory Bodies; including but not limited to [Ofqual](#), [SQA](#), [CCEA](#) and [Qualifications Wales](#);
 - 4.1.2 take all reasonable steps to ensure that we are able to comply with any Regulatory Conditions;
 - 4.1.3 take all reasonable steps to ensure no act or omission by you or your Personnel puts or may put us in breach of any Regulatory Conditions and/ or brings us into disrepute. In any case where this nonetheless occurs, you shall consult with affected Learners, Users and stakeholders and take any action required that seeks so far as possible to mitigate and correct the issue that has arisen and will provide evidence of such consultation to us upon request;
 - 4.1.4 ensure you and your Personnel are familiar with and comply with the terms of this Agreement and our Mandatory Documentation; and
 - 4.1.5 adhere to any relevant Product guidelines published by us from time to time.

5. Charges

- 5.1 You shall be invoiced and pay the applicable Charges in accordance with our [Fees and Pricing List](#) and [Invoicing Policy](#) .
- 5.2 Unless otherwise stated, all Charges notified to you by us are exclusive of VAT and/or any

equivalent sales Tax in the Territory.

- 5.3 All Charges shall be paid within 30 days of receipt of each invoice.
- 5.4 Payment cannot be withheld unless you dispute the amount of the Charges by notifying us in writing within 30 days of receipt of an invoice, giving full details of the amounts disputed and the reason you dispute the Charges.
- 5.5 If you dispute an invoice in accordance with the requirements of clause 5.4:
 - 5.5.1 we shall provide all evidence as may be reasonably necessary to verify the disputed invoice;
 - 5.5.2 you shall pay to us all amounts not disputed by you on the due date;
 - 5.5.3 the parties shall negotiate in good faith to attempt to resolve the dispute promptly; and
 - 5.5.4 if the parties have not resolved the dispute within 14 days of you giving notice to us, the dispute shall be resolved in accordance with the dispute resolution procedure outlined in clause 42 (Dispute Resolution) of this Agreement.
- 5.6 You shall make all payments under this Agreement without withholding or deduction of, or in respect of, any Tax unless required by law. If any such withholding or deduction is required, you shall pay to us such additional amount as will ensure that we receive the same total amount that we would have received if no such withholding or deduction had been required.
- 5.7 You will be liable for compliance with and payments for indirect taxes in the Territory, where applicable. If you are required to self-assess VAT on our Charges under the reverse charge mechanism, you agree to undertake the necessary calculations and declarations required under local tax laws.
- 5.8 We reserve the right, at any time and without notice to you, to set off any of your liability to us against any of our liability to you, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under this Agreement.
- 5.9 Any Charges payable by you under this Agreement are, unless otherwise stated, non-refundable.
- 5.10 If you fail to make any payment due to us under this Agreement by the due date for payment, then, without limiting our remedies under clause 21 (Termination), you shall pay interest on the overdue amount at the rate of 4% per annum above the Bank of England's base rate from time to time applying. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. You shall pay the interest together with the overdue amount.

6. Provision of Information and Reporting

You shall:

- 6.1 comply with all requirements for the provision of information to us and/or any Regulatory Body, as required by our Mandatory Documentation and meet any further reasonable requests for information from us within the time specified by us;
- 6.2 provide full assistance and cooperation to us and/or any Regulatory Body undertaking any investigation relating to you and keep us fully informed about the progress of such investigation (subject to any contrary written instruction of the relevant Regulatory Body);
- 6.3 monitor activities relating to the delivery of our Products and report to us any information which is likely to be relevant to us for the purposes of performing our functions as an Awarding Organisation;
- 6.4 promptly notify us in writing if you are, or if you have cause to believe that you are, likely to be,

subject to:

- 6.4.1 a material change in your governance structure or legal status;
 - 6.4.2 any change of Control;
 - 6.4.3 any Insolvency Event; or
 - 6.4.4 any enforcement or regulatory proceedings, that may affect your ability to deliver the Products in accordance with this Agreement.
- 6.5 notify us of any issues which might affect your ability to meet our requirements, including any issues which might have the potential to harm the interests of any Learner;
- 6.6 ensure that all information provided to us is accurate and complete at all times; including promptly informing us of any changes to your named Personnel and to any other details provided to us in your Centre Approval Application Form.

7. Identification and Management of Risk

- 7.1 You shall have in place appropriate systems for the identification and management of risks in relation to the delivery of our Products in accordance with the relevant Mandatory Documentation and any Regulatory Conditions.
- 7.2 You shall take all reasonable steps to prevent the occurrence of any risks identified pursuant to clause 7.1.
- 7.3 In any case where a risk cannot be prevented, you shall mitigate the risk as far as possible, monitor the risk and provide regular updates to us.

8. Conflicts of Interest

- 8.1 You shall take all reasonable steps to avoid any conflict of interest which relates to you.
- 8.2 Where, having taken all such reasonable steps, a conflict cannot be avoided, you shall record it, promptly disclose it to us in accordance with our [Conflicts of Interest policy](#), monitor and properly manage the conflict and take all reasonable steps to ensure that no conflict of interest that relates to you has an Adverse Effect.
- 8.3 In any case where a conflict of interest nonetheless results in an Adverse Effect, without prejudice to the provisions of clause 7 (Identification and Management of Risk), you shall cooperate with any action taken by us that seeks to mitigate the Adverse Effect as far as possible and correct it.

9. Availability of Adequate Resources and Arrangements

- 9.1 You shall, across the entirety of your Product delivery, (including where you use a Satellite Centre and/or Sub-contract Centre):
- 9.1.1 manage your business and services with reasonable professional care, skill and diligence and shall ensure that no act or omission by you has, or is likely to render us non-compliant with Regulatory Conditions or renders you unsuitable to deliver any of our Products;
 - 9.1.2 put in place effective quality assurance and management processes which you shall monitor and keep under regular review;
 - 9.1.3 ensure that you retain at all times adequate levels of Personnel who are suitably qualified and experienced, in accordance with good industry practice and any directions from us from time to time, in connection with the delivery of the Products;
 - 9.1.4 ensure that you have the capacity, financial and management resources, technical

equipment and support to undertake the effective and correct delivery of all Products;

- 9.1.5 regularly review your physical and human resource requirements and development plans; take appropriate action following each review and confirm the outcomes of each review to us upon request;
 - 9.1.6 have in place at all times an up-to-date disaster recovery and business continuity plan to protect the interests of Learners; and
 - 9.1.7 allow Personnel to participate in events and activities that are essential for maintaining the quality and standard of the Products.
- 9.2 Subject to clauses 28.1 to 28.3, in the event that you sub-contract elements of the delivery of our Products, you are responsible for the management of such sub-contractors and must ensure their compliance with the terms of this Agreement, in particular by ensuring they are engaged by you (as far as applicable) on terms no less onerous than the terms of this Agreement.

10. Registration of Learners

You shall ensure that each Learner is promptly registered in accordance with our [Registration and Certification Policy](#).

11. Quality Assurance and Assessment

You shall:

- 11.1 comply with the quality assurance processes specified in any documentation made available by us from time to time in relation to delivery, assessment or grading;
- 11.2 cooperate with us in respect of any monitoring or quality assurance processes or investigations in compliance with our Mandatory Documentation,
- 11.3 ensure that, evidence purportedly generated by a Learner in an assessment is properly generated by that Learner (including if applicable, as a contribution to group work) and is of sufficient quality, as required by our Mandatory Documentation;
- 11.4 ensure, Learners complete assessments in compliance with conditions detailed in our Mandatory Documentation; and
- 11.5 ensure that the security of our external assessment materials is maintained at all times in accordance with our Mandatory Documentation.

12. Reasonable Adjustments and Special Considerations

You shall comply with our [Access Arrangements and Reasonable Adjustments Policy](#) and [the Joint Council for Qualifications: A guide to the special consideration process](#).

13. Retention of Records, Access to Records, People and Premises

13.1 You shall:

- 13.1.1 maintain all Learner records and details of achievement in an accurate, timely and secure manner, and in accordance with any applicable Mandatory Documentation, and in the format we require;
- 13.1.2 keep complete and accurate records for the duration of this Agreement and for 24 months from its termination, or for seven years from award of a qualification to a Learner, whichever is longer, relating to your compliance with your obligations under this Agreement and make these available to us (at your own cost) upon request within the time specified by us and/or in accordance with our Mandatory Documentation, including, but not limited to, assessment

and internal quality assurance records.

- 13.2 If we, or any Regulatory Body, require access to your Personnel or Learners, you will provide access and fully co-operate with any such requests and all monitoring activities within the time specified by us and/or in compliance with our Mandatory Documentation.

14. Compliance with Laws

- 14.1 When undertaking delivery of our Products you shall comply with applicable laws, statutes and regulations from time to time in force in the Territory where the Products are being delivered, including (but not limited to):

- 14.1.1 Equalities Law;
- 14.1.2 Data Privacy Laws;
- 14.1.3 Bribery Act 2010;
- 14.1.4 Modern Slavery Act 2015;
- 14.1.5 health and safety laws;
- 14.1.6 competition law.

- 14.2 In addition to complying with the obligations at clause 14.1, you shall undertake the delivery of the Products in accordance with our:

14.2.1 [Diversity and Equality Policy](#); and

14.2.2 [Anti-Bribery and Corruption Policy](#).

15. Enquiries, Complaints and Appeals

- 15.1 You shall:

- 15.1.1 at all times maintain a complaints handling process and an appeals process for the benefit of Learners which shall be in accordance with any rules or guidance issued by us or the Regulatory Bodies and co-operate with us in respect of the management of complaints or appeals which are escalated to us;
- 15.1.2 answer accurately, fully and within the timescale set out in your policy or process, any complaints and appeals received by you from Learners; and
- 15.1.3 comply with our [Appeals Policy](#) and processes in relation to appeals or enquiries about results and provide information and support to Learners who wish to use these processes.

16. Maladministration and Malpractice

- 16.1 You shall comply with [the Joint Council for Qualifications Suspected Malpractice: Policies and Procedures](#) and ensure all Personnel are familiar with and comply with its requirements.
- 16.2 You shall take all reasonable steps to prevent any incidents of maladministration or malpractice in the delivery of our Products, including but not limited to any practice which may bring us into disrepute.
- 16.3 We will impose any sanction we consider necessary where actual or potential maladministration or malpractice is suspected or identified in accordance with [the Joint Council for Qualifications Suspected Malpractice: Policies and Procedures](#).

17. Sanctions

- 17.1 You shall comply with our [Sanctions Policy](#).

- 17.2 You acknowledge and agree that where deemed necessary, we may suspend your Direct Claim Status with immediate effect and that you must comply with any instruction from us, (which may include a prohibition on issuing certificates until further notice).

18. Management of the Withdrawal of Products

18.1 Where:

18.1.1 you cease to operate as an Approved Centre or surrender your centre approval, (which shall be deemed to terminate this Agreement pursuant to clause 21 (Termination)); or

18.1.2 you cease to deliver a Product; or

18.1.3 we withdraw your centre approval pursuant to clause 21 (Termination); or

18.1.4 we withdraw your approval in respect of a Product; or

18.1.5 we withdraw a Product from the market which you currently make available to Learners, clause 18.2 shall apply.

18.2 Where any of the events in clause 18.1 above apply, you shall:

18.2.1 co-operate fully with us to effectively manage the withdrawal and will follow our processes for the withdrawal of Products which will be communicated by us at the time;

18.2.2 take all reasonable steps to protect the interests of Learners, including working with us to minimise the impact upon Learners (so far as is reasonably possible);

18.2.3 promptly prepare, maintain and comply with a written withdrawal plan;

18.2.4 provide clear and accurate information about the Product withdrawal to Learners, Users and stakeholders who are likely to be affected by the Product withdrawal;

18.2.5 immediately cease to advertise and enrol Learners for the Product(s); and

18.2.6 provide us with relevant details of the status of all Learners enrolled for Product(s).

18.3 Where your withdrawal of delivery of a Product will, or may, render us non-compliant with any Regulatory Condition(s) you shall:

18.3.1 consult with the affected Learners, Users and stakeholders to formulate and take any action required to minimise any non-compliance before ceasing to deliver the Product and provide evidence of such consultation to us upon request; and

18.3.2 meet any reasonable costs incurred by affected Learners as a result of the withdrawal.

19. Security

19.1 You shall comply with all of our security requirements, as notified to you or published by us from time to time, including those concerning the storage of any examination/assessment papers and the verification of Learners' identity.

19.2 You shall notify us as soon as reasonably practicable of any incident or risk of any incident which could result in your non-compliance with our examination/assessment security requirements and take all reasonable steps to prevent the breach occurring, or where it cannot be prevented, reduce the risk of that incident occurring as far as possible.

20. Licences and Consents

- 20.1 You shall be solely responsible for obtaining (at your own cost) any licences, permissions or other form(s) of authorisation necessary for the delivery of Products in the Territory (if any). We shall have no liability in connection with and arising from the need for and procurement of or failure to procure, any and all such licences, permissions or authorisations.
- 20.2 You shall inform us as soon as reasonably practicable if you, in your reasonable opinion, are or are likely to become unable to deliver any or all of the Products in accordance with the terms of this Agreement (including, but not limited to, as a result of any changes in any applicable laws in the Territory or any regulatory or enforcement action in the Territory), in which case we shall be entitled, without prejudice to our other rights and remedies, to modify, suspend or withdraw centre approval (in full or in part, including in respect of one or more of the Products).
- 20.3 You shall inform us as soon as reasonably practicable of any prospective changes in any laws and regulations affecting the delivery of Products in the Territory and shall ensure that the delivery of Products and any of your activities under or in connection with this Agreement comply with any such change by the date of implementation.

21. Termination

- 21.1 Either party may terminate this Agreement by giving not less than thirty (30) days' written notice to the other party.
- 21.2 Without prejudice to any of our rights or remedies, we may terminate this Agreement immediately on written notice where:
- 21.2.1 you are in material or persistent breach of this Agreement, including failure to pay any amount due by the due date, and if the breach is capable of remedy you have failed to remedy it within the period stipulated by us;
 - 21.2.2 you undergo an Insolvency Event;
 - 21.2.3 there is a change of Control of your organisation;
 - 21.2.4 we reasonably believe that your conduct is prejudicial to our interests (including, but not limited to, in the case of your breach of any security requirements, malpractice or maladministration in the delivery and assessment of our Products, or is not consistent with our brand values, guidelines and/or reputation, or may bring us into disrepute);
 - 21.2.5 there is a breach of clause 26 (Data Protection and Privacy) by you;
 - 21.2.6 the Territory, you or any company or individual connected to you is subject to economic or political sanctions by the United Kingdom and/or the United Nations;
 - 21.2.7 you are unable to offer and/or deliver the Products as a result of a change in laws in the Territory, or as a result of loss of a licence or permit necessary to deliver the Products in the Territory; or
 - 21.2.8 you are subject to a sanction placed on you by another Awarding Organisation, resulting in the withdrawal of your recognition with that Awarding Organisation.
- 21.3 Without prejudice to any of our rights or remedies, we may terminate this Agreement immediately on written notice if we lose our status as an Awarding Organisation in respect of all Products.
- 21.4 Where termination of this Agreement occurs pursuant to clauses 21.1 to 21.3 above, clause 18 (Management of the Withdrawal of Products) shall apply.
- 21.5 Termination of this Agreement does not affect:
- 21.5.1 the rights or liabilities either of us has obtained before termination; and

- 21.5.2 clause 13 (Retention of Records, Access to Records, People and Premises), clause 18 (Management of the Withdrawal of Products), clause 19 (Security), clause 22 (Intellectual Property), clause 27 (Confidentiality), clause 30 (Limitation of Liability), clause 42 (Dispute Resolution) and clause 43 (Governing Law and Jurisdiction); which shall survive and continue in full force and effect.
- 21.6 All Charges which are owed to us by you on the date of termination shall become immediately due and payable.
- 21.7 On termination of this Agreement, you shall:
- 21.7.1 return any of our materials on request and shall immediately cease to use them;
 - 21.7.2 return to us or destroy, any material containing our Trademark and associated branding; and
 - 21.7.3 delete any copies of our Trademark or branding in electronic form.
- 22. Intellectual Property**
- 22.1 In consideration for the provision of the services to the Learners under this Agreement, we hereby grant to you for the purpose of providing such services only in the Territory and for the duration of this Agreement the non-exclusive non-transferable right (with no rights to sub-license) to:
- 22.1.1 designate your organisation as an Approved Centre;
 - 22.1.2 use our Trademark; and
 - 22.1.3 use such other Intellectual Property as we may permit in writing in connection with this Agreement.
- 22.2 You must ensure that all materials (including online materials) using our Intellectual Property produced by you or on your behalf comply with:
- 22.2.1 any limitations and/or restrictions on use which may be communicated to you by us from time to time;
 - 22.2.2 any branding and copy guidelines issued by us from time to time (including but not limited to the Brand Guidelines); and
 - 22.2.3 any specific guidance provided by us.
- 22.3 All Intellectual Property Rights developed or created by you (or by you in collaboration with us) in relation to the Products shall vest in and be owned by us absolutely. To the extent that you or your representatives are the first owners of any such intellectual property in any works in connection with the Products, you hereby assign all such rights with full title guarantee to us (and you shall execute all documents and do all other acts as reasonably requested by us to execute and perfect such assignment and to otherwise evidence our absolute ownership of such rights). For the avoidance of doubt, all Intellectual Property Rights in any teaching materials in relation to products developed independently by you and not derived or based on materials created for or on behalf of us, shall be owned by you.
- 22.4 Apart from the license granted pursuant to clause 22.1, nothing in this Agreement shall give you any rights in respect of our Intellectual Property or the associated goodwill, and you acknowledge that except as expressly provided by us in writing, you shall not acquire any rights in respect of our Intellectual Property and that all these rights and goodwill are and will remain ours, and you will do anything we reasonably require to assist us in the protection of our ownership of these rights.
- 22.5 You shall inform us immediately of any actual, threatened or suspected infringement or other issues relating to our Intellectual Property of which you become aware.

- 22.6 You will not use, register or attempt to register any mark, design, business name or domain name consisting or comprising or being confusingly similar to any of our Intellectual Property, or do or permit to be done any act that may weaken, damage or be otherwise detrimental to the reputation or goodwill associated with us, or may interfere with or jeopardise the registration and/or validity of our Intellectual Property.
- 22.7 For the avoidance of doubt, a breach of any of the provisions of this clause 22 shall be deemed to constitute a material breach of this Agreement.

23. Representations and Branding

- 23.1 You shall not (and shall take all reasonable steps to ensure that any person connected with you does not):
- 23.1.1 make any representation that would be likely to lead Users to believe that a Product is regulated when it is not;
 - 24.1.1 advertise or promote Products in a manner likely to be misleading to Users.
- 23.2 You may only use our Trademark in connection with our Products in compliance with our Brand Guidelines and/or in accordance with any written permission given by us.
- 23.3 Where undertaking delivery of T Level qualifications, you acknowledge and agree that any use of T Level branding is subject to the [Brand and communication guidelines for T Levels](#).
- 23.4 Any express permission to use our Trademark in accordance with clause 23.2 shall be revoked on termination of this Agreement.

24. Our Obligations

We shall:

- 24.1 provide to you all information and Services required or reasonably requested by you to enable you to deliver Products you are approved to deliver:
- 24.2 not be required to perform our obligations under this Agreement where:
- 24.2.1 you have given us information which is incorrect or incomplete; or
 - 24.2.2 you have not performed your obligations under this Agreement.

26. Data Protection and Privacy

- 26.1 Both parties will comply with Schedule 4 (Data Protection).

27. Confidentiality

- 27.1 You shall:
- 27.1.1 treat all Confidential Information as strictly private and confidential and take all reasonable steps to preserve its confidentiality and to ensure that your Personnel preserve its confidentiality;
 - 27.1.2 report any suspected breaches of confidentiality to us as soon as reasonably practicable;
 - 27.1.3 co-operate with any investigations by us into such suspected breaches; and
 - 27.1.4 accept liability for any unauthorised use of Confidential Information by you and/or your Personnel.

- 27.2 The obligations in clause 27.1 shall survive the termination of this Agreement until such time as you no longer hold any Confidential Information which has been provided to you by us or our agents under this Agreement.
- 27.3 You may disclose our Confidential Information:
- 27.3.1 to your Personnel who need to know such information for the purposes of exercising your rights or carrying out your obligations under or in connection with this Agreement. You shall ensure that your Personnel to whom you disclose our Confidential Information comply with this clause 27; and
 - 27.3.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority or Regulatory Body.

28. Assignment

- 28.1 You shall not assign transfer, charge, sub-contract, or otherwise dispose of or delegate (including, but not limited to, appointing an agent) any of your rights, benefits or obligations arising out of this Agreement without our prior written consent. (including operating a Satellite Centre). In the case of a Satellite Centre, you will provide us with notice specifying:
- 28.1.1 whether the location is a Satellite Centre;
 - 28.1.2 how you will monitor and quality assure the Satellite Centre;
 - 28.1.3 the address of the Satellite Centre; and
 - 28.1.4 the reasons for your proposed use of the Satellite Centre.
- 28.2 Where we have given written consent under clause 28.1, you will be responsible for ensuring that the third party has appropriate capacity and capability to ensure the provision of the services under this Agreement at all times and will agree in writing to any requirements we may have in providing consent under clause 28.1. You shall remain liable at all times to us for the acts, errors or omissions of any such third party.
- 28.3 You shall ensure that any such third party appointed by you under this clause 28 to provide any services:
- 28.3.1 complies with all aspects of this Agreement and it is subject to legally binding terms not less onerous than the terms of this Agreement; and
 - 28.3.2 clearly discloses its status and relationship with you in any communication with Learners and/or other Users in connection with the Products.
- 28.4 We may at any time assign, mortgage, charge, declare a trust over or deal in any other manner with any or all of our rights under this Agreement.

29. Remedies

- 29.1 We may at any time set off any liability you have to us (including any Losses you cause to us) against any liability we have to you, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under this Agreement. Any exercise by us of our rights under this clause 29 shall not limit or affect any other rights or remedies available to us under this Agreement or otherwise.
- 29.2 In addition, we reserve the right to retain:
- 29.2.1 any documents, works and materials; and/or
 - 29.2.2 any of your other assets,

held by us whilst any sums are due to us under this Agreement or where you are subject to any sanctions imposed by us pursuant to clause 17 (Sanctions).

- 29.3 In addition to exercising our rights at clause 29.2, we may also withhold delivery of any and/or all Services until payment of all overdue amounts and/or any such sanctions no longer apply.

30. Limitation of Liability

- 30.1 Nothing in this Agreement:

30.1.1 shall limit or exclude either party's liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its Personnel or sub-contractors;
- (b) fraud or fraudulent misrepresentation;
- (c) any other liability which cannot be limited or excluded under English law; or

30.1.2 shall limit or exclude your liability under clause 32 (Indemnity).

- 30.2 Subject to clause 30.1:

30.2.1 we shall have no liability to you, whether in contract, tort (including negligence), breach of statutory duty, or otherwise arising under or in connection with this Agreement for:

- (a) loss of profits;
- (b) loss of sales or business;
- (c) loss of anticipated savings;
- (d) loss of or damage to goodwill or reputation;
- (e) loss of use or corruption of data or information;
- (f) any ex-gratia payments; or
- (g) any special, indirect, consequential or pure economic loss.

30.2.2 Subject to the foregoing, our liability for any claim or series of connected claims, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with this Agreement, shall be limited to a maximum sum equal to the Charges paid by you to us under this Agreement within the period of (twelve) 12 months preceding the event giving rise to the claim (or the first of the series of connected claims).

31. Remedies General

Any of our rights or remedies under this Agreement, or by operation of law, may at any time be enforced separately or concurrently.

32. Indemnity

- 32.1 You shall indemnify us, our trustees and Personnel on demand against all Losses, (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses suffered, or incurred, by us, our trustees and Personnel directly, or indirectly, arising from, or in connection with:

32.1.1 any act or omission by you (including, but not limited to, a breach of this Agreement), or

your Personnel or sub-contractors, which places us in breach of any obligation as an Awarding Organisation;

- 32.1.2 claims made by you or any of your employees or other persons acting on your behalf for any employment-related payment or remuneration;
 - 32.1.3 alleged and/or actual infringement or theft of any confidential information or intellectual property by your Personnel or other persons engaged in the delivery of the Products or acting on your behalf;
 - 32.1.4 the investigation of any instances of suspected malpractice, fraud or financial irregularities in relation to the delivery, assessment and certification of the Products within your organisation and any actions required by us;
 - 32.1.5 a failure by you or your Personnel or any other person or organisation employed, engaged, and/or howsoever connected to you to comply with any provision of this Agreement; and/or
 - 32.1.6 any claim made against us by any third party to the extent that such claim arises as a result of your breach, negligent performance or failure or delay in performing any of your obligations under this Agreement.
- 32.2 For the duration of this Agreement and for two years thereafter, you will maintain full and comprehensive insurance at a level sufficient to cover any potential risks arising from your operations in connection with this Agreement. Upon request, you shall provide to us evidence of the validity of the insurance held in accordance with this clause 32.2.

33. Force Majeure

Neither party will be in breach of this Agreement nor liable for a delay or failure in performance resulting from events, circumstances or causes beyond its reasonable control. In such circumstances the affected party will be entitled to a reasonable extension of the time allocated for performing its obligations. If the period of delay or non-performance continues for sixty (60) days from the date of occurrence, the party not affected may terminate this Agreement by giving fourteen (14) days' written notice to the other party.

34. Variation

- 34.1 We may from time to time amend or vary the terms of this Agreement upon written notice to you when such amendment or variation becomes necessary or desirable to comply with the Regulatory Conditions or for reasons related to our business. Any variation or amendment of this Agreement shall take effect from the date specified in the notice of variation or amendment.
- 34.2 For the avoidance of doubt, we may at any time amend or vary any or all of the Mandatory Documentation by publishing the amended or varied version(s) on the Website or otherwise making it available to you. Any such variation or amendment takes effect from the date of such publication or notification.

35. Notices

- 35.1 Any notice given to a party under or in connection with this Agreement shall be in writing and sent to the party by pre-paid first-class post or other next Business Day delivery service (to the main business address for both parties) or by email, in your case to the authorised person whose email address is stated in the Centre Approval Application Form (or otherwise notified to us), and in our case, to that of our representative whose email address will be specified in any approval confirmation notice. (or as otherwise notified by us).
- 35.2 Notices addressed to us should be marked for the attention of the Chief Executive Officer.
- 35.3 Any notice shall be deemed to have been served:

35.3.1 if by email, at the time of transmission;

35.3.2 if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the address;

35.3.3 if by pre-paid first class recorded delivery post or other next Business Day delivery service providing proof of delivery, at 9 am on the second Business Day after posting or at the time recorded by the delivery service,

providing the time it is served is between 9am and 5pm on a Business Day, otherwise service shall be effective on the next Business Day.

35.4 This clause does not apply to the service of any proceedings or any documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

36. No Partnership or Agency

36.1 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute any party the agent of the other party, or authorise any party to make or enter into any commitments for or on behalf of the other party.

36.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

37. Warranty

Each party confirms that they have the necessary power and authority to enter into this Agreement.

38. Waiver

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

39. Rights of Third Parties

For the purpose of the Contracts (Rights of Third Parties) Act 1999, this Agreement does not and is not intended to give any rights, or any right to enforce any of its provisions, to any person who is not a party to it.

40. Entire Agreement

40.1 This Agreement (including its Schedules and the documents referred to in clause 2.1 constitute the entire agreement between the parties in respect of the delivery of our Products and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between us, whether written or oral, relating to its subject matter.

40.2 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.

40.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in this Agreement and each party acknowledges that, in entering into this Agreement, it has not relied on any representation or warranty.

41. Severability

41.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable,

it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Agreement.

- 41.2 If any provision or part-provision of this Agreement is deemed deleted under clause 41.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

42. Dispute Resolution

- 42.1 Nothing in this clause 42 shall affect either party's right to terminate this Agreement under clause 21 (Termination).
- 42.2 In the event of a dispute arising between the parties in relation to this Agreement ("**Dispute**"), the matter should first be referred for resolution to a nominated individual of each party for resolution.
- 42.3 Should the Dispute remain unresolved within 14 days of the matter first being referred to the nominated individuals, each party will use reasonable endeavors through the CEO (or equivalent), to resolve the Dispute within the next 14 days or such other period as otherwise agreed in writing by the parties.
- 42.4 If the Dispute is not resolved within the period agreed pursuant to clause 42.4, either party may, on written notice to the other, refer the matter for mediation in accordance with the CEDR Model Mediation Procedure and both parties shall use reasonable endeavors to reach agreement through such mediation.
- 42.5 If for any reason the Dispute is not resolved within 30 days of commencement of the mediation, the Dispute shall be referred to and finally resolved by the courts of England and Wales in accordance with clause 43 (Governing Law and Jurisdiction).

43. Governing Law and Jurisdiction

This Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with English Law and the parties shall submit to the exclusive jurisdiction of the English courts.

SCHEDULE 1

DEFINITIONS

Adverse Effect: means an adverse effect as defined in the applicable General Conditions of Recognition including an act, omission, event, incident, or circumstance which:

- (a) gives rise to prejudice to Learners or potential Learners; or
- (b) adversely affects:
 - (i) our ability to undertake the development, delivery or award of qualifications in accordance with our Regulatory Conditions;
 - (ii) the standards of qualifications which we make available or propose to make available; or
 - (iii) public confidence in such qualifications.¹

Approval Criteria: the detailed requirements that you need to evidence as part of our centre approval process.

Approved Centre: an organisation and all of its locations, offices and campuses (including Satellite Centres and Sub-contract Centres) which has received formal approval by us to deliver our Products after confirmation of meeting the Approval Criteria.

Awarding Organisation: an awarding organisation recognised for the purposes of awarding Regulated Products by one or more Regulatory Bodies.

Brand Guidelines: NCFE's brand guidelines currently available at <https://www.ncfe.org.uk/about-ncfe/media-centre/>.

Business Day: Monday to Friday excluding public and bank holidays in England.

Centre Approval Application Form: means an application submitted to us to become an Approved Centre in the form prescribed by us from time to time.

Charges: the charges stated in our most recent fees and pricing list ([currently at https://www.ncfe.org.uk/qualifications/mandatory-policies-fees/](https://www.ncfe.org.uk/qualifications/mandatory-policies-fees/))- - and any other applicable charges agreed between the parties in writing or as set out by us.

Commencement Date: the date we provide written confirmation of your approval as an Approved Centre.

Confidential Information: (i) all confidential or proprietary information relating to the business, affairs, customers, clients, suppliers, plans, intentions, or market opportunities of NCFE or of any of NCFE's group companies and (ii) any information that is identified as being of a confidential or proprietary nature.

Control: has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression change of Control shall be construed accordingly.

Data Privacy Laws: any applicable law relating to the processing, privacy and use of personal data, as applicable to either party or the services under this Agreement, including the UK GDPR (as defined in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018, the Directive 95/46/EC (Data Protection Directive) and/or the UK Data Protection Act 2018 or the General Data Protection Regulation (EU) 2016/679 (GDPR); and any laws which implement any such laws; and any laws that replace, extend, re-enact, consolidate or amend any of the foregoing; all guidance, guidelines, codes of practice and codes of conduct issued by any relevant regulator, authority or body responsible for administering Data Privacy Laws (in each case whether or not legally binding).

¹ Regulatory definition

Equalities Law: the Equality Act 2010 and any Act that was statutory predecessor to that Act, or any legislation in jurisdiction other than England which has an equivalent purpose and effect

Insolvency Event: any distress or execution being levied; offering to make any arrangement with creditors; any resolution or petition to wind up (other than for the purpose of amalgamation or reconstruction without insolvency) being passed or presented; any type of administration order being made; any type of receiver being appointed; ceasing business or threatening to do so.

Intellectual Property: any and all intellectual property rights of ours of any nature anywhere in the world whether registered, registrable or otherwise, including patents, utility models, Trademarks (including our Trademark), registered designs and domain names, applications for any of the foregoing, trade or business names, goodwill, copyright and rights in the nature of copyright, design rights, rights in databases, moral rights, know-how and any other intellectual property rights which subsist in computer software, computer programs, websites, documents, information, techniques, business methods, drawings, logos, instruction manuals, lists and procedures and particulars of customers, marketing methods and procedures and advertising literature, including the “look and feel” of any websites.

Intellectual Property Rights: any and all intellectual property rights of any nature anywhere in the world whether registered, registrable or otherwise, including but not limited to patents, utility models, Trademarks, registered designs and domain names, applications for any of the foregoing, trade or business names, goodwill, copyright and rights in the nature of copyright, design rights, rights in databases, moral rights, know-how and any other intellectual property rights which subsist in computer software, computer programs, websites, documents, information, techniques, business methods, drawings, logos, instruction manuals, lists and procedures and particulars of customers, marketing methods and procedures and advertising literature, including the “look and feel” of websites.

Learner: any person who is registered with us and / or studying in relation to one of our Products in respect of which we supply Services to you under this Agreement.

Losses: all losses, damage, costs, claims and/or expenses.

Mandatory Documentation: as set out in **Schedule 2** which is incorporated into this Agreement by reference and which you must comply with to deliver our Products.

Personnel: includes all staff, employees, agents, consultants, contractors or otherwise.

Product(s): any Unregulated Product(s) or Regulated Product(s) that we offer.

Regulated Product(s): qualifications under the NCFE brand and any subsequent brands developed or acquired by us which are subject to regulation by Regulatory Bodies.

Regulatory Body/Bodies: may include but is not limited to; the Office of Qualifications and Examinations Regulation (Ofqual) in England; Qualifications Wales in Wales (Qualifications Wales); the Council for Curriculum, Examinations & Assessment (CCEA) in Northern Ireland; the Scottish Qualifications Authority (SQA) in Scotland; any equivalent regulator in any other jurisdiction relevant to this Agreement; any statutory bodies such as the Information Commissioner’s Office (ICO); Police; UK Border Agency; any other statutory body relevant to this Agreement; and any successor bodies to these organisations which we may or may not be regulated by at any time.

Regulatory Conditions: all regulatory and statutory conditions, principles, requirements, directives, criteria, guidance and any other documents issued by any Regulatory Body from time to time applying which shall include, but which is not limited to; the [General Conditions of Recognition](#) issued by Ofqual as amended from time to time; and any equivalent and / or statutory documentation as issued by any Regulatory Bodies.

Services: as defined in **Schedule 3**.

Satellite Centre: a location that is part of your Approved Centre but which is not your main site, office or campus and that remains under your control and jurisdiction.

Sub-contract Centre: an organisation to whom you may sub-contract part of the Product delivery or assessment.

Tax: means any tax, levy, impost, duty or other charge or fee of a similar nature.

Territory: means the geographical area(s) where you are approved by us to deliver the Products.

Trademark: any of our brands and associated logos and any other brands and logos developed or acquired by us and as notified by us to you (from time to time), to be used in accordance with instructions for use provided by us (as amended from time to time) including but not limited to our Brand Guidelines.

Unregulated Product: any term specified by us which relates to bespoke education or training products not regulated by the Regulatory Bodies, such as Customised Qualifications and Endorsed Programmes.

Users: persons who have a legitimate interest in the Product(s), which may include Learners, potential Learners (or their representatives), Approved Centres, teachers, employers (and their representatives), further and higher education establishments, schools, government departments and agencies and professional bodies.

VAT: means value added tax or any equivalent tax chargeable.

Website: we provide our website(s) (which may include secure areas where additional information is available) for you to access our Products.

SCHEDULE 2

MANDATORY DOCUMENTATION

Our Mandatory Documentation shall be made available on our Website (currently at <https://www.ncfe.org.uk/qualifications/mandatory-policies-fees/>) or by any other means we deem appropriate.

The following policies and procedures form part of our Mandatory Documentation:

- Sanctions Policy
- Anti-Bribery and Corruption Policy
- Appeals Policy
- Access Arrangements and Reasonable Adjustments Policy
- Complaints Procedure
- Conflict of Interest Policy
- Diversity and Equality Policy
- Invoicing Policy
- Fees and Pricing List
- JCQ Suspected Malpractice: Policies and Procedures
- QA Policy for Awarding
- Recognition of Prior Learning Credit Accumulation and Transfer Policy
- Registration and Certification Policy
- Special Considerations Policy
- Whistleblowing Policy

Our Mandatory Documentation comprises all policies and procedures, guidance and instruction documents, forms, resources, publications, Product specifications and all information relating to the delivery of our Products (as amended from time to time).

From time to time, we may need to amend the Mandatory Documentation. We will inform you when a change has been made and publish any amended and or/ additional Mandatory Documentation on our Website.

SCHEDULE 3

SERVICES

Approval: we have an approvals service so that you can become an Approved Centre which enables you to work with us and engage with our Services.

Product(s): we offer a range of Products, including qualifications across various educational sectors.

Unregulated Products: we offer a range of Unregulated Products which allow you to create your own courses and gain accreditation from NCFE.

Registration: we offer registration services to enable you to register your Learners with us.

External Assessment Entries: we offer an entries service to enable you to enter Learners with us for their external assessment.

Quality Assurance Monitoring and Support: we undertake monitoring of activities to quality assure that the delivery and assessment of our Products is in line with our criteria and guidance.

Results: we issue results for Learners undertaking our Products which have an external assessment.

Certification: we produce certificates for Learners successfully achieving our Products (save for T Level qualifications which are certificated by the Department for Education).

Materials: we provide supporting materials for a range of our Qualifications.

External Assessment: we provide paper-based materials for Learners to use to sit external assessments.

Online Assessment: we provide an online assessment service for Learners to use to sit external assessments online.

Appeals and Enquiries: we provide an appeals and enquiries service for you to appeal against results and/or decisions made by us.

Access to qualifications: we provide support in applying reasonable adjustments and special considerations for Learners to access our Products.

Complaints: we provide a process for dealing with complaints from you and investigated by us and where necessary, reviewed by an independent party.

Training: we provide a range of training services to support delivery and assessment of our Products.

Advice and Support: we provide dedicated, personal support to you and your Personnel.

Secure web zone/portal: we provide an online system to allow you to register and enter your Learners with us and claim your Learners' certificates.

Website: we provide our website(s) for you to access all the Products we offer.

NB: Some of the above services apply only to certain Products.

SCHEDULE 4

DATA PROTECTION

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- (a) the term “**Data Privacy Laws**” shall have the meaning given in Schedule 1 of this Agreement.
 - (b) the term “**Data Security Breach**” shall mean a breach of security leading to the accidental or unlawful destruction, corruption, loss, alteration, unauthorised disclosure of, or unauthorised access, attempted access (physical or otherwise) or access to, personal data transmitted, stored or otherwise processed;
 - (c) the terms “**controller**”, “**processor**”, “**personal data**”, “**processing**” and “**special categories of personal data**” shall have the meanings as defined in the Data Privacy Laws.
- 1.2 The parties acknowledge and agree that for the purposes of the Data Privacy Laws, the parties are independent controllers in respect of any personal data relating to the Learners and exchanged between the parties pursuant to this Agreement, which shall include (but is not limited to); name, address, gender, date of birth and academic performance. You will also provide us with special category personal data such as ethnic origin and health information, where appropriate. (“**Learner Personal Data**”).
- 1.3 Each party shall ensure that it complies with its obligations under the Data Privacy Laws at all times during the term of this Agreement. In addition, you shall comply with any laws in relation to data privacy and security applicable in the Territory.
- 1.4 In the event a transfer of any Learner Personal Data from us to you becomes necessary in connection with this Agreement and such transfer would result in the transfer of the Learner Personal Data (i) outside of the UK and EEA and (ii) where the recipient is not based in a country subject to adequacy regulations under the Data Privacy Laws, you hereby agree to, promptly upon written request from us, enter into a data transfer agreement with us, in a form reasonably prescribed by us which satisfies the requirements of the Data Privacy Laws.
- 1.5 Upon request by us, you shall obtain on our behalf, appropriate consents from the Learners and/or potential Learners, as we may require in order to process and control Learner Personal Data under the Data Privacy Laws in a form prescribed by us from time to time.
- 1.6 You shall, in respect of any Learner Personal Data, ensure that:
- (a) your privacy notices/policies/statements are clear and provide sufficient information to the Learners and/or potential Learners for them to understand which of their Learner Personal Data will be shared by you with us, the purpose of sharing their Learner Personal Data with us and our identity as the Awarding Organisation;
 - (b) your privacy notices/policies/statements shall provide a link to our [privacy notice](#); and
 - (c) such Learner Personal Data supplied by you to us is accurate and kept up-to-date at all times.
- 1.7 Each party agrees to provide the other party with such reasonable cooperation and assistance as is necessary to enable each party to comply with its obligations as a controller in respect of Learner Personal Data, including to enable each party to comply with the Learners’ and/or potential

Learners' rights in respect of their Learner Personal Data and to respond to any other queries or complaints from the Learners and/or potential Learners in connection with the processing of Learner Personal Data or any other matter.

- 1.8 Each party agrees that it shall have in place its own policies that must be followed in the event of a Data Security Breach, taking into account the applicable Data Privacy Laws and any associated guidance.
- 1.9 If you experience a Data Security Breach, you will notify us of the Data Security Breach within 24 hours of becoming aware of such breach and provide us with:
 - (a) a primary point of contact who will manage the Data Security Breach and any subsequent remedial or regulatory actions;
 - (b) a description of the nature of the Data Security Breach, and the approximate number of Learners affected;
 - (c) a description of the types of Learner Personal Data which were subject to the Data Security Breach; and
 - (d) a description of the measures taken or proposed to be taken to address the Data Security Breach including measures to mitigate its possible adverse effects.
- 1.10 Each party agrees to provide to the other reasonable assistance as is necessary to facilitate the handling and resolution of any Data Security Breach in an expeditious manner and a manner that complies with the Data Privacy Laws.
- 1.11 You must comply with all of our security requirements published by us from time to time as part of the Mandatory Documentation, including those concerning the storage of any Learner Personal Data (and, in particular, the storage of any examination papers and the verification of Learners' identity). You shall notify us as soon as reasonably practicable of any incident or risk of any incident which would result in our non-compliance with the Data Privacy Laws and take all reasonable steps to prevent any such risk or incident occurring or, where it cannot be prevented, to reduce the impact of any such incident.
- 1.12 You shall not take any action or make any omission which would result in our breaching the Data Privacy Laws or bring us into disrepute for reasons related to data privacy.
- 1.13 We will use the Learner Personal Data supplied by you to award qualifications, to maintain a comprehensive archive of candidates' assessment results and may also share that information with educational agencies such as the Department for Education, the Education and Skills Funding Agency, The Institute for Apprentices and Technical Education (for T Level qualifications) and Regulatory Bodies.