



## Mountain Training England Provider Agreement 2023

### List of Contents

1. Rights granted	1
2. Annual Fee and Course Fees	2
3. MTE's obligations	2
4. Provider's obligations	2
5. Compliance with MTE's policies	4
6. Insurance	4
7. Intellectual property	4
8. Commencement, Duration & Termination	4
9. Consequences of Termination	5
10. Right to suspend	6
11. Indemnity	6
12. Data protection	6
13. Assignment	6
14. Dispute Resolution	7
15. Limitation of Liability	7
16. General	7
17. Appendix A: Definitions	9
18. Appendix B: Rules of Interpretation	11
19. Appendix C: Dispute resolution process	12

### 1. Rights granted

1.1 **Licence to operate the Business.** In consideration of the obligations to be undertaken by the Provider (including the payments agreed to be made in clause 2), MTE grants the Provider licence to:

1.1.1 deliver MTE's courses and qualifications within the limitations set out in the Providers account on the CMS

1.1.2 use the MTE Intellectual Property ; and

1.1.3 use the benefit of MTE's knowledge and experience,

within the Territory, during the Term and in accordance with the provisions of this Agreement and the Quality Manual.

## 2. Annual Fee and Course Fees

- 2.1 On the Commencement Date and thereafter no later than 31<sup>st</sup> January each Year during the Term, the Provider shall pay the Annual Fee. The Provider shall pay the Course Fees within 30 days of completion of each MTE Course delivered by the Provider.
- 2.2 **VAT.** All fees due under this Agreement are inclusive of VAT, which shall, where applicable, be paid by the Provider at the prevailing rate on the due date for payment or receipt of the relevant invoice from MTE (as may be).
- 2.3 **Third party suppliers.** The Provider shall be responsible for the payment of all invoices due to third party suppliers.

## 3. MTE's obligations

- 3.1 MTE shall:
- 3.1.1 Assure the quality of course provision as set out in the Quality Manual
  - 3.1.2 Update the Quality Manual from time to time and inform the Provider in writing of all such updates;
  - 3.1.3 Schedule a series of annual Update Workshops for all Providers at locations around the country.
  - 3.1.4 Regularly review our portfolio of courses and qualifications
  - 3.1.5 Maintain an online resource providing an accurate database of the training and assessment records of registered candidates and upcoming courses.
  - 3.1.6 Provide facilities and personnel for dealing with complaints or appeals raised by candidates in respect of courses delivered by the Provider.

## 4. Provider's obligations

The Provider shall at all times during the Term, comply with the obligations set out in this Clause 4.

- 4.1 **Trading.** The Provider shall:
- 4.1.1 operate strictly in accordance with the Quality Manual; and
  - 4.1.2 implement any improvements or modifications when requested by MTE.
- 4.2 **Promotion.** The Provider shall:
- 4.2.1 use its best endeavours to promote and extend their own and MTE's Business;
  - 4.2.2 use its best endeavours to protect and promote the goodwill in their own and MTE's Business;
  - 4.2.3 not do anything that could or might in the reasonable opinion of MTE bring their own or MTE's Business into disrepute or damage the reputation of their own and /or MTE's Business.

**4.3 Provision of MTE Courses and Qualifications.** The Provider shall:

- 4.3.1 provide only such MTE courses and qualifications for which it has been approved by MTE as set out in the Providers account on the CMS

**4.4 Procedures.** The Provider shall:

- 4.4.1 comply with the policies, procedures, and quality standards, as required by MTE and set out in the Quality Manual;
- 4.4.2 have its own initial complaints handling procedure in line with Stage 1 of the MTE complaints process

**4.5 Disclosure of information.** The Provider shall:

- 4.5.1 Comply in all respects with the Applicable Data Protection Laws.
- 4.5.2 Co-operate with MTE in: instituting programmes for auditing candidate satisfaction; measuring quality control issues; and investigating regulatory compliance. They will provide all such assistance, information or documentation in relation thereto as MTE shall require.

**4.6 Information technology.** The Provider shall:

- 4.6.1 use the CMS and DLOG and do all such things as MTE shall reasonably require to facilitate the operation and use of the CMS and DLOG.
- 4.6.2 use the CMS to keep and maintain complete and accurate accounts and records of all courses delivered. All such records shall be full, accurate, up to date and sufficient to ascertain the amount of the Course Fees due.

**4.7 Moderation Visits.**

- 4.7.1 The Provider shall allow moderation visits by an MTE Moderator unconditionally at any time in accordance with the Quality Manual and the Provider shall comply with any action points raised within the Moderator's written report within the timescale(s) specified in such report.
- 4.7.2 If the Moderator determines that any element of a course delivered by the Provider does not meet the appropriate minimum standard, then the subsequent course run by the Provider shall also be moderated (and this process may be repeated until the Moderator is satisfied that the required standard is being met).
- 4.7.3 If the Provider fails to meet the appropriate minimum standard after two or more consecutive moderation visits they shall have their contract reviewed by the MTE Board.
- 4.7.4 For the avoidance of doubt, if there is any difference of opinion after mutual discussion between the Provider and the Moderator, as to the quality of the training or assessment course delivery, including whether a candidate has been correctly assessed to the required minimum standard for any qualification, the Moderator's determination shall be final and binding.

**4.8 Miscellaneous.** The Provider shall:

- 4.8.1 obtain, maintain and comply with all necessary licences and consents and comply with all relevant legislation in relation to the delivery of MTE courses or qualifications;
- 4.8.2 not license or authorise any person other than an approved Mountain Training Course Director to direct MTE Courses or qualifications.

**5. Compliance with MTE's policies**

- 5.1 **Mandatory Polices.** The Provider shall comply with the requirements of the Quality Manual and Mandatory Polices listed on the MTE website, which MTE may update from time to time.

**6. Insurance**

- 6.1 **Compulsory cover.** The Provider shall take out and maintain all-risk insurance policies with a reputable insurance company (or companies) with such amount of cover as is appropriate to cover its potential liabilities in connection with this Agreement. Such policy (or policies) shall include:

- 6.1.1 liability for employees and third parties;
- 6.1.2 public liability; and
- 6.1.3 cover in respect of all other risks that are normally insured against by a person carrying on the same type of business.

**7. Intellectual property**

- 7.1 The Provider acknowledges that:
- 7.1.1 it does not have any right, title or interest in the MTE Intellectual Property or any updates or improvements to it.
- 7.2 **Intellectual Property in Quality Manual.** The Provider acknowledges and agrees that all Intellectual Property in the Quality Manual is and shall remain the exclusive property of MTE.

**8. Commencement, Duration and Termination**

- 8.1 This Agreement takes effect on the Commencement Date and, subject to clause 8.2 and 8.3, shall continue for an Initial Probation Term of 1 year and then until terminated by either party giving at least three months' prior written notice to expire on or after the expiry date of the Initial Probation Term. Each party may terminate the agreement with regard to any or all Mountain Training schemes undertaken by the Provider.
- 8.2 This Agreement is subject to an initial one-year Probation Term where the Provider will be required to meet certain Performance Conditions as laid down by MTE. Failure to meet these conditions to MTE's satisfaction may result in termination of the Agreement.

8.3 MTE may terminate this Agreement with immediate effect (or following such notice period as it sees fit) without prejudice to any of its rights or remedies, by giving written notice to the Provider and the Provider's Administrator if:

- 8.3.1 the Provider or where applicable the Provider's Administrator, in the reasonable opinion of MTE, does, or permits to be done, any act which risks the health and safety of others and /or breaches applicable Health and Safety standards; or
- 8.3.2 the Provider or where applicable the Provider's Administrator fails to improve their course delivery to the acceptable minimum standard after two or more successive moderations, as described in 4.7.3; or
- 8.3.3 the Provider or where applicable the Provider's Administrator fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than thirty days after being notified in writing to make such payment; or
- 8.3.4 the Provider or Provider's Administrator commits a material breach of any term of this Agreement and (if such breach is remediable) fails to remedy that breach within a period of thirty days after being notified in writing to do so; or
- 8.3.5 the Provider or Provider's Administrator repeatedly breaches any of the terms of this Agreement in such a manner as to reasonably justify the opinion that its or their conduct is inconsistent with having the intention or ability to give effect to the terms of this Agreement; or
- 8.3.6 the Provider or Provider's Administrator gives to MTE any false or misleading information, or makes any misrepresentation in connection with their Business; or
- 8.3.7 repeated, valid complaints are made to MTE about the quality of the service provided by the Provider and the Provider, having received notice of such complaints, fails to improve such service to the reasonable satisfaction of MTE; or
- 8.3.8 there is a change of Control of the Provider; or
- 8.3.9 the Provider is convicted of a serious criminal offence, or is found by the Board to be guilty of gross misconduct; or
- 8.3.10 the Provider is in breach of any of its compliance obligations under clause 5.

8.4 The Provider may terminate this Agreement at any time upon giving a minimum of 3 months' notice in writing to MTE.

## **9. Consequences of termination**

- 9.1 **Accrued rights.** Any termination or expiry of this Agreement shall not affect any rights or liabilities that have accrued prior to such termination.
- 9.2 **MTE's Rights.** Following notice of termination or expiry of this agreement for any reason MTE reserves the right to stipulate that any courses proposed to be run by the Provider during any

notice period shall be directed (at the Provider's expense) by a Course Director specifically approved in writing by MTE.

**9.3 Cessation of business.** On termination or expiry of this Agreement for any reason, the Provider and the Provider's Administrator shall:

- 9.3.1 immediately pay MTE the full amount of all sums due from the Provider to MTE;
- 9.3.2 cease to operate as a Provider licenced by MTE and not hold the Provider out to be a Provider of MTE Courses or Qualifications or do anything that may indicate any relationship between them and MTE;
- 9.3.3 immediately stop using the MTE Intellectual Property.

## **10. Right to suspend**

10.1 MTE retains the right to suspend named Course Directors deployed by the Provider, pending an investigation or remedial action demanded by MTE, following a serious complaint or a 'below minimum standard' moderation report made against them.

## **11. Indemnity**

11.1 The Provider shall indemnify MTE for and against all claims, liabilities, costs, expenses (including legal and professional expenses), damages and losses suffered or incurred by MTE arising out of or as a result of any and all breaches by the Provider of the terms of this Agreement.

## **12. Data protection**

12.1 Each party agrees that it shall, in relation to personal data processed in connection with this Agreement:

- 12.1.1 process the Data in accordance with the Applicable Data Protection Laws ;
- 12.1.2 process the Data only so far as is necessary for the purpose of performing its obligations under this Agreement; and
- 12.1.3 not disclose or allow access to Data other than by its employees or contractors engaged to perform obligations pursuant to this Agreement, and ensure that all employees or contractors are subject to 12.1.1 and 12.1.2 above.

## **13. Assignment**

13.1 This Agreement is personal to the Provider, who may not, without the prior written consent of MTE, assign, transfer, sub-contract, delegate or deal in any other manner with this Agreement.

13.2 MTE may, at its discretion, in negotiation, assign, transfer, sub-contract, delegate or deal in any other manner with this Agreement.

#### 14. Dispute Resolution

- 14.1 All disputes regarding contractual obligations will be governed this Agreement and managed in accordance with MTE's dispute process (see Appendix C) and will be adjudicated by the MTE Board. Their decision will be final.

#### 15. Limitation of liability

- 15.1 **Unlimited liability.** Nothing in this Agreement shall limit or exclude the liability of either party for:

- 15.1.1 Death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable).
- 15.1.2 Fraud or fraudulent misrepresentation or wilful default.
- 15.1.3 Any matter in respect of which it would be unlawful to exclude or restrict liability.

- 15.2 **Limitations of liability.** Subject to clause 15.1 above:

- 15.2.1 MTE shall not under any circumstances whatever be liable to the Provider, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for:
  - 15.2.1.1 any loss of profit, revenue, or anticipated savings; or
  - 15.2.1.2 any loss that is an indirect or secondary consequence of any act or omission of the party in question.

#### 16. General

- 16.1 **Force Majeure.** Neither party shall be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control.

#### 16.2 Confidentiality.

- 16.2.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except to its employees or contractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under this Agreement or as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 16.2.2 No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this Agreement.

- 16.3 **Waiver.** A waiver of any right or remedy shall not be deemed a waiver of any subsequent breach or default. A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not:

16.3.1 Waive that or any other right or remedy.

16.3.2 Prevent or restrict the further exercise of that or any other right or remedy.

16.4 **Changes to terms and conditions.** MTE may amend or update the terms of this Agreement from time to time to reflect changes in its candidates' needs and/or its business priorities. MTE will give the Provider reasonable notice of any major changes.

16.5 **Severance.** If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Agreement.

16.6 **Notices.**

16.6.1 Any notice or other communication given to a party under or in connection with this Agreement shall be in writing, addressed to that party at its email address set out in the Providers account or such other email address as that party may have specified to the other party. A notice or other communication shall be deemed to have been received: one Business Day after transmission.

16.6.2 This clause shall not apply to the service of any proceedings or other documents in any legal action, arbitration or other method of dispute resolution.

16.7 **Governing law.** This Agreement, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of England and Wales.

16.8 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

16.9 **Entire Agreement.** This Provider Agreement constitutes the entire agreement between the parties relating to its subject content and supersedes all previous discussions, correspondence, negotiations, arrangements, understandings and agreements.



## Appendix A: Definitions

<b>Annual Fee</b>	means the annual fee payable by the Provider as set out in the Providers account and payable in accordance with clause 2.
<b>Applicable Data Protection Laws</b>	All applicable data protection laws, statutes, regulations and codes from time to time in force.
<b>Applicable Health and Safety Laws</b>	All applicable health and safety laws, statutes, regulations and codes from time to time in force.
<b>Business</b>	means the provision of approved training courses as set out in the Providers account carried out in accordance with the Quality Manual.
<b>CMS</b>	means the Candidate Management System and associated software operated by MTE.
<b>Commencement Date</b>	means the date on which the contract takes effect, that being the date of agreement entered into by written or digital signature.
<b>Confidential Information</b>	means any information which is disclosed by one party to the other pursuant to, or in connection with, this Agreement whether orally or in writing.
<b>Contract Year</b>	means the 12-month period following the Commencement Date and each succeeding 12-month period.
<b>Control</b>	means the beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or cause the direction of the general management of a company or organisation. Controls, controlled and the expression change of control shall be construed accordingly.
<b>Course Fees</b>	means the course fee payable per candidate by the Provider to MTE in respect of each MTE Course run by the Provider.
<b>DLOG</b>	means the Digital Log Book system and associated software operated by MTE.
<b>Initial Term</b>	means the term referred to in clause 8.1
<b>Intellectual Property (IPR)</b>	means patents, rights to inventions, copyright and related rights, rights in software, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database

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

**Mandatory Policies**

means MTE's mandatory policies and procedures (which can be viewed at [www.mountain-training.org/england](http://www.mountain-training.org/england)) as amended by MTE from time to time.

**MTE**

means Mountain Training England (Company registered number 03061504) whose registered office is at 177-179 Burton Road, West Didsbury Manchester M20 2BB

**MTE Course**

Means a training or assessment course (including syllabus and guidance) as determined by MTE.

**MTE IPR**

Means the IPR licensed by MTE to the Provider under this agreement, as amended or updated from time to time at MTE's discretion.

**MTE Qualifications**

means the qualifications administered by MTE.

**MTE Software**

means all software owned or operated by MTE including without limitation CMS and DLOG .

**Moderator**

Means any moderator appointed by MTE from time to time as part of its quality assurance requirements.

**Provider**

means the person or organisation who will operate the Business and whose name and contact details is set out in the Provider account.

**Provider Account**

means the Provider account on the CMS setting out the details of the parties, commencement date, scope of approved courses and territory in relation to this Agreement.

**Performance Conditions**

means the performance conditions set out by MTE or otherwise notified to the Provider on or before the Commencement Date.

**Quality Manual**

means the Manual setting out the operations, policies, procedures and parameters for delivering courses and qualifications administered by MTE, as varied and/or

updated from time to time by MTE.

<b>Term</b>	means the Initial Term of this Agreement and any continuation under clause 8
<b>Territory</b>	means the United Kingdom, Isle of Man, the Bailiwick of Guernsey and the Bailiwick of Jersey.
<b>Third Party Supplier</b>	A person or business external to the Provider which provides products and/or services that contributes to the delivery of courses to candidates.
<b>Trade Marks</b>	means the trade marks used and registered by MTE.
<b>Update Workshop</b>	means a workshop facilitated by MTE for the purpose of sharing best practice and communicating updates and changes in relation to MTE courses and qualifications.
<b>VAT</b>	means value added tax chargeable under the Value Added Tax Act 1994 and any similar replacement or additional tax.
<b>Year</b>	means any period of 12 consecutive months from 1 <sup>st</sup> January to the following 31 <sup>st</sup> December.

## **Appendix B: Rules of Interpretation**

The rules of interpretation apply in this Agreement:

This Agreement describes the conditions under which the Provider is authorised by MTE to deliver MTE's courses and qualifications, as set out in the Provider account.

This Agreement shall be binding on, and be for the benefit of, the parties to this Agreement.

A reference to **writing** or **written** includes email.

Any obligation in this Agreement not to do something includes an obligation not to agree or allow that thing to be done.

### **Appendix C: MTE dispute resolution process**

Disputes raised by a Provider relating to this contract, its interpretation and implementation will be managed using the following process:

1. All disputes and complaints should be brought to the attention of MTE within 3 months of any incident of concern occurring.
2. The Provider should contact the MTE Development Officer to raise their concerns. If the dispute concerns the Development Officer then they should contact the Executive Officer.
3. The Development Officer, or Executive Officer (as appropriate), will seek to resolve the Provider's concerns informally.
4. If this informal process does not result in mutual agreement, or the Provider does not feel this process is appropriate, the Provider may submit a formal dispute case.
5. The Provider must present their case in writing, stating how their contractual rights have been breached with reference to the relevant clauses and describing the outcome that they seek.
6. The Provider's case will be reviewed by the Executive Officer to ascertain material evidence to establish the nature and grounds of their dispute. The Executive Officer may contact the Provider seeking further evidence to support their case and may make their own investigations to seek witness statements.
7. If the Executive Officer finds that there is a case to answer the dispute report will then be passed to the Complaints Panel of the MTE Board who will review the case and supporting evidence. They will make their recommendation to the full MTE Board.
8. In the rare case of a conflict of interest between the Executive Officer and the Provider, the Provider may present their case directly to the Complaints Panel.
9. The MTE Board will make a decision regarding the dispute and communicate this to the Provider. In the case of complaints made against any MTE employees the Board will follow an HR process which will remain confidential between the Board and employee.
10. In making its decision the Board will be mindful that for any fruitful contractual relationship to continue there must be goodwill on both sides. Contractors have no right to be Providers for MTE beyond those contained in the Provider Agreement. The decision made by the Board is final.