

Terms of appointment

Examiners/Team Leaders/Assistant Principal Examiners

1. Definitions and interpretation

1.1. The following definitions apply:

The Contractor Means the person identified as the addressee in the *offer of appointment*.

The exam services Means the tasks and deliverables set out in the *duties and responsibilities* document provided.

The commissioning documentation Means the invitation to complete the work, list of delivery dates, instructions for completing the work and all supporting information and guidance documents. For the avoidance of doubt, these documents do not form part of this contract.

The Privacy Statement Means the privacy statement from time to time in force and available at www.aqa.org.uk/about-us/privacy-statement.

1.2. The Contractor is not the employee or agent of AQA and has no authority to represent and must not claim to represent or enter into any commitments on behalf of AQA in any respect.

1.3. Nothing in this Contract is intended to make nor shall it make AQA the employer of the Contractor. The Contractor is classified as self-employed and the Contractor must not claim that they are an employee, director or officer of AQA.

1.4. A reference to a "third party" is a reference to a person who is not a party to this contract.

1.5. Clause headings are for ease of reference only and are not intended to be part of or to affect the meaning, interpretation or construction of any of the terms of this Agreement.

2. Contractor Obligations and Assurances

2.1. The Contractor agrees to make him/herself available to carry out the Exam services at the required times.

2.2. The contractor agrees that for the duration of the contract they will be resident in and undertake the Exam services from a location within the UK.

2.3. The Contractor may not engage a third party to complete the tasks required to fulfil their obligations to AQA.

2.4. The Contractor confirms that they have sufficient time and, where necessary, their employer's consent, to perform the Exam services. By signing this Contract the Contractor is deemed to have confirmed that they will be able to obtain leave of absence from their main or other employment when AQA meetings or other duties occur at a time when they would otherwise expect to be fulfilling the responsibilities of their main or other employment.

2.5. Your attention is drawn to the rules and requirements of the commissioning documents. The Contractor agrees that all work will be completed in accordance with these and key meetings (as notified by AQA) will be attended in accordance with the dates set by AQA. The Contractor acknowledges the importance of completing their tasks to agreed deadlines and quality standards.

2.6. The Contractor confirms their contract to being involved in on-line/on-screen developments and to work in electronic formats in providing exam services. The Contractor will ensure that they have the IT skills and equipment necessary to support on-line/on-screen processes for the duration of their engagement. As a minimum such equipment must include a private PC or laptop with a primary current Microsoft supported Windows operating system, a broadband internet connection and a printer. The possession of IT hardware and software to the necessary standard is a pre-condition of appointment. The contractor warrants that work undertaken in an electronic format will not be performed in a public place and/or connected to a public network. The contractor is required to ensure that the use of any network does not contravene any local educational establishment policies..

2.7. The Contractor agrees to accept the use of cookies when using the RM Scoris Assessor software

for providing exam services. Cookies are used as part of the authentication mechanism when the Contractor logs on to the system and expire when the Contractor leaves the site. Cookies also remember user personal preferences so the Contractor does not need to re-select these every time they log on to the system. These cookies remain on the system to provide support throughout the marking period. Cookies are not used to gather personal information or monitor the Contractor's performance. This information is provided to you as required by The Privacy & Electronic Communications (EC Directive) (Amendment) Regulations 2011.

2.8. The Contractor agrees that AQA may contact their employer or other third parties to assist in contacting the Contractor regarding the return of overdue documentation including but not limited to scripts and may also respond to any request for references from other awarding organisations.

2.9. The Contractor agrees to take all reasonable and possible steps to ensure that they alert AQA immediately to any event which has occurred or is likely to occur which could have an adverse effect on AQA. In such circumstance, the Contractor must comply with the reasonable instructions of AQA to prohibit or mitigate any adverse effect that could bring AQA or its examinations and services into disrepute.

2.10. The Contractor agrees to adhere to the Joint Council for Qualifications' (JCQ) policy for Suspected Malpractice in Examinations and Assessments. AQA will notify the Contractor of what must be done in relation to the policy should the need arise.

2.11. The Contractor must provide any information and assistance to AQA that it seeks for the purpose of performing its functions. For the avoidance of doubt, this includes information and assistance requested by AQA following a request from Ofqual and/or the Co-Regulators for Wales and Northern Ireland.

2.12. The Contractor will hold a current driving licence and have valid vehicle insurance covering business use insurance if and when driving on AQA business.

2.13. As a regulated Awarding Organisation, AQA must comply with all regulations in force, including the General Conditions of Recognition and the relevant Codes of Practice governing the delivery of specific qualifications. If any changes arise to these Conditions and/or to any regulatory documents which impact upon this Contract, then AQA reserves the right to alter these terms to ensure its continued compliance.

2.14. The Contractor agrees to provide AQA personal details, including an individual personal email address, deemed relevant by AQA and to inform the organisation of any changes immediately in the format defined by AQA.

3. Confidentiality

3.1 The Contractor shall at any time while this contract remain in force and after it has terminated or expired:

3.1.1 not disclose confidential information to any third party;

3.1.2 keep confidential all information;

3.1.3 only use any information for the proper exercise of their rights and the performance of their obligations under this Contract.

3.2 This clause shall not apply to information which:

3.2.1 was already lawfully known, or became lawfully known to either of the parties by means other than in relation to this Contract;

3.2.2 becomes or which became generally known to the public by publication or other lawful means otherwise than due to a breach of this Contract;

3.2.3 is required to be disclosed by law, order or by the lawful intervention of a regulatory body.

3.3 The Contractor shall use the same standard of care in storing and handling confidential AQA information as they would their own private personal information.

3.4 The Contractor or their nominees shall neither publicise nor make any public announcement, press release or other statement in respect of this Contract or AQA business without the prior written consent of AQA.

3.5 Proceedings at all meetings attended by the Contractor, or participated in online, in connection with the Exam services must be regarded as strictly confidential. The Contractor is required to maintain the confidentiality of the question papers and mark schemes at all stages before the examination and must respect and maintain confidentiality of the examinations, both prior to their taking place, and in respect of the work and performance of candidates. Pre-publication versions of question papers and mark schemes remain confidential to AQA after the examination has taken place and must not be published or disseminated outside of AQA without the prior written consent of AQA.

3.6 The Contractor must maintain any documents, including question papers and mark schemes, records, computer files and other means of recording information, which contain confidential material, in a secure place at all times. The Contractor must not undertake any part of the Exam services or display or discuss material in a public place, such as on any form of public transport. For the avoidance of doubt, any breach of this clause will constitute a fundamental breach of contract entitling AQA to terminate the contract with immediate effect.

3.7 The Contractor must immediately return to AQA or destroy any documents electronic files or other material containing confidential information when requested to do so by AQA. On termination of this contract for whatever reason, the Contractor must inform AQA in writing that any such materials have been returned, destroyed or deleted in line with the instructions received.

3.8 The Contractor must not communicate directly with centres or with candidates except as instructed, in writing, by AQA. Any communication received from a centre or candidate which is not part of the examination must be forwarded to AQA. Such communications must not be allowed to influence assessment of work.

4. Intellectual Property Rights

4.1. All intellectual property rights in all material (including but not limited to reports, data, question papers, mark schemes, written advice whether or not electronically stored) produced by the Contractor in relation to the performance of the Exam services ("the Material") shall be the property of AQA. The Contractor hereby consents to the assignment (where appropriate by way of assignment of future rights) of all intellectual property rights including (without limitation) copyright in any question papers, mark schemes, reports, written advice or any other material produced by the Contractor for the purposes of this contract.

5. Anti-Bribery and Corruption

5.1. The Contractor confirms that they have not given, offered or agreed to give or accepted any gift of any kind as an inducement or reward for doing or refraining from doing or for having done or having refrained from doing any act in relation to the completion of this contract.

6. Conflict of Interest

6.1. The Contractor shall not engage, during the term of this contract, in any personal, business or professional activity which conflicts or could conflict with any of their obligations in relation to this Contract.

6.2. The Contractor shall notify AQA immediately in writing of any actual or potential conflict together with recommendations as to how the conflict can be avoided.

6.3. The Contractor shall immediately notify AQA in writing if they have a personal interest in a candidate and/or a professional interest in a centre for an examination at least one year before the relevant examination, or as soon as it is known if this is less than one year before the examination.

6.4. In signing this contract, the Contractor confirms that they have informed AQA of any other current commitments the Contractor has to other awarding organisations and that they will not, during the period of this contract, take up additional work with another awarding organisation without prior written permission from AQA.

6.5. The Contractor must not:

6.5.1. make public statements which could have a negative impact on the reputation of AQA or its Exam services;

6.5.2. make use of their association with AQA for commercial purposes, including (without limitation) by identifying themselves as an AQA examiner in text or on the internet or in advertising tutorial services or involvement in courses organised outside of AQA;

6.5.3. appear to represent AQA in public contexts, except where expressly directed to do so by AQA;

6.5.4. allude to the Exam services provided by the Contractor to AQA in any interview with or comment made to the press or other media;

6.5.5. discuss the Exam services on online social media and networking sites;

6.5.6. compromise the integrity or security in part or in full of any of the work undertaken for AQA including (without limitation) in any text books, learning materials or conferences to which the Contractor contributes or in which they participate.

7. Indemnity

7.1. From 6 April 2014 the Contractor shall either provide a P45 or complete a contractor starter check sheet at the commencement of the contract. Using the information provided AQA will deduct income tax at the relevant rate from all payments of fees. However, the collection of this information and the deduction of Income Tax does not mean that the Contractor is an employee of AQA. The Contractor is self-employed, will need to complete a self-assessment tax return and is responsible for the payment of any remaining applicable tax and NI. The Contractor shall indemnify and keep indemnified AQA (including AQA officers, directors, employees and agents) against all liabilities, losses, costs, damages or expense (including, without limitation, any taxes, National Insurance Contributions liability, penalties or interest levied against AQA and any reasonable legal expenses and costs incurred by AQA) which AQA may suffer or incur as a result of AQA failing to deduct, not pay or withhold the correct amount

of any taxes, National Insurance Contributions, duties, fees or other similar charges from any payments to the Contractor under this Agreement, whether by reason of the Contractor being held to be an employee of AQA or otherwise.

8. Fees

8.1. AQA shall be entitled to deduct from the fees (and any other sums) due to the Contractor any sums including overpayments of fees or expenses which the Contractor may owe to AQA at any time. No fees will be payable to the Contractor during any period when the exam services are not provided.

8.2. In the event of duplicate claims being submitted by the Contractor resulting in an overpayment the Contractor agrees to repay the sum within 30 days of receiving a request for repayment from AQA.

8.3. AQA shall be entitled to withhold payment of fees in the event that the Contractor fails to comply with their requirements as set out within this Agreement and associated documents.

8.4. Reimbursement of travel and subsistence expenses where authorised by AQA will be made at current AQA rates and in accordance with current AQA practice.

8.5. Meeting attendance fees and contracted expenses will only be payable for attendance at meetings where such attendance has been specifically required by AQA and no notice that attendance is no longer required has been given by AQA.

8.6. Payment to employers for teacher release will apply to the examinations for which AQA is responsible and will be made in accordance with the *Memorandum for Contract for the Release of Teachers*.

8.7. AQA reserves the right to make adjustments to the level of fees payable, during the period of the contract without the express agreement of the Contractor.

9. Payment

9.1. Subject to compliance with this clause 9, the Contractor shall be paid in return for the provision of the Exam services.

9.2. Script and meeting fees are usually paid automatically and do not need to be claimed. Any claim forms for other Exam services must be sent to Examiner Payments, AQA Education, Devas Street, Manchester M15 6EX or e-mailed to claimsman@aqa.org.uk, quoting the component code for the work claimed. All payments are made by bank transfer (BACS). Bank details for a UK bank account and personal information details including National Insurance numbers must be provided for payment to be

made. All valid claim forms shall be paid within 30 days of their receipt, subject to the provision of the necessary personal information and AQA approval.

9.3. Any claim not presented in accordance with this clause 9 may be rejected and in any event shall be liable to query and delay in payment. AQA reserves the right not to pay any amount due in respect of a claim received by AQA more than 90 days after the day of the Contractor becoming entitled to claim for the payment to which it relates.

10. Pensions

10.1 From the commencement date of this contract, where appropriate AQA will comply with its obligations under the pensions auto enrolment regulations.

10.2 As required under these regulations AQA will make the appropriate deductions from fees which will be paid over as pension contributions to the pension scheme. Further details of the pension scheme are available from autoenrolment@aqa.org.uk.

10.3 A contracting out certificate under the terms of the Pensions Schemes Act 1993 is not in force in respect of this contract.

11. Force Majeure

11.1. Where the performance by the Contractor of their obligations under this Contract is delayed, hindered or prevented by an event or events beyond the reasonable control of the Contractor (including, without limitation, accident or illness) and against which an experienced Contractor could not reasonably have been expected to take precautions, the Contractor shall promptly notify AQA, in writing, specifying the nature of the force majeure event and stating the anticipated delay in the performance of this Contract. AQA reserves the right to terminate this contract under these circumstances.

12. Termination

12.1. Either party may immediately end this Contract if the other party commits any material breach of any term of this Contract, and which, in the case of a breach capable of remedy, has not been remedied within 30 days of receipt of a written request to do so.

12.2. AQA reserves the right to terminate this Contract with immediate effect and without any liability to the Contractor if:

12.2.1. the Contractor has breached confidentiality;

- 12.2.2. the Contractor's performance of duty, of which AQA will be the sole arbiter, is considered unsatisfactory;
- 12.2.3. the Contractor has acted in any way which has brought or could bring AQA into disrepute;
- 12.2.4. the Contractor is in breach of any of their obligations;
- 12.2.5. the Contractor is convicted of a criminal offence or is the subject of any investigation which may affect their position as a Contractor.

12.3. The expiration or termination of this contract, howsoever arising, shall:

12.3.1. Be without prejudice to any claims that either party may have for damages arising from any antecedent breach by the other party; and

12.3.2. Not operate to affect such provisions of this contract which are expressed to operate or have effect thereafter.

12.4 This Agreement shall automatically terminate at the end of the Term of Agreement.

13. Termination without Default

13.1. The Contractor may terminate this Contract at any time by giving a minimum of 30 working days' notice to AQA and giving the reason(s) for such termination.

13.2. AQA may terminate this Contract on reasonable written notice (including, but not limited to if a legal or regulatory authority directs, instructs or gives guidance that AQA should terminate all or part of this Contract and/or continuation of this Contract would cause AQA to be in breach of any laws or regulatory requirements or guidance to which it is subject).

14. Actions on Termination

14.1. Whether termination has occurred in accordance with clause 12 or 13,

14.1.1. upon request by AQA, the Contractor shall

14.1.2. fully co-operate with and assist AQA in order to ensure that such termination and its consequences cause the minimum disruption to AQA business and affairs

and the performance of its responsibilities. The Contractor shall take all reasonable steps to mitigate any costs which AQA may incur as a result of termination of this Contract;

14.1.3 return all AQA property in their possession;

14.1.4 return all AQA information in their possession together with all copies. The Contractor acknowledges that AQA may take whatever steps it deems necessary to recover the scripts and/or drafts of question papers to enable them to be processed by the appropriate deadlines;

14.1.5 destroy all Information in their possession, custody or control, not required to be returned to AQA, by shredding or incinerating the same and/or irretrievably deleting the same if stored on electronic or magnetic media, and confirm that this has been done.

14.2 Where this Contract has been terminated according to clause 12, the Contractor shall:

14.2.1 take the necessary steps to ensure the conclusion of this Contract proceeds in a cost-effective, timely and orderly manner;

14.2.2 if necessary, provide to AQA, not more than 60 days after AQA notifies the Contractor of the termination of this Contract a statement in writing, requesting :

14.2.3 any fees or expenses, if any, due before the date of termination;

14.2.4 any expenses incurred after the date of termination which in the proper performance of this Contract the Contractor cannot reasonably be expected to avoid or recover.

14.2.5 Subject to AQA approval, AQA shall pay such fees and expenses to the Contractor within 30 days of receipt of the appropriate claim form from the Contractor of the amount due.

15 Variations

This Contract may not be altered or modified, except by written contract of both parties. No addition to or modification of any provision of this Contract shall be binding upon the parties unless made in writing and signed by the Duly Authorised Representative of each of the parties.

16 Retention of Rights

Clauses 3 Confidentiality, 6 Conflict of Interest, 7 Indemnity and 19 Governing Law shall continue in force following the termination of this Contract.

17 Waiver

The failure of either party to exercise or enforce any right or remedy available to that party shall not be construed as a waiver of that party's right or remedy under this Contract.

18 Notices

All notices which are required to be given under this Contract shall be in writing and shall be delivered personally, or sent by first class post or facsimile transmission or by e-mail to the party concerned at its last known address, marked for the attention of the Duly Authorised Representative of each of the parties. Notices delivered personally shall be deemed to have been served when delivered, and notice sent by first class post, facsimile or e-mail, shall be deemed to have been served on the business day following the date of despatch.

19 Governing law

This Contract shall be governed by and construed in accordance with English law and the parties submit to the exclusive jurisdiction of the English courts.

20 Legal status

Nothing in this Contract shall be deemed to constitute a partnership or any employment relationship between

the parties nor shall anything in this Contract be deemed to constitute one party the agent of the other for any purpose.

21 Severability

If any provision of this Contract may prove to be invalid or unenforceable in any way, the other provisions of this Contract and the remainder of the provision in question shall remain in full force and effect.

22 Third party rights

This Contract does not create or confer any rights or benefits enforceable by any person not a party to it (within the meaning of the Contracts (Rights of Third Parties) Act 1999).

23 Data Protection

The parties confirm that they will only use any information provided in accordance with AQA's privacy statement and they will only keep the information as long as is necessary. AQA abides by the eight Data Protection Act principles and it requires all those who supply or use data to abide by those principles. AQA acknowledges that Contractors have rights under the Data Protection Act 1998 to gain access to all of the confidential personal data that AQA holds about them. If the Contractor wishes to gain access to this data they should contact the Department within AQA with whom they have dealings. However, if the Contractor is uncertain about the identify of their contact or the relevant Department, they should address their enquiry to Dr A Bird, Chief Operating Officer, AQA Education, Devas Street, Manchester M15 6EX. AQA is required to provide the Contractor with this information within 40 days of the receipt of their enquiry plus a £10 fee for the provision of this service.