

# Standard Terms for the Licensing of Access Validating Agencies

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## Introduction

1. The Quality Assurance Agency for Higher Education ('QAA') is the regulator of the Access to Higher Education (HE) Diploma ('the Diploma') and is responsible in its charitable objects to provide advice to governments on Diploma recognition. QAA also registers and holds the Access to HE logo trademark and Access to HE word trademark (together the 'Access to HE Trademarks'), which are the trademarks associated with the Diploma.
2. In maintaining the means through which the Diploma is recognised by governments for funding, QAA operates the QAA Recognition Scheme for Access to HE ('the Recognition Scheme'). The Recognition Scheme refers to QAA's arrangements for exercising its responsibilities in respect of the Diploma, and includes a framework of requirements set out in documentation through which QAA permits Access to HE Diploma courses to be developed, validated and approved, and Diplomas awarded, by Access Validating Agencies ('AVAs') under licence (the 'Licence').
3. QAA will award and permit AVAs to maintain their Licence for these purposes on the basis that they agree to adhere to QAA's requirements in relation to the Diploma as set out in the following documents which make up the Recognition Scheme:
  - 3.1. **These Standard Terms for the Licensing of Access Validating Agencies** ('Terms') which set out the terms that an AVA must agree to in order to become an AVA and maintain its Licence; and
  - 3.2. **The Access to HE Conditions** ('Conditions') which are the obligations an AVA must comply with (or demonstrate its ability to comply with) to become an AVA and to continue to comply with to maintain its Licence.
4. The Conditions contain reference to requirements, expectations and arrangements which are set out in further regulatory documentation (the 'Regulatory Documents'), and in meeting the requirements of the Conditions it is expected that the AVA will adhere to the requirements and guidance set out in these further documents. The Regulatory Documents include:
  - 4.1. **The licensing arrangements:** This refers to the arrangements QAA has in place for the award, withdrawal and surrender of Licences, as set out in *The Access to HE Licensing Arrangements*.
  - 4.2. **The monitoring arrangements:** These are the arrangements QAA operates to monitor and make judgements about whether an AVA is meeting the requirements of the Recognition Scheme, as set out in *The Access to HE Monitoring Arrangements*. This also includes information on the approaches QAA may take where it has concerns about an AVA's compliance with its requirements.
  - 4.3. **The qualification requirements:** These requirements are set out in *The Access to HE Diploma Specification*, *The Access to HE Grading Scheme* and the Subject Descriptors. *The Access to HE Diploma Specification* and *The Access to HE Grading Scheme* set out QAA's requirements for the design, delivery, assessment and award of Diplomas. The Subject Descriptors set out requirements for the content of particular subject areas. Together, these qualification requirements ensure consistency across the qualification, and across AVAs.

- 4.4. **Guidance documents:** QAA will, from time to time, produce guidance documents that provide further explanation and detail as to how specific elements of the Recognition Scheme will operate or be implemented by QAA. For example, to provide explanation of what behaviours QAA may consider compliant or non-compliant with its Terms or Conditions of the Licence.

## Standard Terms of the Licence

5. AVAs must agree to these Terms and demonstrate their continued compliance with the requirements set out in the Conditions and associated Regulatory Documents, in order to be awarded and maintain a Licence.
6. Failure by an AVA to comply with these Terms and/or the Conditions or any other aspect of the Recognition Scheme may result in an investigation by QAA.
7. QAA may undertake an investigation into the AVA or any of its Providers if so required, at any time on reasonable notice, for any legitimate reason. Such reasons include but are not limited to circumstances where there is evidence that any of these Terms, or any of the criteria or documents referred to within these Terms, are not being complied with. Such investigations can take place at the premises of an AVA or a Provider and can lead to procedures being instigated for the withdrawal of the Licence in the case of the AVA, or other activity as set out in *The Access to HE Monitoring Arrangements*. For the purposes of these Terms, the term 'Provider' refers to an organisation that has entered into a contract with an AVA to deliver Access to HE courses validated by that AVA (whether or not those courses are delivered in practice).
8. Charges will be imposed for any investigation or activity undertaken outside general AVA monitoring process as set out in further detail in *The Access to HE Monitoring Arrangements*.
9. Save where expressed otherwise, in the event of a conflict between these Terms and any document referred to within these Terms, these Terms shall prevail.

## Identity, constitution and governance arrangements

10. An AVA must be a company registered in England or Wales or have a constitutional basis that is clear and readily identifiable, and have formal documentation that specifies its legal identity, function(s), aim(s) and principal governance structures, with a main address in the United Kingdom.
11. An AVA's legal identity, constitutional and governance arrangements must jointly ensure:
  - 11.1. protection from the undue influence of any one of, or a minority group of, its members; and
  - 11.2. its independent decision-making and operation as an AVA, as required by these Terms and other requirements of the Recognition Scheme.
12. An AVA must not itself be a Provider of Access to HE or an education provider that offers courses for which the Diploma could meet the entry requirements.

## Terms of agreement

13. The AVA agrees that it will:
- 13.1. continue to comply with these Terms;
  - 13.2. comply with the Conditions and the Regulatory Documents;
  - 13.3. act in accordance with the requirements set out in the Recognition Scheme and such other requirements for AVAs that may be issued by QAA from time to time;
  - 13.4. exercise its AVA responsibilities through its own organisation as required by the Conditions, and not devolve to any other body any part of those responsibilities, subsequent to QAA's approval of the organisation's arrangements for operation of the Licence;
  - 13.5. follow, and be able to demonstrate that it has followed, the procedures that it has set out in formal submissions to QAA to demonstrate how it meets the Conditions, which have been approved by QAA through the processes of AVA licensing or monitoring, as set out in *The Access to HE Monitoring Arrangements*;
  - 13.6. make resources available to implement fully the approved procedures that are set out in its formal documentation or submissions to QAA, and requirements that may be made by QAA for the continuation of the Licence;
  - 13.7. contribute a specified annual fee as determined by QAA to the costs of maintaining and developing the Recognition Scheme as set out in *The Access to HE Licensing Arrangements*;
  - 13.8. promptly inform QAA of any proposed changes in ownership of the AVA and in any event within one working day of such change;
  - 13.9. consult with QAA before adopting a new legal identity, in order to confirm:
    - the appropriateness of the new identity for meeting its public obligations and
    - that the new identity (or other, additional arrangements) ensures that the AVA's liability exists separately from that of member or partner organisations and their individual representatives;
  - 13.10. cooperate with, and participate in, QAA's arrangements for the licensing and monitoring of AVAs as set out in *The Access to HE Monitoring Arrangements*, including the submission of reports and data, according to requirements specified by QAA; and comply with requirements made by QAA for the continuation of its Licence;
  - 13.11. take no action and make no omission that, in QAA's reasonable opinion, brings into disrepute or could endanger the reputation of the Diploma, the Recognition Scheme, or QAA, or which damages the goodwill or reputation in the Access to HE Trademarks;
  - 13.12. use, and ensure that eligible Providers only use, the Access to HE Trademarks in such forms and such manner as permitted by QAA's *Requirements for the use of Access to HE Trademarks* (as may be amended from time to time) and comply, and ensure that Providers comply, with all other provisions of that document and the licensing criteria in the use of the Access to HE Trademarks;

- 13.13. not sub-license, assign or otherwise dispose of any rights granted under these Terms to any third party other than to eligible Providers in accordance with these Terms, and also acknowledge that all rights and goodwill in the Access to HE Trademarks shall belong to QAA and that neither the AVA, nor any Provider, shall acquire any rights in the Access to HE Trademarks other than as expressly set out in these Terms; and
- 13.14. conduct an inspection or audit at any time on reasonable notice at any one or more of the Providers, should it, or QAA, be of the reasonable belief that the Provider is not operating in accordance with the requirements of any part of the Recognition Scheme, including, but not limited to, guidelines for the use of the Access to HE Trademarks in their use of the Access to HE Trademarks.

## Non-compliance

14. Where QAA, in its reasonable opinion, concludes there has been, or there is risk of, non-compliance with any requirement of these Terms, the Conditions and/or the Recognition Scheme, QAA may:
  - 14.1. issue a notice to an AVA that requires an AVA to take targeted action to resolve the non-compliance, or risk of non-compliance;
  - 14.2. impose a specific condition or conditions on an AVA that must be complied with, which may require an AVA to take certain action, or prohibit it from taking certain action; and/or
  - 14.3. impose a formal sanction on an AVA such that the AVA is restricted in the activities it can undertake under its Licence, or suspend or withdraw its Licence.
15. Where QAA has taken any action specified in Term 14 above, and the AVA has failed to comply with the action, QAA may take further action and issue a notice as per Term 16 to terminate the AVA's Licence, in line with processes set out in *The Access to HE Licensing Arrangements*.
16. QAA may terminate the Licence at any time on written notice to the AVA with immediate effect:
  - 16.1. if the AVA is in breach of any of these Terms or the Conditions and, if the breach is capable of remedy, the AVA has failed to remedy such breach within 30 days of the date of the notice from QAA requiring such remedy;
  - 16.2. if the AVA is in breach of any of these Terms or the Conditions which is not capable of remedy;
  - 16.3. if a resolution is passed or an order is made for the winding up of the AVA (other than for the purpose of solvent amalgamation or reconstruction) or the AVA becomes subject to an administration order or a receiver or administrative receiver is appointed over, or an encumbrancer takes possession of any of the AVA's property;
  - 16.4. for non-compliance by the AVA with Term 13.8 by entering into a new legal identity without adherence to relevant QAA procedures;
  - 16.5. for non-compliance by the AVA with the QAA's *Requirements for the use of Access to HE Trademarks* or in the event that, by reason of any act or omission of the AVA, there has been, or there is likely to be, damage to the reputation of QAA;

- 16.6. in the event that in QAA's reasonable opinion, by reason of the use being made of the Access to HE Trademarks by the AVA, there is a risk that the Access to HE Trademark may become devalued by its generic use or application; or that the Access to HE Trademark has been used in such a way as to suggest QAA's approval has been given to activities that are unrelated to the Access to HE Diploma; and/or
- 16.7. in the event that the use by any of the AVA's Providers results in or is likely to result in one of the outcomes set out in Terms 16.5 and 16.6 above, and QAA has notified the AVA of such circumstances, and the AVA has not taken steps to rectify the same within a reasonable time period of being given notice to do so.
17. Where QAA terminates the Licence in accordance with Term 16, the consequences and process for this shall be as set out in *The Access to HE Licensing Arrangements*.

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