



Your attention is particularly drawn to the provisions of clauses 9 and 17.

These Terms should be read in conjunction with the Funding Agency guidelines as updated from time to time and detailed on the Funding Agency's website as follows: <http://www.skillsdevelopmentscotland.co.uk/> (the "**Funding Rules**"). These terms and conditions are applicable for the provision of Apprenticeship Programmes in Scotland. For terms and condition for apprenticeship programmes in England and Wales please see <https://www.qa.com/legal-privacy/tcs/apprenticeships/>.

OPERATIVE PROVISIONS

1. DEFINITIONS AND INTERPRETATION

In these Terms:

1.1 the following words and expressions have the following meanings unless the context otherwise requires:

"Applicable Laws"	any: (a) statute, statutory instrument, bye-law, order, directive, treaty, decree or law (including any common law, judgment, demand, order or decision of any court, regulator or tribunal); (b) legally binding rule, policy, guidance or recommendation issued by any governmental, statutory or regulatory body; and/or (c) legally binding industry code of conduct or guideline which relates to these Terms and/or the Parties' obligations under them.
"Apprentice"	your employees who are on Apprenticeship Programmes under these Terms.
"Apprenticeship Completion Certificate"	means the completion certificate issued in accordance with the Funding Agency guidelines.
"Apprenticeship Framework"	means the government- approved document specifying the list of qualifications and other educational outcomes required to award the Apprenticeship Completion Certificate.
"Apprenticeship Programme"	is a generic term meaning a programme of on and off-the-job training and Assessments provided by QA for a given Apprentice consisting of a suite of units and qualifications leading to achieving an Apprenticeship Framework
"Assessments"	means any of tests, assessments, vendor certifications and examinations.
"Background IPR"	means all Intellectual Property Rights or other proprietary rights owned by QA, its subcontractors or any third party, the use of which is necessary for or incidental to the provision of the Services.
"Confidential Information"	means any and all materials and information of or relating to you or QA constituting or concerning products, services, contracts, business models, methods or practices, financial projections or results, know how, trade secrets, intellectual property or ideas which, at the time or times concerned, are not generally known to third persons and such other information as may be proprietary or confidential in nature or is identified by you or QA as confidential.
"Data Protection Legislation"	all Applicable Laws relating to data protection, the processing of personal data and privacy, including (but not limited to): (a) the Data Protection Act 2018; and (b) Regulation (EU) 2016/679 of the European Parliament and of the Council of 27th April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) as it forms part of the laws

	of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018.
"Equality Monitoring Form"	means the form issue by QA to you prior to commencement of the Apprenticeship Programme relating to Equality and Diversity.
"Contributions"	means amounts payable by you which are not funded by SDS
"Foreground IPR"	means all Intellectual Property Rights arising, or which subsist in materials created, in relation to the delivery of services under the Apprentice Programme Confirmation Contract.
"Funding Agency"	Skills Development Scotland (SDS)
"Initial Assessment"	means the Apprentice Initial Assessment document agreed by QA and you prior to commencement of the Apprenticeship Programme.
"Intellectual Property Rights"	means all patents, petty patents, utility models, trademarks, design rights, applications for any of the foregoing, copyright, moral rights, database rights, trade or business names, domain names, website addresses whether registerable or otherwise (including applications for and the right to apply for registration of any such rights), and any similar rights in any country whether currently existing or created in the future, in each case for their full term together with any renewals or extensions.
"Modern Apprenticeship Training Agreement"	means a contracted declaration signed by QA, you and the Apprentice which included terms relating to the correct use of personal data and your data being held and used by SDS.
"QA"	QA Limited is registered in England and Wales under company number 02413137 with its registered office at International House, 1 St Katharine's Way, London, E1W 1UN.
"Safeguarding Legislation"	means the Protection of Vulnerable Groups (Scotland) Act 2007, Safeguarding Vulnerable Groups Act 2006, the Children's Act 1989, Protection of Children Act 1999, the Education Act 2002 and all other legislation on the protection of children or vulnerable adults.
"Services"	means all services provided by QA to you and the Apprentice under these terms.
"Terms"	means these terms and conditions.
"VAT"	means UK value added tax, or any similar sales tax in any relevant jurisdiction.
"you" "your"	means the entity specified on the Initial Assessment

1.2 references to the background section, clauses and Schedules are to the background section and clauses of and schedules to these Terms and references to paragraphs are to paragraphs of the relevant Schedule;

1.3 the Schedules form part of these Terms and will have the same force and effect as if set out in the body of these Terms and any reference to these Terms and Conditions will include the Schedules;

1.4 all headings are for ease of reference only and will not affect the construction or interpretation of these Terms;

1.5 unless the context otherwise requires:

1.5.1 references to the singular include the plural and vice versa and references to any gender include every gender;

1.5.2 references to a "person" include any individual, body corporate, association, partnership, firm, trust, organisation, joint venture, government, local or municipal authority, governmental or supra-governmental agency or department, state or agency of state or any other entity (in each case whether or not having separate legal personality);

1.5.3 references to a "Party" means you and QA, each of whom being a "Party" and who may be collectively referred to as the "Parties";

1.6 references to any statute or statutory provision will include any subordinate legislation made under it and will be construed as references to such statute, statutory provision and/or subordinate legislation as modified, amended, extended, consolidated, re-enacted and/or replaced and in force from time to time;

1.7 any words following the words “include”, “includes”, “including”, “in particular” or any similar words or expressions will be construed without limitation and accordingly will not limit the meaning of the words preceding them;

1.8 the rule known as the ejusdem generis rule will not apply and accordingly the meaning of general words introduced by the word “other” or a similar word or expression will not be restricted by reason of the fact that they are preceded by words indicating a particular class of acts, matters or things;

1.9 references to these Terms are references to these Terms as varied from time to time in accordance with clause 17 and as novated from time to time;

1.10 an obligation on a Party to procure or ensure the performance or standing of another person will be construed as a primary obligation of that Party; and

1.11 any obligation on a Party not to do or omit to do anything includes an obligation not to allow (whether expressly or by a failure to take reasonable steps to prevent) that thing to be done or omitted to be done by any other person.

2. Composition of Agreement

2.1 A contract for the supply of Apprenticeship Programmes by QA to you on these Terms (the “**Contract**”) will be formed when the Initial Assessment is entered into by the Parties at which point and on which date the contract shall come into existence (“**Commencement Date**”).

2.2 These Terms apply to the Contract to the exclusion of any other terms that you seek to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.

2.3 The Contract shall incorporate:

2.3.1 a Modern Apprenticeship Training Agreement; and

2.3.2 the Equality Monitoring Form.

2.4 If there is any inconsistency between any of the documents referred to in 2.2 the Terms of the Initial Assessment shall prevail followed by these Terms and then followed by the documents listed in 2.3 in the order in which they are listed.

3. JOINT OBLIGATIONS OF THE PARTIES

3.1 The Parties will deliver their respective obligations to each other and to the Apprentice in accordance with all applicable Funding Rules.

3.2 The Parties will ensure that each Apprentice, you and QA each sign the Modern Apprenticeship Training Agreement.

3.3 The Parties will comply with their respective obligations under the Funding Rules.

3.4 The Parties will meet at mutually agreed times to discuss:

3.4.1 issues relating to Apprentices;

3.4.2 health, safety and security concerns; and

3.4.3 achievement and satisfaction levels.

3.5 The Parties will ensure that each of their staff whether with or without a contract of employment, including agency, volunteer or contract workers who will come into contact with the Apprentice, has any necessary qualifications and/or checks and is not barred from employment as in their role and is bound to maintain the confidentiality of the Confidential Information.

3.6 The Parties must each inform the other as soon as possible and in any event within 48 hours of any change of circumstance which may affect the amount of funding that can be claimed, the Apprentice's ability to successfully complete their Apprenticeship Programme or compliance with the Funding Rules.

3.7 The Parties will comply with their respective obligations under the Safeguarding Legislation.

3.8 You shall make every effort to assure and promote the safeguarding of Apprentices during their employment and to comply with QA's Safeguarding Policy Statement. A copy of the full policy can be downloaded from QA's website: <https://www.qa.com/media/13982/qa-safeguarding-policy-and-procedure-jan-2019.pdf>

4. QA'S OBLIGATIONS

4.1 In consideration for sufficient information being provided by you and Apprentice to enable QA to claim funding in accordance with the Funding Rules, QA shall provide the Services.

4.2 QA shall:

4.2.1 provide relevant training and course materials to the Apprentice in respect of the Apprenticeship Programme;

4.2.2 carry out its responsibilities in accordance with Applicable Laws;

4.2.3 maintain all consents, licences and approvals required in order to provide the Apprenticeship Programme and the Services.

5. YOUR OBLIGATIONS

5.1 You shall:

5.1.1 commit to employ each Apprentice for the duration of the Apprenticeship Programme;

5.1.2 enter into a Modern Apprenticeship Training Agreement with each Apprentice and facilitate the Apprentice to perform the Apprentice's obligations set out therein;

5.1.3 ensure Apprentices attend all additional courses relevant to the Apprenticeship Framework;

5.1.4 comply with all Applicable Laws in relation to the employment of the Apprentice including in relation to minimum wage requirements;

5.1.5 obtain the Apprentice's express written consent that data relating to them may be transferred to QA for the purposes of registration and in connection with the Apprenticeship Programme and such consent to include the right for QA to transfer data and information relating to the Apprentice to third parties as required to fulfil its obligations under the Contract;

5.1.6 provide sufficient opportunity for the Apprentice to attend planned off-the-job training and all other Services provided by QA;

5.1.7 attend and contribute to the Apprentice's progress reviews;

5.1.8 provide such information in relation to each Apprentice as QA may reasonably request;

5.1.9 be fully responsible for the health and safety of your premises including in relation to the Apprentice's role;

5.1.10 maintain such insurances as required by law and to cover potential liabilities under the Contract;

5.1.11 provide QA with as much notice as is reasonably practicable of the Apprentices intention to withdraw from the Apprenticeship Programme; and

5.1.12 not use QA, as a recruitment agency or service during the term of the Contract. Should you offer any Apprentice or candidate (introduced by QA) employment during the Term otherwise than as envisaged by the Contract then you will be liable to pay to QA liquidated damages of £1,500 (one thousand five hundred pounds). Both Parties acknowledge that this figure is a genuine pre-estimate of the losses incurred by QA on a time and effort basis and is not a penalty of any kind.

6. Intellectual Property Rights

6.1 Use of either Party's name or logo by the other Party is prohibited except with the prior written consent of the other Party.

6.2 Except where explicitly otherwise stated, nothing in the Contract shall act to transfer any intellectual property rights from one party to the other. As such QA and its licensors shall retain all right, title and interest in and to all Background IPR and you shall not acquire any rights to the Background IPR nor to any materials in which Background IPR subsists, including any documents, training guides, instruction manuals, drawings, diagrams, videos or any other materials provided by QA in connection with Services.

6.2 QA hereby grants to you a licence to use its Background IPR in those materials which QA provides to the Apprentice solely to the extent necessary for the Apprentice to receive the Services.

6.3 Except as permitted by law you nor the Apprentice shall copy, reproduce, sell, license, distribute, publish or otherwise circulate any Background IPR without QA's prior written consent.

6.4 All Foreground IPR shall vest in QA upon creation and you hereby assign with full title guarantee all Foreground IPR which relates to the Contract. Such assignment shall take effect as a present assignment of future rights.

6.5 QA hereby grants to you a worldwide, royalty-free, perpetual licence to use its Foreground IPR for the fulfilment of the Apprenticeship Programme only, and provided always that you shall not commercialise Foreground IPR and in particular shall not sell, license, distribute, publish or otherwise circulate Foreground IPR to any third party except with QA's prior written consent.

6.6 You shall promptly inform QA in writing of any infringement or alleged infringement of Background IPR or Foreground IPR of which it becomes aware, and of any allegation coming to your attention that the Services or the Background IPR or Foreground IPR infringe any third party's intellectual property rights.

6.7 Subject to the exclusions and limitations on liability under Clause 9, QA shall indemnify you from and against all losses or expenses (including reasonable legal expenses) suffered or incurred by you as a result of a claim that Background IPR or Foreground IPR created by QA or the provision of the Services infringes any third party's Intellectual Property Rights.

6.8 Where you require Services to be provided by QA to your specifications or require QA to incorporate your materials within the Services, you shall fully indemnify QA from and against all losses or expenses (including reasonable legal expenses) suffered or incurred by QA as a result of a claim that use of your materials infringes any third party's Intellectual Property Rights.

7. Contributions

7.1 The Apprenticeship Programme shall be funded in accordance with the Funding Rules.

7.2 Details of any Contributions will be agreed in writing between the parties.

7.3 QA will meet the cost of the first exam attempt and one resit of each exam per Apprentice (where applicable). The cost of any additional resits must be met by you and paid prior to the Apprentice sitting the exam.

7.4 All Contributions are exclusive of VAT unless otherwise stated you will pay QA where applicable any VAT properly chargeable on the Services, provided QA has delivered a correct VAT invoice as required by statute.

7.5 Except where otherwise specified in the Contract, the Contributions shall be due and payable by you within thirty (30) days of the date of QA's invoice.

7.6 You shall not be entitled to exercise any set-off, lien or any similar claim in relation to amounts due to QA.

7.7 Without prejudice to any other rights, QA shall be entitled to charge interest on overdue payments at the statutory rate, such interest to run from the relevant invoice date until receipt of all outstanding payments in full in cleared funds.

7.8 You shall provide QA with such information and assistance required in order to claim amounts due under the Funding Rules.

8. Term and termination

8.1 Either party may, at its sole discretion, terminate or suspend the Contract if the other Party:

8.1.1 ceases to do business or otherwise suspends business operations;

8.1.2 becomes insolvent or seeks protection under any bankruptcy, receivership, trust deed, creditors arrangement, composition or comparable proceeding; or

fails to make timely payments as required under the Contract.

8.2 Either party may, in its sole discretion, immediately terminate or suspend the Contract if that other Party commits a material breach of the Contract and (where remediable) fails to remedy the breach within 30 days.

8.3 QA reserves the right to terminate the Contract immediately upon notice to you if amounts due to QA are not recoverable by QA under the Funding Rules. Notwithstanding this right to terminate, QA may at its sole discretion agree with you alternative funding arrangements in order to continue the Apprenticeship Programme.

8.4 Where a Contract is terminated QA shall not be required to issue any formal certification of achievement.

8.5 The Contract shall terminate immediately on termination by you or the Apprentice of the employment contract between you and the Apprentice.

8.6 QA reserves the right, at its discretion, to change course schedules, change course content, discontinue courses, limit class size and cancel training courses or events, in which case it shall use reasonable endeavours to notify you at the earliest possible opportunity and ensure that it does not negatively affect the Apprentice's ability to complete their Apprenticeship Programme. In the event of cancellation of an element of the Apprenticeship Programme, QA will use reasonable endeavours to reschedule the course at the first available opportunity, where possible.

8.7 The clauses in these Terms which expressly or impliedly have effect after termination will continue to be enforceable notwithstanding termination.

8.8 Upon termination of the Contract, the Parties will continue to work together in good faith to conclude any outstanding administrative, audit or other Apprentice requirements that may exist.

9. Liability

9.1 Neither Party excludes or limits its liability (if any) to the other:

9.1.1 for personal injury or death resulting from its negligence;

9.1.2 for fraud or fraudulent misrepresentation; and

9.1.3 any matter for which it is not permitted by law to exclude or limit its liability.

9.2 Subject to clause 9.1, the aggregate liability of QA to you under or in connection with the Contract whether in contract, tort (including negligence), breach of statutory duty, restitution or otherwise will be the lower of £500,000 or the total Fees paid by you under the Contract in the previous 12 months.

9.4 The exclusions from and limitations of liability contained in these Terms will apply after as well as before the date of expiry or termination of the Contract.

9.5 The exclusions from, and limitations of, liability set out in this clause 9 will be considered severally. The invalidity or unenforceability of any one sub-clause or clause will not affect the validity or enforceability of any other sub-clause or clause and will be considered severable from each other.

9.6 Subject to 9.1, neither Party will be liable to the other for indirect or consequential losses including any loss of profits, loss of business, loss of revenue, loss of goodwill, actual or potential business, reputation or opportunity, or loss of savings (whether anticipated) or otherwise).

10. FORCE MAJEURE EVENTS

10.1 Neither Party will be in breach of the Contract or otherwise liable to the other Party for any failure to perform or delay in performing its obligations under the Contract to the extent that such failure or delay is due to a Force Majeure Event.

10.2 If a Force Majeure Event occurs:

10.2.1 the Party affected will as soon as reasonably practicable of becoming aware of the Force Majeure Event give written notice to the other Party that the Force Majeure Event has occurred, giving details of the nature, extent and anticipated duration of the Force Majeure Event and the expected impact of the Force Majeure Event on its ability to perform its obligations; and

10.2.2 the Party affected will use reasonable endeavours, without being required to incur additional expenditure, to mitigate the effects of the Force Majeure Event.

11. CONFIDENTIALITY

11.1 Each Party will, subject to clause 11.2:

11.1.1 only use the other Party's Confidential Information for the purpose of performing its obligations under the Contract;

11.1.2 keep the other Party's Confidential Information secret, safe and secure; and

11.1.3 not disclose the other Party's Confidential Information to any other person.

11.2 Each Party may disclose the other Party's Confidential Information:

11.2.1 to the extent required by Applicable Laws; and

11.2.2 to those of its officers, directors, employees and professional advisers who need access to that Confidential Information so that it can perform its obligations under the Contract. A Party disclosing the other Party's Confidential Information under this clause 11.2.2 will procure that each person to whom it discloses that Confidential Information will not do or omit to do anything which if done or omitted to be done by that party would be a breach of this clause 11.

11.3 For the purposes of this clause 11, "Confidential Information" excludes information that:

11.3.1 is at the relevant time in the public domain (other than by virtue of a breach of this clause 11);

11.3.2 was received by the other Party from a third party who did not acquire it in confidence; or

11.3.3 is developed by the other Party without any breach of these Terms.

12. DATA PROTECTION

12.1 For the purposes of this clause 12:

12.1.1 "Data Subject", "Controller", "Processor" and "Processing" have the same meaning as in the Data Protection Legislation;

12.1.2 "Personal Data" has the meaning set out in the Data Protection Legislation in relation to data Processed under these Terms and Conditions; and

12.1.3 "Regulator" means any independent public authority responsible for monitoring the application of the Data Protection Legislation in the UK or any other member state of the European Union.

12.2 The Parties hereby acknowledge and agree that they will share Personal Data under these Terms and as such will each ensure that, prior to providing any Personal Data to the other Party, they have all appropriate legal bases (whether consent or otherwise) necessary to enable lawful transfer of Personal Data to the other Party. Once such Personal Data has been provided to the other Party, the Parties hereby acknowledge and agree that they will act as separate Data Controllers when Processing such Personal Data and:

12.2.1 you will be a Data Controller where you are Processing Personal Data for the purpose of your relationship with each Apprentice as his or her employer;

12.2.2 QA will be a Data Controller where it is Processing Personal Data for the purpose of its role as the provider of the Apprenticeship Programme to each Apprentice and delivering education and training to Apprentices;

12.2.3 the Parties do not anticipate that either will act as a Data Processor on behalf of the other Party and neither Party is authorised or instructed to act as a Data Processor on behalf of the other Party; and

12.2.4 the Parties will not act as joint Data Controllers in common.

12.3 Each Party will ensure that it complies with its respective obligations under Data Protection Legislation.

12.4 In the event that either Party:

12.4.1 receives a Data Subject Request; or

12.4.2 receives a request for information from a Regulator in relation to the Processing of Personal Data;

it will notify the other Party and if required, the other Party will provide all reasonable co-operation and assistance required by the notifying Party (at the notifying Party's expense) in relation to any such Data Subject Request or request for information from a Regulator.

12.5 If either Party becomes aware of a Personal Data breach it will notify the other Party promptly, providing details of the breach.

12.6 Each Party will indemnify and keep indemnified (the "Indemnifying Party") the other Party (the "Indemnified Party") against all costs, claims, damages, expenses, fines and/or penalties incurred by or imposed on the Indemnified Party due to any failure by the Indemnifying Party to comply with its obligations under Data Protection Legislation. The liability of each Party under this clause 12.6 shall be limited and capped to the lesser of (i) the sum of £5,000,000 (five million pounds) or (ii) 200% of the Fees payable in the contract year in which the indemnification obligation occurs. The contract year means the 12 month period commencing on the Commencement Date or any anniversary of it.

13. Anti-Bribery and Modern Slavery

13.1 Each Party undertakes to the other Party that it:

13.1.1 will fully comply with, and will procure that all of its personnel and sub-contractors fully comply with the Bribery Act 2010 (the "Anti-Bribery Requirements");

13.1.2 will not do, or omit to do, any act that will cause the other Party to be in breach of the Anti-Bribery Requirements;

13.1.3 has in place, and shall maintain in place throughout the term of this Agreement, policies and procedures to ensure compliance with the Anti-Bribery Requirements and will enforce them where appropriate. At the other Party's request, it will disclose such policies and procedures to the other Party; and

13.1.4 will make it clear to those providing services to that Party, including its staff and sub-contractors, that it does not accept or condone the payment of bribes on its behalf.

13.2 Each Party shall:

13.2.1 comply with the Modern Slavery Act 2015 and all applicable anti-slavery and human trafficking laws, statutes, regulations and codes of practice in force from time to time; and

13.2.2 develop and maintain policies and procedures aimed at ensuring that slavery and human trafficking is not taking place in any of its supply chains and in any part of its own business.

13.3 In the event that either party becomes aware that slavery or human trafficking is taking place in any of its supply chains or in any part of its own business it shall:

13.3.1 notify the party as soon as reasonably practicable; and

13.3.2 take all reasonable steps necessary to ensure that any slavery or human trafficking found to be taking place in any of its supply chains or in any part of its own business ceases and that the interests of the victims of such slavery or human trafficking are appropriately respected and protected.

13.4 Each Party shall indemnify, keep indemnified and hold harmless the other Party, its affiliates and each of its officers, directors, employees and agents, from and against all loss, cost, harm, expense (including reasonable legal fees), liabilities or damage suffered or incurred by the the other Party as a result of its, or any of its staff or sub-contractor's breach of this clause 13.

14. Escalations, Notices and Contact Details

14.1 In the event of a concern, complaint or an issue with the delivery of the Services you should initially send an email to QAcomplaints@qa.com at which point the complaint or issue will be allocated a case number and assigned to a suitable member of QA's team. Should further escalation be required, you should contact the Skills Development Scotland via an email to complaints@sds.co.uk

14.2 Notices must be given in writing. A notice shall be deemed effectively served:

14.2.1 if sent by email, on the date when receipt has been personally acknowledged by return email (electronically generated receipts shall not be valid);

14.2.2 if delivered personally, on the date when left at the registered office of the party the notice is intended for; or

14.2.3 if sent by recorded delivery post, on the date when the notice has been signed for at the at the registered office of the party the notice is intended for.

14.3 For QA, notices shall be sent to: Legal Counsel, International House, 1 St Katharine's Way, London, E1W 1UN.

For you, notices shall be sent to the attention of the person and address/email identified in the relevant Initial Assessment.

15. Governing Law and Dispute Resolution

15.1 The Contract shall be governed by and construed in accordance with the law of Scotland. The parties hereby submit to the exclusive jurisdiction of the courts of Scotland in relation to all matters arising thereunder.

16. Miscellaneous Provisions

16.1 The parties are independent contractors. Nothing in this Agreement shall give rise to a partnership, joint venture, agency or any such other relationship between the parties. Neither party shall claim to be a legal representative, partner, agent, franchisee or employee of the other party.

16.2 QA may assign or sub-contract its obligations or rights under the Contract to a competent third party in whole or in part, subject to your prior written consent. You may not assign the Contract in whole or in part except with QA's prior written consent.

16.3 The failure or neglect of a party to enforce any provision of the Contract shall not be construed as a waiver of that party's rights, nor in any way affect the validity of the whole or any part of the Contract.

16.4 If any provision of the Contract shall be adjudged by any court of competent jurisdiction to be unenforceable or invalid, that provision shall be deleted to the minimum extent necessary so that the affected Contract otherwise remains in full force and effect.

16.5 The Contract is not intended to be for benefit of and shall not be enforceable by any person other than a party, in particular under the Contracts (Rights of Third Parties) Act 1999.

16.6 During the Term, and for a period of one (1) year following its termination or expiry, you shall not directly or indirectly employ or solicit for employment any members of QA's then current personnel. If you breach this Clause 16.6, in addition to any other remedies available whether under an agreement or at law, QA shall be entitled to recover from you liquidated damages of 35% of gross annual salary of the member of the QAs personnel employed or solicited for employment (as at the date their employment with QA ended). The parties agree that such amount is a genuine pre-estimate of QA's loss and not a penalty. This Clause 16.6 shall not restrict you from employing any members of QA's personnel who apply unsolicited in response to a general advertising or other general recruitment campaign.

16.7 The Contract constitutes the entire agreement between the Parties and supersedes any prior agreement or arrangement in respect of its subject matter and:

16.7.1 neither Party has entered into the Contract in reliance upon, and it will have no remedy in respect of, any misrepresentation, representation or statement (whether made by the other Party or any other person and whether made to the first Party or any other person) which is not expressly set out in the Contract;

16.7.2 the only remedies available for any misrepresentation or breach of any representation or statement which was made prior to entry into the Contract and which is expressly set out in the Contract will be for breach of contract; and

16.7.3 nothing in this clause 16.7 will be interpreted or construed as limiting or excluding any liability for fraud or fraudulent misrepresentation.

17. VARIATION

17.1 Save as otherwise expressly provided in these Terms, no variation to these Terms will be effective unless it is in writing and signed by a duly authorised representative on behalf of each of the Parties.

17.2 QA reserves the right to modify these Terms without prior notice to the extent that such changes are required due to changes in Applicable Laws that would apply to the Services. For the avoidance of doubt, you acknowledge and agree that if there is an update or change in Applicable Laws, then such changes are deemed to be automatically applicable to the Contract and You are obligated to comply with such changes.