



Web Application Services Agreement

This agreement is entered into on DD/MM/YYYY

Between:

Smart Apprentices Limited (Registered in England No. 7408258) with registered office address at Ditton Park, Riding Court Road, Datchet, Berkshire, United Kingdom, SL3 9LL trading as Smart Apprentices (the “**Licensor**”); and

XXXX (the “**Licensee**”).

Background:

- (A) The Licensor has developed the SEPA Platform (as defined below), which enables Apprentice Assessment Organisations to manage the process of End Point Assessments from enrolling through to successful grading and completion.
- (B) The Licensee wishes to use the SEPA Platform in the delivery of its End Point Assessments.
- (C) The Licensor has agreed to provide, and the Licensee has agreed to take and pay for the Services (as defined below) subject to the terms and conditions of this Agreement.

In consideration of the mutual obligations set out below **the Parties agree** as follows:

1. Definitions

In this Agreement, the following words shall have the following meanings unless otherwise expressly stated:

- “**Additional Services**” means those Services referred to in clause 6 and as described in paragraph 5 of Schedule 1;
- “**Affiliate(s)**” in relation to either Party, each and any subsidiary or holding company from time to time of that Party and each and any subsidiary from time to time of a holding company of that Party;
- “**Agreement**” means these terms and conditions, including the schedules and appendices;
- “**Application Services**” means the Subscription Services and the Support Services;
- “**Charges**” means the charges payable by the Licensee to the Licensor under this Agreement for the Services, as set out in Schedule 3;
- “**Commencement Date**” means the date of this Agreement;



“Confidential Information”	means the Licensee Data and any and all other secret or confidential commercial, financial, marketing, technical information, know-how, trade secrets and other information of either Party in written, electronic or any other form or medium, whether disclosed before, on or after the date of this Agreement;
“Consumer Prices Index”	the Consumer Prices Index as published by the Office for National Statistics from time to time, or failing such publication, such other index that most closely resembles such index.
“Contract Year”	any 12-month period ending on any anniversary of the Commencement Date;
“Data Controller”, “Data Processor”, “Data Subject”, “Personal Data” “processing”	have the meanings as set out in the GDPR ;
“Data Protection Law”	means: (i) the GDPR; and (ii) all other applicable laws and regulations relating to the processing of Personal Data and privacy, including statutory instruments, all as amended, extended, re-enacted or replaced from time to time;
“Documentation”	means the inter-active on-line information and User guides and other documentation as may be supplied or made available by the Licensor in respect of the Software, as updated, replaced or supplemented from time to time by the Licensor;
“Excluded Services”	means the services, facilities, functionality and other matters set out or referred to in paragraph 4 of Schedule 1;
“Force Majeure”	means any event outside the reasonable control of either Party affecting its ability to perform any of its obligations (other than payment) under this Agreement, including without limitation: fire; flood; lightning; war; revolution; terrorism; riot; strike; lock-out or other industrial action (but excluding any industrial action relating to the Licensor or its Affiliates or sub-contractors and their staff); failure of supplies of power, telecommunication network, fuel, transport, equipment, raw materials or other goods or services;
“GDPR”	means the General Data Protection Regulation (EU) 2016/679 adopted by the European Parliament on 14 April 2016, as may be implemented, transposed or replaced in the United Kingdom from time to time;



“Good Industry Practice”	the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a leading company within the relevant industry or the business sector;
“Initial Period”	means the initial term of this Agreement, being 5 years from the Commencement Date;
“Intellectual Property Rights”	means any patent, copyright, database right, moral right, design right, registered design, trade mark, service mark, domain name, metatag, know-how, model, unregistered design (and any application for any such right) or other rights in the nature of intellectual property rights (whether registered or not) and all applications for the same which may now or in the future subsist anywhere in the world, including the right to sue for and recover damages for past infringements;
“Learner(s)”	means an individual undertaking an End Point Assessment;
“Learner Account(s)”	means the registration of a Learner on the SEPA Platform for an End Point Assessment in a specified standard. For the avoidance of doubt, in the event a Learner undertakes End Point Assessments in a number of standards, registration in respect of each standard shall constitute a separate Learner Account;
“Licensee Data”	means (a) any data, text, drawings, diagrams, images, video or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, including, but without limitation, the data inputted by the Users or by the Licensor on the Licensee’s behalf for the purpose of using the SEPA Platform or facilitating the use of the SEPA Platform pursuant to this Agreement; and/or (b) any Personal Data for which the Licensee or any of its Affiliates or customers is Data Controller, in each case which are supplied to the Licensor by the Users and/or on behalf of the Licensee or which the Licensor is required to generate, process, store or transmit pursuant to this Agreement;
“Licensee Responsibilities”	the responsibilities of the Licensee as set out in Schedule 4;
“Licensee Trade Mark”	means the trade mark supplied by the Licensee and which the Licensor shall use to provide the Licensee branded Licensor’s Application Web Site in accordance with this Agreement;



- “Licensor Materials”** means any documentation, materials, software, equipment, data and all other materials and Intellectual Property Rights owned or licensed by the Licensor, including, without limitation, the Licensor’s Web Site, the Licensor’s Application Web Site, the Software and the Documentation;
- “Licensor’s Application Web Site”** means those portions of the Licensor’s Web Site which provide interfaces to the Users to the server-side Software and to which access is available to the Users only after logging in using the Users Login Details;
- “Licensor’s Web Site”** means the Licensor Materials which can be accessed using a browser at the specified url which will be provided to the Licensee no later 5 Working Days from the Commencement Date;
- “Normal Business Hours”** means 9.15am to 5.15pm on any Working Day;
- “Parties”** means the Licensee and the Licensor;
- “Party”** means the Licensee or the Licensor;
- “Renewal Period”** means each successive period of 12 months for which this Agreement may be extended in accordance with clause 2.1.
- “Restricted Items”** means each of the User Login Details, Licensor’s Application Web Site, the Documentation and the Software (in each case whether in whole or in part);
- “Services”** means, the Implementation Services, the Application Services and/or the Transitional Services;
- “Software”** means all software or software code (whether compiled or uncompiled) which form a part of the Licensor’s Application Web Site, as updated from time to time by the Licensor;
- “Subscription Services”** means the services relating to the subscription to use the SEPA Platform via the Licensor’s Application Web Site under this Agreement, as more particularly described in paragraph 2 of Schedule 1;
- “Support Services”** means the services described in Schedule 2



“SEPA Platform”	means the solution developed by the Licensor for the delivery of End Point Assessments, comprised of the Software, the Documentation, the Licensor Materials, the Licensor’s Application Web Site, the Licensor’s Web Site and the Application Services, functionality of which is described in the SEPA Platform Specification, as such functionality may be amended or enhanced pursuant to the Implementation Services and/or the Additional Services;
“Term”	means the duration of this Agreement including the Initial Period and any Renewal Periods;
“User Terms and Conditions”	mean the terms and conditions of use and privacy policy (as the same may be updated from time to time) which are accessible within or linked to the Licensor’s Web Site and which shall be agreed by the Parties and displayed by the Licensor on the Licensor’s Application Web Site;
“Users”	means the registered users of the Licensee issued with User Login Detail, for the avoidance of doubt this may include people external to the Licensee, such as training provider staff and EPA assessor staff;
“Users Login Details”	means the username, password and other information which a User will be required to input in order to be granted access to the Licensor’s Application Web Site;
“VAT”	value added tax chargeable under the Value Added Tax Act 1994 and any similar additional tax or any other similar turnover, sales or purchase tax or duty levied in any other jurisdiction; and
“Working Day(s)”	means Monday to Friday inclusive, excluding public holidays in England.

- 1.1 The headings contained in this Agreement are for convenience of reference only and shall not affect its interpretation.
- 1.2 References to “person” includes an individual, company, public organisations, corporation, firm or partnership.
- 1.3 Words indicating the singular shall include the plural and vice versa. Words indicating a gender shall include each gender.
- 1.4 The words and phrases “including” and “in particular” shall be without limitation to the generality of any preceding words and any preceding words shall not be construed as being limited to a particular class where a wider interpretation of those words and phrases is possible.



- 1.5 References to any statute or statutory provision shall include (i) any subordinate legislation made under it, and (ii) any provision which subsequently supersedes it or re-enacts it (whether with or without modification).
- 1.6 Writing includes e-mail.
- 1.7 If any conflict arises between the terms and conditions of this Agreement and any provision of any schedule or appendix, the terms and conditions of this Agreement shall prevail.
- 1.8 Reference to 'we' shall refer to the Licensor.
- 1.9 Reference to 'you' shall refer to the Licensee.
- 2. Term**
- 2.1 This Agreement shall commence on the Commencement Date and shall continue, unless it is terminated earlier in accordance with its provisions, for the Initial Period and shall automatically extend for a Renewal Period at the end of the Initial Period and at the end of each Renewal Period. Either Party may give written notice to the other Party, not later than 60 days before the end of the Initial Period or the relevant Renewal Period, to terminate this Agreement at the end of the Initial Period or the relevant Renewal Period, as the case may be.
- 3. Grant of License and Services**
- 3.1 The Licensor shall supply the SEPA Platform to the Licensee and other Services during the Term, in accordance with the terms this Agreement.
- 3.2 The Licensor shall supply the Licensor's Application Web Site as an interface for the use of the SEPA Platform by the Users, which shall be branded with the Licensee Trade Mark. For the avoidance of doubt, the Licensor shall ensure that no persons other than the Users, shall have access to and use of the Licensor's Application Web Site.
- 3.3 The Licensor hereby grants to the Licensee a non-exclusive, non-transferable, licence to permit Users to access the Licensor's Application Web Site and use of Software and the Documentation for the Term of this Agreement, subject to the provisions of this Agreement.
- 3.4 The Licensee acknowledges that the connection between the Licensee's browser and the Licensor's Application Web Site relies upon intermediate networks and systems which are not under the direct control of the Licensor, and the Licensor shall not be responsible for any failure by the Licensee or the Users to be able to access the Licensor's Application Web Site or the Software arising from or relating to any internet connection failures outside of the Licensor's reasonable control.
- 3.5 The number of Learner Accounts purchased by the Licensee as at the Commencement Date shall be as specified in Schedule 3 (Charges).



3.6 The Licensee may, from time to time during the Term, purchase additional Learner Accounts and the Licensor shall grant access to the Licensor's Application Web Site and the Documentation to such additional Users in accordance with the provisions of this Agreement.

3.7 The cost of any additional Learner Accounts shall be calculated in accordance with Schedule 3 (Charges).

3.8 All activated Learner Accounts shall remain active throughout the Term, unless they are deactivated by the Licensee.

3.9 The Licensor warrants that the Application Services and the SEPA Platform shall be available 24 hours a day for the duration of the Agreement. Should the availability of the Application Services and the SEPA Platform drop below 99.5% availability measured on a monthly basis, Smart Apprentices will report any period of unavailability. Should availability drop below 99.5%, the client will be immediately notified.

3.10 The Licensor shall provide the Licensee with the Support Services in accordance with Schedule 2.

3.11 The Licensee acknowledges and agrees that the Licensor is being appointed under this Agreement as an exclusive supplier of the Services and that the Licensee may not during the Term procure such services from a third party.

4. Licensee Obligations

4.1 The Licensee undertakes:

4.1.1 not to make available the Restricted Items in whole or in part and in any form, whether for sale or otherwise, to any person, other than Users, without prior written consent from the Licensor;

4.1.2 to use the Restricted Items solely for its business purposes and not to use them to provide any form of bureau services, managed services, outsourced services, sublicensing, time-sharing, rental, facility management, or to process data on behalf of a third party or provide any other form of services or access to the Restricted Items to any third party, other than the Users;

4.1.3 not to copy the Restricted Items (other than for normal operation, or as specifically permitted by the Licensor) nor otherwise reproduce the Restricted Items (except to the extent permitted by law);

4.1.4 not to translate, adapt, vary, or modify the Restricted Items;

4.1.5 not to disassemble, decompile or reverse engineer the Restricted Items (except to the extent permitted by law);



- 4.1.6 to be responsible for providing and configuring the Licensee's browser and all Licensee's hardware, software and network connections necessary for the browser to be able to connect to the internet to access the Licensor's Web Site; and
- 4.1.7 to use reasonable endeavours only to access the Licensor's Web Site and the Licensor's Application Web Site using equipment and software specified by the Licensor in writing.
- 4.2 The Licensee shall:
- 4.2.1 notify the Licensor within 30 days after the Implementation date if the Application Services which have been provided are not provided in accordance with this Agreement. The Licensee will be deemed to accept the Application Services in the event that it has not provided any such notice to the Licensor within such 30-day period;
- 4.2.2 notify the Licensor through the support ticket system any defects after the period specified in clause 4.2.1 and the Licensor shall provide the Support Services in accordance with the provisions of Schedule 2;
- 4.2.3 save in respect of the rights to use the Application Services and Support Services granted by the Licensor under this Agreement, obtain all necessary consents, licenses and permissions which are reasonably necessary in order for the Licensee to use the Application Services and Support Services;
- 4.2.4 use reasonable endeavours to ensure that the Licensor's Application Web Site is used by the Users in accordance with the Documentation;
- 4.2.5 not infer or imply any endorsement of the Licensee's products by the Licensor;
- 4.2.6 ensure that the Application Services input fields and any information categories are correct and meet the Licensee's requirements; and
- 4.2.7 ensure that all Users are registered and undertake appropriate training. The Licensor cannot support any User who hasn't been through their training programme.
- 4.3 The Licensee warrants to the Licensor that it has full capacity and authority to enter into this Agreement.
- 4.4 The Licensee shall comply with the Licensee Responsibilities set out in Schedule 4. For the avoidance of doubt, the Licensee Responsibilities shall constitute the exclusive responsibilities of the Licensee under this Agreement.
5. **Licensor's Warranties and Obligations**
- 5.1 The Licensor shall provide to the Licensee from time to time copies of the Documentation containing sufficient up-to-date information for the proper use of the SEPA Platform. Such Documentation may be supplied in electronic form. The Licensee may make such further



copies of the Documentation as are reasonably necessary for the use of the SEPA Platform, and for training the Users in use of the SEPA Platform.

5.2 In performing the Services, the Licensor shall comply with the Licensee's reasonable instructions to ensure minimal disruption to the Licensee's activities and the availability and functionality of the SEPA Platform.

5.3 The Licensor shall comply with all applicable laws and regulations with respect to its activities under this Agreement.

5.4 The Licensor warrants to the Licensee that:

5.4.1 it has full capacity and authority to enter into this Agreement and grant to the Licensee the rights set out in this Agreement;

5.4.2 the SEPA Platform when used in accordance with this Agreement and without unauthorised modification, will function materially based on the Documentation supplied by the Licensor and the Schedule of Requirements;

5.4.3 the SEPA Platform, when used in accordance with this Agreement, will not infringe the Intellectual Property Rights of a third party;

5.4.4 the Licensor will use its best endeavours to ensure that the Application Services or the results obtained by using the Application Services are error or defect free but provides no assurance that the Application Services are capable of operation with any equipment or software other than software and/or equipment specified in the Documentation, the SEPA Platform Specification and/or the Schedule of Requirements; and

5.4.5 the Licensor will at all times meet its obligations as set out in Schedule 2.

5.5 In the event that there is a breach of Clause 5.4.2 ("**Defect**"), then upon the Licensee promptly bringing this to the attention of the Licensor, the Licensor will at its sole discretion and expense, correct the Application Services within a reasonable period of time or provide the Licensee with an alternative means of remedying the Defect.

6. **Additional Services**

6.1 The Licensee may procure any of the Additional Services by submitting a written request to the Licensor.

6.2 Once a proposal for Additional Services issued by the Licensor has been agreed by the Parties in writing, each such proposal shall be part of this Agreement and shall not form a separate contract.

7. **Charges**



- 7.1 The Licensor shall submit invoices in accordance with Schedule 3. The Licensee shall make payment of each such invoice within 30 days of receipt of the invoice, provided that the relevant invoice is an appropriate and properly issued invoice.
- 7.2 The Charges and all other payments stated in Schedule 3 are net of tax. The Licensee shall, in addition, pay to the Licensor any applicable VAT.
- 7.3 If any sum is not paid on or before the due date under this Agreement and is not the subject of a genuine dispute, the Party in default shall pay the other Party interest, at the rate of 3 per cent above the base rate from time to time of Barclays Bank Plc (or its successor) for the period beginning on the due date and ending with the date on which the sum is paid (and the period shall run after as well as before judgment), provided that, in the case of any sums due to the Licensor, the relevant invoice is an appropriate and properly issued invoice.
- 7.4 All invoices issued by the Licensor under or in connection with this Agreement shall be accompanied by a sufficiently detailed breakdown of the matters being invoiced.
- 7.5 The Licensor shall be entitled to increase the Charges annually after the Initial Period, with the Licensee with no less than 60 days' notice. Any such increase shall not exceed the increase in the Consumer Prices Index in the preceding 12-month period.
- 8. Intellectual Property Rights**
- 8.1 All Intellectual Property Rights in the Licensor Materials shall remain vested in the Licensor and/or its licensors.
- 8.1.1 uses its reasonable endeavours to mitigate any damages, losses, costs and expenses resulting from any claim of infringement.
- 9. Confidentiality**
- 9.1 All Confidential Information disclosed or obtained in connection with this Agreement shall be kept confidential by the Parties and neither Party shall use or disclose such Confidential Information. Where such Confidential Information is disclosed by a Party to its employees, agents or sub-contractors, it shall be subject to confidentiality obligations equivalent to those set out in this Agreement. Each Party shall procure that any such employee, consultant, sub-contractor or agent complies with such obligations.
- 9.2 The obligations of confidentiality shall not extend to any disclosure of Confidential Information which either Party can show:
- 9.2.1 is necessary for the proper performance of its obligations under this Agreement;
- 9.2.2 has been carried out with the prior consent of the other Party;
- 9.2.3 is in, or has become part of, the public domain other than as a result of a breach of the obligations of confidentiality under this Agreement; or



9.2.4 was in its records prior to the Commencement Date (other than from the disclosing Party); or

- 9.2.5 was independently disclosed to it by a third party entitled to disclose the same; or
- 9.2.6 is required to be disclosed under any applicable law, or by order of a court or governmental body or authority of competent jurisdiction.
- 9.3 The Licensor may not refer to the Licensee or this Agreement in any publicity or advertising material without first obtaining the Licensee's written approval.
- 9.4 This clause 9 shall remain in full force and effect in the event of termination of this Agreement for any reason.

10. Licensee Data

- 10.1 As between the Licensee and the Licensor, the Licensee shall own all right, title and interest in and to all of the Licensee Data.
- 10.2 The Licensor shall comply with Schedule 5 in all respects in relation to the Licensee Data.
- 10.3 In the event of any loss or damage to the Licensee Data, the Licensor shall use its best endeavours to restore the lost or damaged Licensee Data from the latest back-up of such Licensee Data maintained by the Licensor in accordance with the back-up Services described in 2.3 of Schedule 1.
- 10.4 The Licensor undertakes that it will at the written request of the Licensee at any time or up until three months after termination of this Agreement howsoever arising or after the expiry of the Termination Period (whichever is later) return to the Licensee (or such Affiliate or a replacement supplier as the Licensee may nominate), without further charge and in the format reasonably stipulated by the Licensee (or the Affiliate or replacement supplier) a copy of all Licensee Data residing on the hosting equipment provided or procured by the Licensor pursuant to this Agreement.
- 10.5 The Licensee may request in writing within the period of time specified in clause 10.4 that the Licensee Data shall be stored on the hosting equipment provided or procured by the Licensor pursuant to this Agreement for a period of time beyond the termination of this Agreement or the expiry of the Termination Period (as applicable), subject to the payment of the Charges in respect of such hosting Services by the Licensee, at the rate current at the effective date of termination of this Agreement.
- 10.6 Each Party shall comply with the obligations set out in Schedule 5 (Data Protection Schedule).

11. Limitation of Liability

- 11.1 Neither Party excludes or limits liability to the other Party for:
- 11.1.1 fraud or fraudulent misrepresentation;



- 11.1.2 death or personal injury caused by negligence; or
- 11.1.3 any matter for which it would be unlawful for the Parties to exclude liability.
- 11.2 Except in the case of a breach of clauses 5.4.2 to 5.4.5(Licensor warranties) clause 3.9 (availability of the SEPA Platform), neither Party shall be liable in any circumstances to the other Party for consequential, special or indirect losses, or the following losses whether direct or indirect: loss of profits; loss or delay in payment of government grants; loss of revenue; economic loss; loss of business or contracts; loss of anticipated savings or goodwill; harm to reputation; loss of data; (or any losses arising from a claim by a third party for any of the above losses); whether arising under contract, statute, tort (including without limitation, negligence), or otherwise.
- 11.3 Nothing in this clause 11 shall exclude or restrict the Licensee's obligation to pay the Charges.
- 11.4 The Charges have been calculated on the basis that each Party will exclude and limit its liability as set out in this Agreement, and the Parties therefore agree that the limitations and exclusions of liability in this Agreement are reasonable. Subject to clause, 11.1, each Party's liability to the other Party under this Agreement shall not exceed £1 million.
- 11.5 The Licensor will not be liable for:
- 11.5.1 any failure to comply with the provisions of this Agreement to the extent that such default is attributable to the acts or omissions of: the Licensee; the Licensee's agents, employees or contractors; including without limitation, the failure of the Licensee to perform its obligations under this Agreement;
- 11.5.2 any consequences arising from the Licensor complying with the Licensee's instructions or requirements; or
- 11.5.3 any consequences arising from the Licensee failing to secure any necessary consents, licenses or permissions; or
- 11.5.4 any consequences arising from the Licensee or the Users failing correctly to enter information into the SEPA Platform.
- 12. Termination**
- 12.1 Either Party may terminate this Agreement immediately upon notice in writing to the other Party in the event that the other Party commits a breach of its obligations under this Agreement
- 12.2 Either Party may terminate this Agreement immediately upon notice in writing to the other Party if:



- 12.2.1 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 is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- 12.2.2 the other Party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other Party with one or more other companies or the solvent reconstruction of that other Party;
- 12.2.3 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other Party other than for the sole purpose of a scheme for a solvent amalgamation of that other Party with one or more other companies or the solvent reconstruction of that other Party;
- 12.2.4 an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other Party;
- 12.2.5 a floating charge holder over the assets of that other Party has become entitled to appoint or has appointed an administrative receiver;
- 12.2.6 a person becomes entitled to appoint a receiver over the assets of the other Party or a receiver is appointed over the assets of the other Party;
- 12.2.7 a creditor or encumbrancer of the other Party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- 12.2.8 any event occurs, or proceeding is taken, with respect to the other Party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 12.2.1 to clause 12.2.7 (inclusive); or
- 12.2.9 the other Party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business.
13. **Force Majeure**
- 13.1 If either Party (the “**Affected Party**”) is prevented from complying with its obligations due to Force Majeure, it shall not be in breach of this Agreement or otherwise liable to the other Party (the “**Unaffected Party**”) by reason of any delay in performance or non-performance of any of its obligations due to such events.
- 13.2 If such Force Majeure persists for a continued period of 3 months, then the Unaffected Party shall be entitled whilst the Force Majeure persists, to terminate this Agreement immediately upon notice to the Affected Party.



14. **Rights and remedies**

Except as expressly provided in this Agreement, the rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

15. **Notices**

15.1 Any notice required to be given under this Agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other Party at its address set out in this Agreement, or such other address as may have been notified by that Party for such purposes or sent by email to the email address provided by the other Party for this purpose.

15.2 A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9 am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice sent by email shall be deemed to have been received at the time of transmission.

16. **Assignment and Sub-contracting**

16.1 The Licensee shall not assign, delegate, sub-contract, transfer or otherwise dispose of any of its rights or responsibilities under this Agreement without the prior written consent of the Licensor.

16.2 The Licensor shall be permitted to assign, delegate, sub-contract (subject to paragraph 2 of Schedule 5), transfer or otherwise dispose of any of its rights or responsibilities under this Agreement without the prior written consent of the Licensee.

16.3 This Agreement may not be assigned by either Party without the prior written approval of the other but may be assigned (either in whole or part) by either Party without the other's consent to (i) an Affiliate, (ii) an acquirer of assets, or (iii) a successor by merger; or (iv) any other company, agency or other body which substantially performs any of the functions that previously had been performed by that Party.

17. **Contracts (Rights of Third Parties) Act 1999**

The Parties to this Agreement do not intend any third party to have any benefit under this Agreement. The Parties therefore agree that no third party shall have the right to enforce any term of this Agreement.

18. **No Partnership**

Nothing in this Agreement shall create, or be deemed to create, a partnership or joint venture or relationship of employer and employee or principal and agent between the Parties to this Agreement.



19. **Variations**

No variation of this Agreement shall be effective unless it is in writing and is signed by an authorised representative of each Party.

20. **Severability**

If at any time any part of this Agreement or a clause of this Agreement becomes void or unenforceable under any applicable law, it shall be deemed to be deleted from this Agreement and the remaining provisions of this Agreement shall continue unaffected.

21. **No Waiver**

No provision of the Agreement shall be waived unless agreed to be waived by both Parties in writing. If any provision is waived, then that waiver shall operate for that instance only and not future instances, unless agreed otherwise by both Parties in writing.

22. **Entire Agreement**

This Agreement contains the entire agreement between the Parties with respect to the subject matter of this Agreement (the “**Subject Matter**”) and supersedes all other written and oral communications between the Parties relating to the Subject Matter. The express terms, conditions and warranties in this Agreement are in lieu of all warranties, conditions, terms, representations, statements, undertakings and obligations whether express or implied by statute, common law, custom, usage or otherwise all of which are hereby excluded to the fullest extent permitted by law. The Parties hereby confirm that they have not relied upon any representations, communications or other matters which have not been expressly stated in this Agreement. Notwithstanding any provision to the contrary, nothing in this Agreement limits or excludes either Party’s liability for fraudulent misrepresentations.

23. **Law and Jurisdiction**

This Agreement and any dispute or claim arising in connection with it shall be governed by the laws of England and shall be subject to the exclusive jurisdiction of the English Courts to which the Parties irrevocably submit.



Schedule 1 Services

1. Implementation Services

As described in the Schedule of Requirements.

2. Subscription Services

- 2.1 A hosted solution available for use by the Licensee, assessors, Internal Quality Assurers, data contractors/employers and Administrators via secure logins and passwords.
- 2.2 The Licensor's Application Web Site will be branded in line with the Licensee Trade Mark as part of the initial setup as defined in the Schedule of Requirements.
- 2.3 The Licensor will hold a regular backup of the system and the data stored in the database. When a User completes their programme and their license is terminated the Licensee can extract in a soft copy the EPA portfolio for data storage.
- 2.4 Hosting Charges are renewable annually. Licenses are spent when allocated to a User.

3. Support Services

- 3.1 Support will only be provided to the trained personnel of the solution.
- 3.2 Any support requests will need to be made from the provided URL. The Licensee will need to clearly state the issue as explained on the request ticket. The Licensor will respond via online ticketing within a 24-hour period. The Licensor will then endeavour to resolve the issue ASAP depending on the complexity the issue.
- 3.3 Refer to schedule 2 for the detailed support model.

4. Excluded Services

- 4.1 The Licensor will not have responsibility for the content and accuracy of the data stored in the system – either candidate or company information and any evidence uploaded into the solution.
- 4.2 The Licensor will not be held responsible and cannot support the use of any data that has been exported from the system to be used in other applications.

5. Additional Services



- 5.1 Training to third-party persons or companies can also be supplied, please contact your account manager for details. We train auditors, Verifiers, candidates, sales staff and employers using the system at an additional cost to the Licensee.
- 5.2 Developments to the solution can be requested for by the Licensee at any time. These need to be made in writing. Depending on the request it will be chargeable if it is a bespoke request for the solution. Alternatively, it may be included in routine upgrades to the solution. Any bespoke developments will need to be agreed between the Licensor and Licensee via a written proposal, which will outline costs, payment terms and timescales for the development. As it is a hosted solution bespoke developments must be rolled out in accordance to suit all Users of the solution and must be planned and announced in advance.
- 5.3 Deleted data will be investigated at the request of the client through the online ticketing system, if we can restore this data you will be charged £60 per hour if this proves to be the fault of the User.



Schedule 2 Support Services

1. Support Model

- 1.1 The support model is based on the following underlying technology, any required deviation or requirement for changing or supplementing technology may impact on the performance of support.

Microsoft developers support environment

Microsoft azure (mainland uk geographical hosting)

Infrastructure (bt)

Rackspace (uk)

- 1.2 All support requirements will be routed through SA through our ticketing and escalation process.

- 1.3 Geo Redundant Storage, replicates data to a secondary region within the UK with Windows Service Failover Cluster.

- 1.4 A full business continuity plan is in place and is tested yearly to ensure any disruption event can be recovered quickly and the system restored to minimise the impact on the Users. System recovery within 3 hours, data recovery variable based on volume of data. Details of the full disaster recovery process is referenced in : Register 18 - ISO 27001 – Business Continuity Plan Version 1.2.

- 1.5 The licensor will only provide support services for users who are using the latest 2 browser versions currently deployed,

2. Escalation Process

- 2.1 Normal escalation target response times are open to review throughout any development period to address the opportunities for fix deployment within the development cycle.

- 2.2 Critical system performance will where possible be mitigated with both elements of resilience as well as potential duplicate redundancies.

3. Error Resolution

- 3.1 Licensor shall resolve any Errors according to the table set out below.

- 3.2 Where it becomes apparent an Error cannot be rectified within the Resolution Time Licensor shall notify the Licensee as soon as is reasonably possible and continue to work towards rectifying the Error.

- 3.3 Licensor shall at the request of the Licensee provide the Licensee with status reports on the progress of the resolution of each Error, together with an estimate of how long it will take to remedy the Error if this is available.

3.4

Incident Level	Description	Response Time	Resolution Time
A	System outage, unable to communicate in anyway with the system.	1 hr response time, within this period a site status check is performed every 5 min, if two consecutive checks result in a failure and immediate SMS is sent to the phones of our support group, which can then validate and if necessary, escalate to the Microsoft support.	12 hours
B	System area functionality failure, critical feature unusable.	1 hrs response within Normal Business Hours, with resolution identification in 24 hrs.	24 hours
C	Feature failure, a specific task in the product is not executing in a prescribed way	Acknowledgment in 4 hrs, resolution identification in 24 hrs.	48 hours
D	Feature/task not available in the system	Acknowledgment in 4 hrs, resolution identification in 48 hrs.	1 week

3.5 Escalation process

- 3.5.1 A & B Immediate escalation to Chief Technical Officer
- 3.5.2 C 4hrs – Support, 24hrs – Head of Client Relations, 5 Days – Chief Technical Officer
- 3.5.3 D 4hrs – Support, Weekly review of failure to determine further escalation.



Schedule 3 Charges

Pricing



Schedule 4 Licensee Responsibilities

In order to facilitate the provision of the Services by the Licensor, the Licensee shall (in addition to those Licensee responsibilities and obligations identified elsewhere in this Agreement), the Licensee shall:

- co-operate with the Licensor in all matters relating to the Services and appoint a project manager, who shall have the authority to commit the Licensee on all matters relating to the Services;
- provide the Licensor with access to appropriate members of the Licensee's staff, as such access is reasonably requested by the Licensor, and necessary, in order for the Licensor to discharge its obligations under this Agreement;
- respond to and provide such documentation, data and other information as the Licensor reasonably requests in order for the Licensor to perform its obligations under this Agreement;
- to the extent that the following are not expressly provided for elsewhere in this Agreement, using its reasonable endeavours, respond to requests for information in a prompt and timely manner, where such requests are reasonably made by or on behalf of the Licensor to enable the Licensor to comply with its obligations under this Agreement;
- identify and agree with the Licensor the source, systems and processes required for the input of the Licensee Data onto the SEPA Platform;
- provide such assistance as the Licensor reasonably requests in identifying validation criteria to facilitate successful input of the Licensee Data onto the SEPA Platform; and
- shall use its best endeavours to ensure that all Users who obtain access to the Licensor's Application Web Site complete the relevant training, as agreed with the Licensor, to help them to become competent in the use of the Licensor's Application Web Site.



Schedule 5 Data Protection Schedule

1. Processing of Personal Data

- 1.1 To the extent that the Licensor processes any Personal Data on behalf of the Licensee under or in connection with this Agreement, the Licensor shall be the processor and the Licensee shall be the Licensee. The scope, nature and purpose of processing by the Licensor, the duration of the processing and the types of Personal Data and categories of Data Subject shall be as necessary for the Licensor to comply with its obligations under the Agreement.
- 1.2 the Licensor warrants and undertakes that it shall:
- 1.2.1 process the Personal Data only on the documented written instructions of the Licensor (which are set out in the Agreement) unless the Licensor is required by applicable laws to otherwise process that Personal Data. Where the Licensor is relying on applicable laws as the basis for processing Personal Data, the Licensor shall promptly notify the Licensee of this before performing the processing required by the applicable laws unless those applicable laws prohibit the Licensor from so notifying the Licensee;
- 1.2.2 process the Personal Data in compliance with the Data Protection Laws;
- 1.2.3 implement appropriate technical and organisational measures to ensure a level of security appropriate to the risks that are presented by processing (in particular from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to the Personal Data), taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of the processing of Personal Data, as well as the risk of varying likelihood and severity for the rights and freedoms of the Data Subjects;
- 1.2.4 promptly, upon request from the Licensee, amend, transfer or delete any Personal Data;
- 1.2.5 notify the Licensee without undue delay on becoming aware of a Personal Data Breach
- 1.2.6 ensure that access to Personal Data is limited to those of the Licensor's personnel who need access to the Personal Data to meet the Licensor's obligations under this Agreement and that all such personnel are informed of the confidential nature of the Personal Data and preserve the confidentiality of the Personal Data at all times;
- 1.2.7 provide the Licensee, on request, with such information and co-operation, as may reasonably be required in relation to any complaint, notice, communication or request which is notified to the Licensee from time to time and
- 1.2.8 provide the Licensee, on request, such other assistance as may reasonably be required by the Licensee to comply with its own obligations under applicable Data Protection Laws to the extent this relates to the processing of Personal Data by the Licensor (or its permitted sub-contractors) in connection with this Agreement.



- 1.3 The Licensor shall only transfer Personal Data to countries outside the United Kingdom, if it has provided or procured appropriate safeguards, as required by the applicable Data Protection Law. The Licensor hereby warrants that it has secured adequate safeguards with the Approved Sub-Contractors for the protection of Personal Data in accordance with the Data Protection Law.
- 1.4 The Licensee acknowledges and agrees that the Licensor shall not be responsible for any transfers of Personal Data outside the United Kingdom, which occur when the Users access the Licensor's Application Web Site through a browser from a country, or territory outside the United Kingdom.
- 1.5 At the Licensee's reasonable request, the Licensor shall:
- 1.5.1 make available to the Licensee such information as may reasonably be necessary to demonstrate compliance with its obligations under this Schedule 5, including copies of any audit reports demonstrating compliance with paragraph 1.1.3 and allowing the Licensee or its designated auditor to conduct audits; and
- 1.6 The Licensee shall use reasonable endeavours to conduct any audits under clause 1.4 during reasonable times and for a reasonable duration, which shall not unreasonably interfere with the Licensor's day-to-day operations.
- 2. Use of sub-contractors**
- 2.1 The Licensor may subcontract its obligations under this Agreement (including in respect of the processing of Personal Data) subject to (i) the Licensor entering into a written agreement with each sub-contractor incorporating terms which are substantially the same as in this Schedule 5 and which the Licensor confirms reflect and will continue to reflect the requirements of the Data Protection Laws and (ii) the provisions of this paragraph 2.
- 2.2 The Licensor shall make available to the Licensee prior to signing this Agreement, a current list of those sub-contractors which are used by the Licensor in its performance of its obligations under this Agreement ("Approved Sub-Contractors"), and the purposes for which they are used.
- 2.3 By entering into this Agreement, the Licensee is deemed to have approved the use of Approved Sub-Contractors. The rights afforded to the Licensee in paragraph 2.4 shall not apply in relation to Approved Sub-Contractors.
- 2.4 Following the date of this Agreement:
- 2.4.1 the Licensor shall notify the Licensee of its intention to appoint or use a new sub-contractor (which is not an Approved Sub-Contractor), and whether such appointment may result in the transfer of Personal Data outside of the United Kingdom (in which case the Licensor shall inform the Licensee of the safeguards it has in place with such sub-contractor in accordance with the applicable Data Protection Law), or to use an Approved Sub-Contractor for a different purpose, prior to transferring, or continuing to transfer, any Personal Data to such sub-contractor;



- 2.4.2 the Licensor shall confirm that it has entered into or will enter into a written agreement with each sub-contractor incorporating terms which are substantially the same as in this Schedule 5 and which the Licensor confirms reflect and will continue to reflect the requirements of the Data Protection Laws
- 2.4.3 if the Licensee has a reasonable basis to object to the Licensor's use of such sub-contractor, and such objection directly relates to the Licensee's obligations under Data Protection Law, the Licensee shall notify the Licensor promptly in writing within 10 Working Days after receipt of the Licensor's notice;
- 2.5 The Licensor shall remain fully liable for all acts or omissions of any sub-contractor appointed by it pursuant to clause 2.3 or 2.4.



Signed for and on behalf of Smart Apprentices Limited

Name: _____

Job Role: _____

Signature: _____

Date: _____

Signed for and on behalf of {}

Name: _____

Job Role: _____

Signature: _____

Date: _____

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