

TERMS AND CONDITIONS

1. TERMS OF USE

- 1.1. These are the Terms of Use for the Federation for Industry Sector Skills & Standards, a company incorporated in Scotland (registered number SC175918) with registered office at 3rd Floor, 101 George Street, Edinburgh EH2 3ES (the "Federation") in relation to its (Apprenticeship Certificates Wales) ACW service ("Service").
- 1.2. These Terms of Use, together with the Registration Form and the Central Payment System form the agreement between the Federation and the User for the Services ("Agreement").

2. DEFINITIONS

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

ACW: means the Federation's ACW software as a service developed and operated by the Federation and more fully described on the ACW website. Its purpose is to record and verify qualifications leading to the issuing of an Apprenticeship certificate.

ACW Credits: the credits purchased on the Central Payment System operated by the Federation. Each credit can be used to make one application for an Apprenticeship certificate. No application can be made without a valid credit. Once purchased, ACW Credits can only be refunded if the User ceases to deliver Apprenticeship Framework training.

Apprentice: This is the person who, having completed the elements of their Apprenticeship Framework, consents to the training provider (User) claiming the Apprenticeship certificate, on their behalf.

Apprentice/User Data: the data inputted by User, on behalf of the Apprentice, for the purpose of claiming the Apprenticeship certificate.

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

Confidential Information: has the meaning provided in clause 10.1.

Consent Form: The Federation's form signed by the User (and if under 16 also by a parent or guardian) indicating that they consent to providing information and claiming the Apprenticeship certificate (on behalf of the Apprentice).

Documentation: the data and documents:

- made available to the User by the Federation (including by online means) which sets out a description of the Service and the User instructions for the Service
- made available by the User (qualification certificates and consent form) and loaded onto ACW by the user, on behalf of the Apprentice.

DPA: means the Data Protection Act 1998, and related subordinate legislation, as may be amended, updated or re-enacted from time to time including the GDPR. It is the responsibility of the User to ensure that they are properly authorised to collect and process the data input on behalf of the Apprentice.

Effective Date: the date of the User's submission of the Registration Form.

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

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

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trademarks and service marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of,

confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

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

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

Payment System: The portal on the ACW website used to purchase credits [www.acwcerts.co.uk].

Registration Form: the transaction page of [www.acwcertsco.uk] containing details of ACW Credit prices and where these Terms of Use are accepted.

Renewal Period: means a period of 12 months.

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

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

Support Services Policy: the Federation's policy for providing support in relation to the Service as notified to the User from time to time.

Users: the User or those employees, agents and independent contractors of the User, who are authorised by the User's business to use the Service and the Documentation in accordance with the Agreement and have a unique login.

Website means [www.acwcerts.co.uk].

3. ACW SECURITY AND DATA POLICY

- 3.1. The Federation grants to the user from the Effective Date a non-exclusive, non-transferable right to permit the Users to use the Service and the Documentation during the Licence Term, solely for the User's internal business operations.

- 3.2. Where the Service involves access to analytical data and/or reports via a password protected section of the ACW Website, or such other website notified to the User for this purpose, then the User undertakes that:

3.2.1. Each person from the User using the system will need to register on ACW. Each person will have their own password and that password must be a minimum of 12 characters long, contain at least one capital, one number and one non alphabetical or numeric character. That login and password must be kept confidential and must not be shared with other people employed by the User or agents of the User;

3.2.2. it will not allow or suffer any person with a login and password to be used by more than one individual unless it has been reassigned in its entirety to another individual, in which case the prior person shall no longer have any right to access or use the Service and/or Documentation;

3.2.3. it shall provide an up-to-date list of current logins to the Federation within 5 Business Days of the Federation's written request at any time or times;

3.2.4. it shall permit the Federation to audit the Service in order to establish the name and password of each login. Such audit may be conducted no more than once per quarter, at the Federation's expense, and this right shall be exercised with reasonable prior notice, in such a manner as not to

- substantially interfere with the User's normal conduct of business; and
- 3.2.5. if any of the audits referred to in clause 3.2.4 reveal that any password has been provided to any individual who is not entitled to use it, then without prejudice to the Federation's other rights, the Federation shall promptly disable such passwords and the Federation shall not issue any new passwords to any such individual.
- 3.3. The User shall not access, store, distribute or transmit any computer viruses, or any material during the course of its use of the Service that:
- 3.3.1. is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
- 3.3.2. facilitates illegal activity; or
- 3.3.3. in a manner that is otherwise illegal or causes damage or injury to any person or property;
- and the Federation reserves the right, without liability or prejudice to its other rights to the User, to disable the User's access to any material that breaches the provisions of this clause.
- 3.4. The User shall not (except to the extent expressly permitted under the Agreement), attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or Documentation (as applicable) in any form or media or by any means; or
- 3.4.1. attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or
- 3.4.2. access all or any part of the Service and Documentation in order to build a product or service which competes with the Service and/or the Documentation; or
- 3.4.3. use the Service and/or Documentation to provide services to third parties; or
- 3.4.4. subject to clause 15.5, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or Documentation available to any third party, or
- 3.4.5. attempt to obtain, or assist third parties in obtaining, access to the Service and/or Documentation, other than as provided under this clause 3.2.4.
- 3.5. The User shall keep all password and log-in details used in the relation to the Service secure, and shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Service and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify the Federation.
- 3.6. The rights provided under this clause 3.2.4 are granted to the User only, and shall not be considered granted to any subsidiary or holding company of the User.
- 3.7. An Apprentice cannot be registered on ACW unless the User has an ACW credit it has purchased through our Central Payment System. The price of a credit is set out on the ACW website payments page. The charge for a credit might be changed from time to time in accordance with clause 9.6
- 3.8. The User must have in place policies and have taken all reasonable precautions to ensure that data is held securely and that any data (whether held on paper or electronically) is adequately protected from, theft, accidental loss, deletion and malicious hacking.
- 3.9. The User shall adhere to the Federation's Data Use and Data Management Policy which can be found at www.acwcerts.co.uk.
4. **SERVICES**
- 4.1. The Federation shall, during the Licence Term, provide the Service and make available the Documentation to the User, subject to the terms of the Agreement.
- 4.2. The Federation shall use commercially reasonable endeavours to make the Services available 24 hours a day, seven days a week, except for:
- 4.2.1. planned maintenance carried out during agreed maintenance windows; and
- 4.2.2. unscheduled maintenance performed outside Normal Business Hours, provided that the Federation has used reasonable endeavours to give the User at least 6 Normal Business Hours' notice in advance.
- 4.3. The Federation will provide the User with the Federation's standard User support services during Normal Business Hours, in accordance with the Federation's Support Services Policy in effect at the time that the Services are provided. The Federation may amend its Support Services Policy in its sole and absolute discretion from time to time.
- 4.4. Set-up and training services can be provided, on request, under separate agreement.
5. **USER DATA AND RESULTS**
- 5.1. The User shall own all right, title and interest in and to all of the User Data and all Results. The User shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the User Data. Subject to clause 5.3, the Federation do not monitor any User Data posted or provided by the User as part of the Service.
- 5.2. The User shall be solely responsible for archiving and back-up of all User Data and Results at all times, including during the provision of the Service.
- 5.3. If the User Data includes any personal data (as that term is defined in the GDPR and the DPA), then the parties acknowledge that for the purposes of the GDPR and the DPA, the Federation is the data processor and the User is the data controller, and the provisions of clause 5.4 shall apply.
- 5.4. The User warrants that it has procured all necessary consents from individuals to the processing of their personal data. The Federation shall process such personal data only to the extent, and in such a manner, as is necessary for the purposes of the Agreement, and in accordance with the User's instructions from time to time, and shall not process the personal data for any other purpose. The Federation shall ensure that appropriate security measures are used to protect against unauthorised use of, or access to, the personal data.
- 5.5. Notwithstanding clause 15.5, the Federation shall have the right to perform statistical analysis of the User Data and Results for the creation of anonymised statistical data. This data will be used to benchmark with other ACW Users. This is a core element of the ACW service. For the avoidance of doubt, such anonymised data shall belong to the Federation and may be licensed to third parties.
- 5.6. The Federation shall not be responsible for any loss, damage or disclosure of User Data caused by any third party or as a result of the User's failure to comply with its obligations under the Agreement.
6. **USER OBLIGATIONS**
- 6.1. The User shall provide the Federation with all necessary co-operation in relation to the Agreement and all necessary access to such information as may be required by the Federation in order to provide the Service, including but not limited to User Data, security access information and configuration services.
- 6.2. The User shall comply with all applicable laws and regulations with respect to its activities under the Agreement and shall carry out all other User responsibilities set out in the Agreement in a timely and efficient manner.

- 6.3. The User shall ensure that the Users use the Service and the Documentation in accordance with the terms of the Agreement and shall be responsible for any User's breach of the Agreement.
- 6.4. The User shall obtain and shall maintain all necessary licences, consents, and permissions necessary to enable it to receive the Service from the Federation.
- 6.5. The User shall ensure that its network and systems comply with any relevant specifications provided by the Federation from time to time and be solely responsible for procuring and maintaining its network and internet connections.
- 6.6. The User shall ensure that all information entered on the ACW system is accurate and up to date.
- 6.7. The User shall comply with any requests relating to the GDPR, the DPA or "subject access requests".
- 7. THE FEDERATION OBLIGATIONS**
- 7.1. The Federation undertakes that the Service will be performed substantially in accordance with the Documentation and with reasonable skill and care.
- 7.2. The undertaking at clause 7.1 shall not apply to the extent of any non-conformance which is caused by use of the Service contrary to the Federation's instructions, or modification or alteration of the Service by any party other than the Federation or the Federation's duly authorised contractors or agents. If the Service does not conform with this undertaking, the Federation will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the User with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the User's sole and exclusive remedy for any breach of the undertaking set out in clause 7.1. Notwithstanding this, the Federation:
- 7.2.1. does not warrant that the User's use of the Service will be uninterrupted or error-free; or that the Service, Documentation and/or the information obtained by the User through use of the Service will meet the User's requirements; and
- 7.2.2. is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the User acknowledges that the Service and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 7.3. The Agreement shall not prevent the Federation from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under the Agreement.
- 7.4. The Federation warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under the Agreement.
- 7.5. The Federation will ensure that any information it enters on the ACW system is accurate and up to date as possible.
- 8. RIGHTS IN THE SERVICES**
- 8.1. All Intellectual Property Rights in the Service are owned by, or validly licensed to, the Federation.
- 8.2. Software and Documentation provided in relation to the Service are provided solely in relation to the User's use of the Services in accordance with the Agreement and are not provided, or to be used, for any other purpose.
- 9. PAYMENT**
- 9.1. The User shall purchase credits from the Federation for at least the minimum number of candidates on the ACW system in accordance with this clause 9.
- 9.2. The User shall provide to the Federation valid, up-to-date and complete debit or credit card details and any other relevant valid, up-to-date and complete contact and billing details.
- 9.3. The User hereby authorises the Federation to receive payments when the User specifies the number of credits and clicks the payment button on the online payment system and the Federation will hold any unused credits on account until such time as they are redeemed in ACW.
- 9.4. All amounts and fees stated or referred to in the Agreement shall be payable in pounds sterling, are non-cancellable and non-refundable (subject to the User ceasing to deliver Apprenticeship Framework training.), and are exclusive of value added tax, which shall be added to the Federation's invoice(s) at the appropriate rate.
- 9.5. If the User disputes any payment, the User shall notify the Federation in writing within 60 days. The parties shall negotiate in good faith to attempt to resolve the dispute promptly and the Federation shall provide all such evidence as may be reasonably necessary to verify the request for payment.
- 9.6. The Federation shall also be entitled to increase the cost of a credit upon 30 days' prior notice to the User (but not more than once during any 12 month period during the Agreement).
- 10. CONFIDENTIALITY**
- 10.1. Each party (**Receiving Party**) shall keep in strict confidence any information that is proprietary or confidential and is either clearly labelled as such or which ought reasonably to be treated as confidential, including all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party (**Disclosing Party**), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain ("**Confidential Information**").
- 10.2. The Receiving Party shall restrict disclosure of such Confidential Information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Agreement, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. This clause "Confidentiality" shall survive termination of the Agreement.
- 10.3. Notwithstanding the terms of clause 10.1 and 10.2 above, the Federation shall be entitled to reference the User as being a User of the Federation in relation to its marketing activities.
- 11. INDEMNITY**
- 11.1. The User shall defend, indemnify and hold harmless the Federation against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the User's use of the Service and/or Documentation, provided that:
- 11.1.1. the User is given prompt notice of any such claim;
- 11.1.2. the Federation provides reasonable co-operation to the User in the defence and settlement of such claim, at the User's expense; and
- 11.1.3. the User is given sole authority to defend or settle the claim.
- 11.2. The Federation shall defend the User, and if applicable, its officers, directors and employees against any claim that the Service or Documentation infringes any United Kingdom patent effective as of the Effective Date, copyright, trade mark, database right or right of confidentiality, and shall indemnify the User for any amounts awarded against the User in judgment or settlement of such claims, provided that:
- 11.2.1. the Federation is given prompt notice of any such claim;

- 11.2.2. the User provides reasonable co-operation to the Federation in the defence and settlement of such claim, at the Federation's expense; and
- 11.2.3. the Federation is given sole authority to defend or settle the claim.
- 11.3. In the defence or settlement of any claim, the Federation may procure the right for the User to continue using the Service, replace or modify the Service so that they become non-infringing or, if such remedies are not reasonably available, terminate the Agreement on 2 Business Days' notice to the User without any additional liability or obligation to pay liquidated damages or other additional costs to the User.
- 11.4. In no event shall the Federation, its employees, agents and sub-contractors be liable to the User to the extent that the alleged infringement is based on:
- 11.4.1. a modification of the Service or Documentation by anyone other than the Federation; or
- 11.4.2. the User's use of the Service or Documentation in a manner contrary to the instructions given to the User by the Federation; or
- 11.4.3. the User's use of the Service or Documentation after notice of the alleged or actual infringement from the Federation or any appropriate authority.
- 11.5. The foregoing and clause 12 state the User's sole and exclusive rights and remedies, and the Federation's entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.
- 12. LIMITATION OF LIABILITY**
- 12.1. This clause 12 sets out the entire financial liability of the Federation (including any liability for the acts or omissions of its employees, agents, consultants and subcontractors) to the User in respect of:
- 12.1.1. any breach of the Agreement however arising;
- 12.1.2. any use made by the User of the Service; and
- 12.1.3. any representation, statement or delictual act or omission (including negligence) arising under or in connection with the Agreement.
- 12.2. Except as expressly and specifically provided in the Agreement:
- 12.2.1. the User assumes sole responsibility for its use of all Results, and for conclusions drawn from such use. The User acknowledges that the Federation has not undertaken any verification of Results and accepts no responsibility for, and makes no warranty or representation in respect of, the Results, their accuracy or completeness. Use of the Service does not guarantee the User any improvement in its business efficiencies;
- 12.2.2. the Federation shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to the Federation by the User in connection with the Service, or any actions taken by the Federation at the User's direction;
- 12.2.3. all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from the Agreement; and
- 12.2.4. the Service and Documentation are provided to the User on an "as is" basis.
- 12.3. Subject to clause 12.4, in no event shall the Federation be liable for any loss of business, loss of profit, loss or corruption of data or for any indirect or consequential loss and the Federation's total aggregate liability arising under the Agreement or otherwise relating to the Service shall be limited to the total Fees paid during the 12 month period preceding the date on which the claim arose.
- 12.4. Nothing in these Terms of Use shall limit or exclude the Federation's liability for:
- 12.4.1. death or personal injury caused by negligence;
- 12.4.2. fraud or fraudulent misrepresentation; or
- 12.4.3. any other liability that cannot be excluded or limited by law.
- 13. TERM AND TERMINATION**
- 13.1. The Agreement shall, unless otherwise terminated under the remaining provisions of this clause 13, commence on the Effective Date and continue for the Initial Licence Term (12 months) and, thereafter, the Agreement shall be automatically renewed for successive Renewal Periods unless:
- 13.1.1. either party notifies the other party of termination, in writing, at least [30 days] before the end of the Initial Licence Term or a Renewal Period, in which case the Agreement shall terminate upon the expiry of the Initial Licence Term or applicable Renewal Period; or
- 13.1.2. otherwise terminated in accordance with the provisions of the Agreement.
- 13.2. Without prejudice to any other rights or remedies to which the parties may be entitled, either party may terminate the Agreement without liability to the other if:
- 13.2.1. the other party commits a material breach of any of the terms of the Agreement and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; or
- 13.2.2. the other party is insolvent within the meaning of section 123 of the Insolvency Act 1986; or
- 13.2.3. the other party ceases, or threatens to cease, to trade.
- 13.3. Without limiting its other rights or remedies, the Federation may terminate the Agreement with immediate effect by giving written notice to the User if:
- 13.3.1. the User fails to pay any amount due under the Agreement on the due date for payment; or
- 13.3.2. the User is, or is controlled directly or indirectly by, a direct competitor of the Federation.
- 13.4. On termination of the Agreement for any reason:
- 13.4.1. the User shall immediately pay the Federation all outstanding payments;
- 13.4.2. all licences granted under the Agreement shall immediately terminate;
- 13.4.3. each party shall return and make no further use of any equipment, property, Documentation and other items (and all copies of them) belonging to the other party; and
- 13.4.4. the accrued rights of the parties as at termination, or the continuation after termination of any provision expressly stated to survive or implicitly surviving termination, shall not be affected or prejudiced.
- 14. DISPUTE RESOLUTION**
- 14.1. In the event the parties are unable to resolve a dispute between them arising out of or relating to the Agreement, and except for claims for interdict or other similar relief, the parties will attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution Model Mediation Procedure. Unless otherwise agreed between the Parties, the mediator will be nominated by the Centre for Effective Dispute Resolution and the mediation will take place in Wales. The mediation agreement referred to in the Model Procedure shall be governed by Welsh law.
- 14.2. If the dispute is not settled by mediation within 10 days of commencement of the mediation or within such further

period as the parties may agree in writing, the parties shall be free to seek to resolve the dispute by such other means subject always to clause 16.

15. GENERAL

- 15.1. The Federation reserves the right to amend the Agreement from time to time and will email any such changes to the User or make such terms available on the ACW Website. The User's continued use of the Service will be deemed acceptance of any new terms.
- 15.2. If the Federation choose to waive any particular right it has under the Agreement on any particular occasion this does not prevent it from exercising that right on another occasion.
- 15.3. If any part of the Agreement is held by a court of law (or similar forum) to be invalid or unenforceable, this shall not affect the validity or enforceability of the rest of the Agreement.
- 15.4. The Federation shall have no liability to the User under the Agreement if it is prevented from or delayed in performing its obligations under the Agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control.
- 15.5. The User is not entitled to transfer or assign its rights and obligations under the Agreement to anyone else without the Federation's prior written permission.
- 15.6. Nothing in the Agreement is intended to, or shall operate to, create a partnership between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).
- 15.7. All notices required or permitted under the Agreement will be in writing which shall include email. Any notice shall be deemed to have been duly received:
 - 15.7.1. if delivered personally, when left at the address;

- 15.7.2. if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second business day after posting; or
- 15.7.3. if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed;
- 15.7.4. if sent by email or fax, at the time of transmission if no failed delivery message is received by the sender.

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

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

16. LAW AND JURISDICTION

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