

End Point Assessment Terms and Conditions

1 Interpretation

1.1 In these terms and conditions, the following expressions shall have the following meanings unless the context otherwise requires:

“Agreement”: the contract between Advance HE and the Customer for the provision of the Services in accordance with these terms and conditions, the Letter and the applicable Statement of Work;

“Advance HE”: Advance HE (a company limited by guarantee incorporated in England and Wales under company number 4931031, and registered as a charity in England under charity number 1101607 and in Scotland under charity number SC043946);

“Background IPR”: any Intellectual Property Rights vested in or licensed to either party prior to or independently of the performance by either party of their obligations under the Agreement; **“Business Days”**: a day that is not a Saturday, Sunday, or bank or public holiday in England;

“Charges”: the charges, fees, expenses and any other sums specified in the relevant Statement of Work;

“Commencement Date”: the date for commencement of the Services specified in the relevant Statement of Work;

“Confidential Information”: all proprietary information (in whatever form) in respect of the business of each of the parties, including Background IPR, any ideas; business methods; finance; prices; business, financial, marketing or development plans; customer lists or details; computer systems and software; products or services, know-how or other matters connected with products or services manufactured and/or marketed; and information concerning either party's relationships with actual or potential clients, customers or suppliers and the needs and requirements of the parties and such persons; which is (in each case) provided or obtained by one party to or for the other and which is (whenever reasonably practicable) marked or otherwise designated as confidential at the time of disclosure or which would otherwise be regarded as confidential by a reasonable business person;

“Control”: the ability to direct the affairs of another party whether by virtue of the ownership of shares, contract or otherwise (and **“Controlled”** shall be construed accordingly);

“Customer”: the organisation which purchases the Services from Advance HE, as identified in the Letter;

“Deliverables”: any document, piece of equipment, data listing, diagram, plan, drawing, image, products,

workbooks, presentations, materials or any other creation in any form (including drafts) developed by Advance HE or its Staff in order to complete performance of the Services as more particularly detailed in Schedule 1 to the Letter;

“Deposit”: the sum calculated by a percentage of the Charges specified in the relevant Statement of Work, payable upon signing the Agreement, deemed necessary to cover the costs of providing access to the Advance HE in-house EPA (support) team, to EPA resources, to the Apprenticeship Connect website and to Provider Events prior to delivering the Services;

“Force Majeure”: any circumstance not within a party's reasonable control including: acts of God, flood, drought, earthquake or other natural disaster; epidemic or pandemic; terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations; military coup; nuclear, chemical or biological contamination or sonic boom; any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition; inability to obtain the relevant visa for Staff to undertake required international travel to outside the UK as may be required in the course of the Services; collapse of buildings, fire, explosion or accident; any labour or trade dispute, strikes, industrial action or lockouts; and interruption or failure of any utility service;

“Foreground IPR”: Intellectual Property Rights in items or materials created by Advance HE and/or its Staff (or by a third party on behalf of Advance HE) specifically for the purposes of the Agreement including, Intellectual Property Rights in any Deliverables;

“Initial Term”: has the meaning given in the Letter;

“Intellectual Property Rights”: trade marks, service marks, trade names, design rights, copyright (including rights in software), patents and patent applications, and any rights or property similar to any of the foregoing in any part of the world whether registered or not registered together with the right to apply for the registration of any such rights, and all rights or forms of protection having equivalent or similar effect, in any part of the world;

“Letter”: the letter from Advance HE to the Customer confirming that Advance HE shall provide, and the Customer shall pay for, the Services as set out in the Statement of Work on these terms and conditions;

“Renewal Period”: has the meaning given in the Letter;

“Services”: the services to be supplied by Advance HE to the Customer, as set out in the Letter and the relevant Statement of Work;

“Staff”: any employee, consultant, sub-contractor of Advance HE or any other persons engaged by Advance HE who are involved in the provision of the Services; and

"Statement of Work": the detailed plan attached to the Letter describing the Services and setting out the estimated timetable (including any milestones) for delivery.

- 1.2 Clause, paragraph, and schedule headings shall not affect the interpretation of the Agreement and references to clauses, paragraphs and schedules are to the clauses and schedules of the Agreement.
- 1.3 Words in the singular include the plural and vice versa.
- 1.4 Any reference to a statute or provision of a statute shall be construed as a reference to that statute or provision as amended, re-enacted or extended at the relevant time and includes any replacement legislation or subordinate legislation for the time being in force made under it.
- 1.5 Any phrase introduced by the term **"include"**, **"including"**, **"in particular"**, **"for example"** or any similar expression will be construed as illustrating and will not limit the sense of the words preceding that term.
- 1.6 In the event and only to the extent of any conflict between these terms and conditions and the Letter and/or the Statement of Work, these terms and conditions shall prevail except where the Letter or the Statement of Work (as applicable) specifically states that its terms are to prevail over these terms and conditions.
- 1.7 The Customer may, with Advance HE's prior written consent, permit a named subsidiary to receive the benefit of the Services, provided that the Customer remains responsible for all Charges and for the subsidiary's compliance with this Agreement.

2 End Point Assessment Services

- 2.1 Advance HE shall provide the Services from the Commencement Date and shall use its reasonable endeavours to:
 - 2.1.1 manage and provide the Services, and to deliver the Deliverables to the Customer, in accordance with the Statement of Work in all material aspects; and
 - 2.1.2 meet any performance dates or milestones specified within the Statement of Work.
- 2.2 Where it is performing the Services at the Customer's premises, Advance HE shall observe all health and safety rules and regulations and any other reasonable security requirements that apply at such premises, provided these have been notified to it by the Customer. Advance HE shall not be liable under the Agreement if, as a result of such observation, it is in breach of any of its obligations under the Agreement.
- 2.3 Advance HE shall provide the Services using appropriately experienced, qualified and trained Staff who possess a degree of skill and experience which is appropriate to the tasks which they are allotted and

shall procure that the Staff shall perform these tasks in a professional manner.

- 2.4 Advance HE shall retain information regarding all End Point Assessments undertaken and payment received under this Agreement for six (6) years for audit purposes.
- 2.5 Advance HE shall not at any time during the Initial Term, and any Renewal Period, do or say anything which damages or which could reasonably be expected to damage the interests or reputation of the Customer or its Staff.
- 2.6 Neither party shall, without the prior written consent of the other party, at any time from the date of the Agreement to the expiry of six (6) months after the Initial Term, and any Renewal Period, solicit or entice away from the other party, any person who is, or has been, an employee of the other party and involved in the provision of the Services.

3 Customer Obligations

3.1 The Customer shall:

- 3.1.1 co-operate with Advance HE as reasonably requested in all matters relating to the Services;
 - 3.1.2 provide Advance HE and its Staff, in a timely manner and at no charge, access to the Customer's premises, data and other facilities of the Customer as reasonably required for the performance of the Services;
 - 3.1.3 inform and supply Advance HE with details of all health and safety rules and regulations and any policies or other reasonable security requirements that apply at any of the Customer's premises at which the Services are provided;
 - 3.1.4 provide, in a timely manner, such materials and other information as Advance HE may reasonably require for the performance of the Services, and ensure that, to its knowledge, it is accurate in all material respects; and
 - 3.1.5 not at any time during the Initial Term, and any Renewal Period, do or say anything which damages or which could reasonably be expected to damage the interests or reputation of Advance HE or its Staff.
- 3.2 If Advance HE's performance of its obligations under the Agreement is prevented or delayed by any act or omission of the Customer or its agents, subcontractors, consultants or employees, Advance HE shall not be liable for any costs, charges or losses sustained or incurred by the Customer that arise directly or indirectly from such prevention or delay.

4 Charges, Invoicing & Payment

- 4.1 The Customer warrants that it has in place the funding from the Apprenticeship Levy via the national funding bodies to meet Advance HE's Charges. Any failure by the Customer to secure the required funding will not negate the Customer's obligation to pay Advance HE for any Services it has delivered.
- 4.2 Following completion of the Services, or at the intervals specified in the Statement of Work, Advance HE may invoice the Customer for the applicable Charges.
- 4.3 Upon signing the Agreement, the Customer shall raise a PO and provide this to Advance HE. Advance HE shall provide an invoice, stating the PO, for the Deposit. The Customer understands and agrees that such Deposit is non-refundable regardless of the reason for termination or the expiry of the Agreement, except where this Agreement expressly provides otherwise.
- 4.4 The Customer shall pay each undisputed invoice submitted to it by Advance HE within 30 days of receipt of that invoice to the bank account specified in the relevant invoice. An invoice shall be deemed undisputed if the Customer does not raise any concerns or queries within 5 Business Days of receiving the invoice.
- 4.5 Unless stated otherwise in the Statement of Work, the Customer will pay the Charges in pounds sterling plus value added tax ("VAT") or any equivalent sales tax in any applicable jurisdiction, which shall be added to the invoices issued by Advance HE at the appropriate rate.
- 4.6 Without prejudice to any other right or remedy that it may have, if the Customer fails to pay any undisputed invoice on the due date, Advance HE may:
- 4.6.1 charge interest on such sum from the due date until payment is made in full both before and after any judgment, at 4% above the base lending rate from time to time of the Royal Bank of Scotland plc, accruing on a daily basis and being compounded quarterly until payment is made; and
- 4.6.2 upon 10 Business Days' written notice, withdraw/suspend all Services, including other services in relation to 'end point assessment' that Advance HE is carrying out for the Customer under separate Statement of Works, until full cleared payment is received by Advance HE from the Customer.

5 Change Control

- 5.1 If either party wishes to change the scope or provision of the Services, it shall submit details of the requested change to the other in writing (e-mail to suffice) and such change shall only be implemented if agreed in accordance with the remainder of this clause.
- 5.2 If the Customer requests a change to the scope or provision of the Services:

- 5.2.1 Advance HE shall, within a reasonable time, provide a written estimate (e-mail to suffice) to the Customer of:

- (i) the likely time required to implement the change;
- (ii) any reasonable variations to the Charges arising directly as a result of the proposed change, including any Charges already incurred which the Customer may be liable to pay in accordance with clause 4.2 at Advance HE's discretion; and
- (iii) any other impact of the change on the terms of this Agreement;

- 5.2.2 if, following receipt of Advance HE's written estimate submitted in accordance with clause 5.2.1, the Customer does not wish to proceed, there shall be no change to this Agreement; and

- 5.2.3 if the Customer wishes Advance HE to proceed with the change, Advance HE shall do so after agreement on the necessary variations to the Charges, the

Services and any other relevant terms of this Agreement to take account of the change following which this Agreement shall be varied by the parties in accordance with clause 15.2.

- 5.3 If Advance HE requests a change to the scope or provision of the Services, it shall send such request to the Customer in writing (e-mail to suffice), and the Customer shall be entitled to withhold or give its consent to such change. If the Customer permits Advance HE to proceed with the change, Advance HE shall do so, following a variation of this Agreement in accordance with clause 15.2.

6 Confidentiality

- 6.1 Each party agrees:

- 6.1.1 to keep the other's Confidential Information confidential;
- 6.1.2 not to use the other's Confidential Information save for complying with its obligations under the Agreement;
- 6.1.3 not to disclose the other's Confidential Information to a third party other than to:
- (i) the party's employees, officers, representatives or advisers (and in the case of Advance HE the Staff) who need to know such information for the purposes of exercising that party's rights or carrying out

its obligations under or in connection with this agreement and who are under a similar duty to protect Confidential Information; or

- (ii) to the extent required to do so by law, an order by a court of competent jurisdiction or any governmental or regulatory authority.

6.2 The restrictions contained in clause 6.1 shall continue for a period of five (5) years following expiry or termination of the Agreement, except that they shall cease to apply to information which:

- 6.2.1 has in its entirety become public knowledge otherwise than through any unauthorised disclosure or breach of this clause 6;
- 6.2.2 was available to or otherwise lawfully in the possession of the receiving party on a non-confidential basis prior to its disclosure by the disclosing party;
- 6.2.3 was received by the receiving party from a third party who to the receiving party's knowledge is not under any confidentiality obligation in respect of that information;
- 6.2.4 the disclosing party has consented in writing to the Confidential Information being disclosed; or
- 6.2.5 is or has been independently developed by the other party without reference to or use of the disclosing party's Confidential Information.

7 Intellectual Property Rights

7.1 Save as otherwise set out in the Agreement, neither party shall acquire any right, title or interest in the other's Background IPR.

7.2 All title to and all rights and interest in the Foreground IPR shall vest in Advance HE. Advance HE hereby grants to the Customer a fully paid-up, royalty free, non-exclusive, non-assignable and non-sublicensable worldwide licence to use the Foreground

IPR in the Deliverables for its internal business purposes in relation to the apprenticeship scheme to which this Contract relates.

7.3 The Customer shall not use the Foreground IPR and/or the Deliverables for any purpose other than as set out in clause 7.2 without the prior written agreement of Advance HE, and the Customer acknowledges that such agreement may be conditional on a further written licence agreement being entered into between the parties. For the avoidance of doubt, in the event that the Customer wishes to commercially exploit the Foreground IPR and/or the Deliverables outside the scope of the licence granted in clause 7.2 above, it shall not do so until a further written licence agreement has been entered into with Advance HE, which will include

commercially reasonable royalty provisions in respect of any such exploitation.

7.4 The Customer hereby grants to Advance HE a nonexclusive, perpetual, irrevocable, transferrable, worldwide, royalty free licence (together with a right to sub-license) to use the Customer's Background IPR for any purpose relating to the provision of the Services and creation and delivery of the Deliverables.

8 Data Protection

8.1 The following definitions and rules of interpretation apply in this clause 8:

Controller: shall have the meaning given to it in the Data Protection Legislation;

Data Protection Legislation: the Data Protection Act 2018, the GDPR EU 2016/679 (or such replacement upon the UK leaving the EEA), all legislation enacted in the UK in respect of the protection of Personal Data; and any other laws and regulations relating to the Processing of Personal Data and privacy which apply to a party and, if applicable, the guidance and codes of practice issued by the relevant data protection or supervisory authority, all as revised and superseded from time-to-time;

Data Subjects: has the meaning given to it in the Data Protection Legislation and for the purpose of this clause 8, relates to the Customer's apprenticeship students;

Personal Data: means "personal data" (as defined in the Data Protection Legislation) that are transferred to Advance HE by the Customer in respect of the Data Subjects;

Processing: shall have the meaning given to it in the Data Protection Legislation;

Purpose: Advance HE carrying out an 'end point assessment' of each Data Subjects, as paid for by the Customer; and keeping a record of the assessment for a period of 6 years following completion of the Services; and

Third Party Recipients: means any third parties authorised to receive the Personal Data from Advance HE, including the Education and Skills Funding Agency, and any regulatory bodies.

8.2 The parties acknowledge that each party is a Controller of the Personal Data and that the Customer will transfer the Personal Data to Advance HE for the Purpose.

8.3 Each party must ensure compliance with the Data Protection Legislation at all times in respect of the Personal Data.

8.4 The Customer warrants and undertakes that it is entitled to provide the Personal Data to Advance HE.

8.5 The Customer shall, in respect of the Personal Data, ensure that it notifies the Data

Subjects that their Personal Data will be shared with Advance HE and Third Party Recipients for the Purpose. Advance HE shall ensure that the Data Subjects are provided with access to, and acknowledge, the [Advance HE 'end point assessment' privacy statement](#) prior to submitting their Personal Data to Advance HE.

- 8.6 Each party shall only provide the Personal Data to the other by using secure methods to ensure compliance with the Data Protection Legislation.
- 8.7 Each party agrees to provide such assistance as is reasonably required to enable the other party to comply with requests from Data Subjects to exercise their rights under the Data Protection Legislation within the time limits imposed by the Data Protection Legislation.
- 8.8 Each party agrees to provide reasonable assistance as is necessary, in an expeditious and compliant manner, to the other party to facilitate the handling of any Personal Data Breach in relation to the Personal Data.
- 8.9 Each party shall ensure that it provides the other party with all updates to the Personal Data to ensure its accuracy at all times.
- 8.10 Each party will indemnify the other party and keep them indemnified against all costs, claims, damages or expenses incurred or for which they may become liable due to any failure by the indemnifying party to comply with its obligations under this clause 8.
- 8.11 Advance HE shall:
 - 8.11.1 take reasonable steps to ensure the reliability of its personnel and any Third Party Recipients who have access to the Personal Data;
 - 8.11.2 implement appropriate technical and organisational measures in accordance with the Data Protection Legislation to ensure a level of security appropriate to the risks that are presented by such 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, the nature, scope, context and purposes of Processing and the likelihood and severity of risk in relation to the rights and freedoms of the Data Subjects;
 - 8.11.3 not Process the Personal Data for any purposes other than the Purpose;
 - 8.11.4 not disclose the Personal Data to any third parties other than any Third Party Recipients and ensure that any Third Party Recipients are subject to obligations equivalent to those of Advance HE under this Agreement;
 - 8.11.5 not cause or permit the Personal Data to be transferred outside the United Kingdom or the European Economic Area without the Customer's prior written consent; and
 - 8.11.6 only retain the Personal Data for as long as is necessary for the Purpose.

8.11.7 Notwithstanding clause 8.2, if either party is deemed to be a joint Controller with the other in relation to the Personal Data, the Parties agree that they shall be jointly responsible for the compliance obligations imposed on a Controller by the Data Protection Legislation, and the Parties shall cooperate to do all necessary things to enable performance of such compliance obligations, except that each Party shall be responsible, without limitation, for compliance with its data security obligations where Personal Data has been transmitted by it, or while Personal Data is in its possession or control.

8.11.8 The parties do not envisage that either party will process the Personal Data received from the other party for and on behalf of the other party under or in connection with this Agreement. Where and to the extent that either party anticipates that it will process the other party's Personal Data in the capacity of a processor for and on behalf of the other party during the Initial Term, or any Renewal Period, it shall immediately notify the other party and prior to such processing the parties agree to amend this Agreement to incorporate the duties to be imposed upon processors in accordance with Articles 28 to 36 of the GDPR.

9 Liability and Insurance

- 9.1 Nothing in the Agreement limits or excludes the liability of either party for: (i) personal injury or death resulting from its negligence; (ii) fraud or fraudulent misrepresentation; (iii) or any other matter which cannot lawfully be excluded or limited.
- 9.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Agreement.
- 9.3 Subject to clause 9.1:
 - 9.3.1 neither party shall under any circumstances whatsoever be liable to the other party for:
 - (i) any indirect, special, or consequential losses of any nature and howsoever caused, even if the losses were reasonably foreseeable or the other party has been advised of the possibility of such loss occurring; or
 - (ii) any direct or indirect loss of profit, business, contract, goodwill, corruption of data or information, revenues or anticipated savings.
 - 9.3.2 each party's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the Agreement shall in all other circumstances

be limited to the sum of the Charges paid or payable by the Customer to Advance HE for the Services.

9.3.3 Notwithstanding clause 9.3.2, each party's total liability in connection with a breach of clause 8 shall be limited to £5,000,000 (five million pounds sterling).

9.4 Each party shall maintain during the Initial Term, and any Renewal Period, with a reputable insurance company adequate insurance against its liabilities under the Agreement on terms no less favourable than those generally available to a prudent contractor in respect of risks insured in the international insurance market from time to time.

10 Termination

10.1 Either party may terminate the Agreement for any reason by giving at least 60 (sixty) Business Days' written notice to the other party, provided that where the Customer terminates under this clause 10.1, the customer shall compensate Advance HE in accordance with clause 10.5.1.

10.2 Without prejudice to any other rights or remedies which a party may have, either party may terminate

the Agreement with immediate effect by giving notice in writing without incurring liability to the other party by reason of such termination if the other:

10.2.1 becomes (or, in the reasonable opinion of the terminating party, is at serious risk of becoming) insolvent or unable to pay its debts as they fall due; or

10.2.2 is in material breach of any part of the Agreement and that breach (if capable of remedy) is not remedied within 20 (twenty) Business Days after notice being given requiring it to be remedied (and where such breach is incapable of remedy, the terminating party shall be entitled to terminate the Agreement with immediate effect).

10.3 Advance HE may immediately terminate the Agreement on written notice to the Customer without incurring liability to the Customer by reason of such termination if there is a change of Control of the Customer.

10.4 In the event that Advance HE is no longer an End Point Assessment Organisation whether by means of withdrawal or suspension (including voluntary withdrawal) from the register of end-point assessment organisations, Advance HE shall promptly notify the Customer and use reasonable endeavours to facilitate alternative arrangements for EPA completion. The Customer shall not be required to pay for any Services not provided, and any Charges and any Deposit paid in advance for those Services, shall be refunded. Either party shall have the right to terminate this Agreement with immediate effect by written notice.

10.5 On termination of the Agreement:

10.5.1 In accordance with clause 4.2 and 4.3, the Customer shall pay Advance HE for any work properly carried

out by Advance HE (or its Staff) in preparation for delivery of the Services, and any reasonable expenses incurred by Advance HE (or any of its Staff) in anticipation of the delivery of the Services in accordance with the Agreement, up to the date of termination where such work and/or expenses have not previously been paid for. This clause 10.5.1 shall not apply where the Customer terminates in accordance with clause 10.2.2, where either party terminates in accordance with clause 10.4, or where either party has given notice in accordance with clause 11.2;

10.5.2 all undisputed sums payable to Advance HE shall become due and payable in accordance with their existing payment terms. In respect of Services supplied for which no invoice has been submitted, Advance HE shall promptly submit an invoice, which shall be payable by the Customer within 30 (thirty) days of receipt;

10.5.3 the accrued rights, remedies, obligations and liabilities of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination;

10.5.4 to the extent that either party has any information or records derived directly from Confidential Information, Intellectual Property Rights or other data of the other party, the receiving party shall at the option of the disclosing party: (i) return to the disclosing party all such information and records; or (ii) (to the extent technically practicable) erase or destroy all such information and records, and certify, in writing, to the disclosing party that it has done the same. Neither party shall be required to return, erase or destroy any information or records which it is required to retain by law, regulation or applicable professional or audit requirements, or which remain in routine backup or archival systems, provided that any retained information or records remain subject to the confidentiality and data protection obligations in this Agreement and are not used for any other purpose.

10.5.5 clauses which expressly or by implication have effect after termination shall continue in full force and effect, including clauses 6 (Confidentiality), 7 (Intellectual Property Rights), 8 (Data Protection), 9 (Liability and Insurance), this clause 10.5, clause 12 (Dispute Resolution) and clause 15.8 (Law and Jurisdiction).

11 Force Majeure

11.1 Neither party to the Agreement shall be deemed to be in breach of the Agreement,

or otherwise liable to the other party, in any manner whatsoever for any failure or delay in performing its obligations under the Agreement due to Force Majeure, provided that as soon as reasonably practicable upon a party becoming aware of a Force Majeure it shall notify the other party in writing of the Force Majeure and the anticipated duration of such Force Majeure.

11.2 If the Force Majeure in question continues for more than 30 (thirty) Business Days either party may give notice in writing to the other to terminate the Agreement. The notice to terminate must specify the termination date, which must not be less than 5 (five) Business Days after the date on which the notice is given, and once such notice has been validly given, the Agreement will terminate on that termination date.

12 Dispute Resolution

12.1 If any dispute or claim arises out of or in connection with the Agreement, the parties will first attempt to resolve amicably by way of good faith negotiations and discussions any such dispute or claim as soon as reasonably practicable.

12.2 If the dispute cannot be resolved by the parties pursuant to clause 12.1 the dispute may, by agreement between the parties, be referred to mediation in accordance with the LCIA Mediation Rules (as at the date of such mediation), and those Rules are deemed to be incorporated by reference into this clause 12.

12.3 If the dispute or claim is not settled by mediation within 30 days of the commencement of the mediation, or such further period as the parties shall agree in writing, either party may commence proceedings under clause 15.8.

12.4 Nothing in this clause 12 shall prevent either party from applying at any time to the English courts for injunctive relief on the grounds of infringement, or threatened infringement, of the other party's obligations of confidentiality contained in the Agreement or infringement, or threatened infringement, of the applicant's Intellectual Property Rights, or if the case would be prejudiced by delay to allow for mediation.

13 Publicity and publication

13.1 Either party shall be permitted to use the name of the other party in any publication making reference to Advance HE as an End Point Assessor for the Customer.

13.2 The Customer shall not publicise the terms of the Agreement, or any Statement of Work, or use the name of Advance HE or any trade name or trade mark used by Advance HE or refer to Advance HE in any other way in any press release, promotional literature, publications or advertising material, including any website, "blogs", social media or other online services, without the prior written consent of Advance HE other than as expressly set out in this Agreement.

14. Anti-corruption and anti-bribery

14.1 Each party shall:

14.1.1 comply with all applicable laws, statutes and regulations relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 ("**Relevant Requirements**"); and

14.1.2 have and shall maintain in place throughout the Initial Term, and any Renewal Period, its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements, and will enforce them where appropriate.

14.2 Neither party shall engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 (whether such an act was committed in the UK or not).

14.3 If any breach by either party (or anyone acting on its behalf) of this clause 14 is suspected or known, that party must notify the other party immediately and must respond promptly to the other party's enquiries and co-operate with any investigation.

14.4 Any breach of this clause 14 by either party or anyone acting on its behalf shall be deemed a material breach of the Agreement not capable of remedy.

15 General

15.1 **Waiver:** A waiver of any right under the Agreement is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and the circumstances for which it is given.

15.2 **Variation:** No variation of the Agreement shall be valid unless in writing and signed by a duly authorised representative of each of the parties.

15.3 **Notices:** Any notice given under the Agreement must be made in writing, sent for the attention of the person, and to the address, given on the front page of the Agreement (or such other address or person as the relevant party may notify to the other party).

15.4 **Agency:** 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).

15.5 Assignment and Sub-Contracting: The Customer shall not, without the prior written consent of Advance HE, assign, transfer, charge, create a trust in, or deal in any other manner with all or any of its rights or obligations under the Agreement or any Statement of Work. Advance HE may assign or novate the Agreement and/or any Statement of Work to: (i) any separate entity Controlled by Advance HE; or (ii) any body or department which succeeds to those functions of Advance HE to which the Agreement relates. The Customer warrants and represents that it will (at Advance HE's reasonable expense) execute all such documents and carry out all such acts, as reasonably required to give effect to this clause 15.5.

15.6 Severability: If any provision of the Agreement is or becomes illegal, void or unenforceable for any reason, such provision shall be severed and the remainder of the provisions of the Agreement shall continue in full force and effect as if the Agreement had been executed with the invalid provision eliminated. In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Agreement, the parties shall immediately commence good faith negotiation to remedy such invalidity.

15.7 Third parties: The parties to the Agreement do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

15.8 Law and Jurisdiction: The Agreement and any dispute or claim (including any non-contractual dispute or claim) arising out of or in connection with it or its subject matter, shall be governed by, and construed in accordance with, the laws of England and Wales and (subject to clause 12) the courts of England and Wales shall have exclusive jurisdiction to settle any such dispute or claim.