GRADEMAKER LIMITED

TERMS AND CONDITIONS FOR THE SUPPLY OF THE SERVICES

1.   Interpretation

The definitions and rules of interpretation in this clause apply in these Conditions.

1.1   Definitions:

Authorised Users: means those employees, agents and independent contractors of the Customer who use the Software in accordance with the licence terms set out in the Order Form under the Customer's instruction solely to create, review or approve items, papers and mark schemes for Customer Examinations as part of the examination authoring process.

Business Day: a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

"Change Control Note" means a document to inform decision making about Change requests, containing at a minimum the date of the request, the Change proposed, the impact of the Change, any risks, costs and timescales.

"Change Control Procedure" means the procedure set out in clause 15.

Commencement Date: means the effective date of the relevant Order Form.

Conditions: these terms and conditions as amended from time to time.

Confidential Information: information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in clause 10.

Contract: the contract between the Customer and the Supplier for the supply of Services in accordance with these Conditions, comprising these Conditions and the Order Form.

Customer: the person or firm who purchases the Services from the Supplier, as set out in the relevant Order Form.

Customer Data: the data inputted by the Customer, Authorised Users, or the Supplier on the Customer's behalf into the data fields of the Software for the purpose of using the Services or facilitating the Customer's use of the Services.

"Customer Examinations" means assessments created and accredited by the Customer as further defined (as applicable) in the Order Form.

Data Protection Legislation: means all applicable privacy and data protection laws including the General Data Protection Regulation (*(EU) 2016/679*) and any applicable national implementing laws, regulations and secondary legislation in England and Wales relating to the processing of Personal Data and the privacy of electronic communications, as amended, replaced or updated from time to time, including the Privacy and Electronic Communications Directive (*2002/58/EC*) and the Privacy and Electronic Communications (EC Directive) Regulations 2003 (*SI 2003/2426*).

Documentation: the documents (in whatever media) made available by the Supplier to the Customer that accompany the Services or Software, including all data, reports and specifications.

Fees: the Implementation Services Fees, the Live Services Fees and any other fees payable by the Customer pursuant to the Contract.

Initial Term: the initial term during which the Services are to be provided, as set out in the Order Form;

Implementation Services: the implementation services set out in the Order Form.

Implementation Services Fees: the fees payable by the Customer to the Supplier for the Implementation Services, as set out in the Order Form.

Live Services: means the live services set out in the Order Form using the Software.

Live Services Fees: the services fees payable by the Customer to the Supplier for the Live Services, as set out in the Order Form.

Order Form: means the electronic or physical form ordering the Services entered into by or on behalf of the Customer and the Supplier, incorporating these Conditions.

Renewal Period: the period described in clause 12.1.

RPI: the United Kingdom Retail Prices Index or any official index replacing it

Services: together the Implementation Services and the Live Services and any services agreed under the Change Control Procedure, provided by the Supplier to the Customer under the Contract.

Software: the online software applications provided by the Supplier as part of the Services.

Term: the Initial Term together with any subsequent Renewal Periods.

Supplier: GradeMaker Limited, incorporated and registered in England and Wales with company number 08936673 whose registered office is at Fryern House, 125 Winchester Road, Chandlers Ford, Hampshire SO53 2DR.

SLA: the Supplier's document, as set out at Schedule 2 of the Order Form or as made available at such website address as may be notified to the Customer from time to time, setting out applicable service levels in relation to the Services.

Terms of Use: the conditions upon which Approved Users access the Software and which are presented to them on first login;

Virus: any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

1.2   Interpretation:

        (a)   A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality).

(b)   A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.

(c)   Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

(d)   Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

(e)   A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision shall include all subordinate legislation made under that statute or statutory provision.

(f)   Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

(g)   A reference to **writing** or **written** includes faxes and e-mail.

2.   Basis of contract

2.1   The Contract shall come into existence on the Commencement Date.

2.2   These Conditions apply to the Contract to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

3.   Services

3.1   The Supplier shall, during the Term, in consideration of the Fees and the mutual undertakings agreed under this Contract:

(a)   provide the Services including the Software and the Documentation to the Customer for the benefit of itself and to the Users in accordance with the Contract including the licence set out in Schedule 2 of the Order Form;

(b)   comply with its obligations as contained in the SLA;

(c)   ensure that the Services are provided with the reasonable skill and care to be reasonably expected of a service provider in this field providing services similar to the Services;

(d)   use commercially reasonable endeavours to make the Services available to the extent and in accordance with the service levels set out the SLA.

3.2   The Supplier reserves the right to propose amendments to the Services from time to time upon notification to the Customer using the Change Control Procedure and to its Approved Users via the Terms of Use.

3.3   The rights provided under this clause are granted to the Customer only and shall not be considered granted to any subsidiary or holding company of the Customer.

4.   Customer data

4.1   The Customer shall own all right, title and interest in and to all of the Customer Data that is not personal data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of all such Customer Data.

4.2   The Supplier shall follow its archiving procedures for Customer Data as set out in the SLA. In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy against the Supplier shall be for the Supplier to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by the Supplier in accordance with the archiving procedure described in the SLA. The Supplier shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party (except those third parties sub-contracted by the Supplier to perform services related to Customer Data maintenance and back-up for which it shall remain fully liable pursuant to the terms of this Contract).

4.3   Both parties will comply with all applicable requirements of the Data Protection Legislation and the terms set out in the Data Processing Addendum. This clause 4 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.

5.   Supplier's obligations

5.1   The Supplier undertakes that the Services will be performed substantially in accordance with the Documentation and the SLA.

5.2   The undertaking at clause 5.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to the Supplier's instructions, or modification or alteration of the Services by any party other than the Supplier or the Supplier's duly authorised contractors or agents. If the Services do not conform with the foregoing undertaking, the Supplier will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in clause 5.1. Notwithstanding the foregoing, the Supplier:

            (a)   does not warrant that the Customer's use of the Services will be uninterrupted or error-free; or that the Services, Documentation and/or the information obtained by the Customer through the Services will meet the Customer's requirements; and

            (b)   is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

5.3   The Contract shall not prevent the Supplier from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are the same as or similar to those provided under the Contract.

5.4 The Supplier warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under the Contract.

6. Customer's obligations

6.1 The Customer shall not access, store, distribute or transmit any Viruses, or any material during the course of its use of the Services that:

(a) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;

(b) facilitates illegal activity;

(c) promotes unlawful violence;

(d) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or

(e) is otherwise illegal or causes damage or injury to any person or property;

and the Supplier reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's access to any material that breaches the provisions of this clause.

6.2 The Customer shall not:

(a) except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under the Contract:

(i) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or Documentation (as applicable) in any form or media or by any means; or

(ii) attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or

(b) access all or any part of the Services and Documentation in order to build a product or service which competes with the Services and/or the Documentation; or

(c) use the Services and/or Documentation to provide services to third parties; or

(d) subject to clause 21.1, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or Documentation available to any third party except the Authorised Users, or

(e) attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation, other than as provided under this Contract; and

6.3 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify the Supplier.

6.4 The Customer shall provide the Supplier with:

      (a)   all necessary co-operation in relation to the Contract; and

      (b)   all necessary access to such information as may be required by the Supplier;

in order to provide the Services, including but not limited to Customer Data, security access information and configuration services;

6.5   The Customer shall

      (a)   without affecting its other obligations under the Contract, comply with all applicable laws and regulations with respect to its activities under the Contract;

      (b)   carry out all other Customer responsibilities set out in the Contract in a timely and efficient manner. In the event of any material delays in the Customer's provision of such assistance as agreed by the parties, the Supplier may adjust any agreed timetable, price or delivery schedule as reasonably necessary;

      (c)   ensure that the Authorised Users use the Services and the Documentation in accordance with the terms and conditions of the Contract and shall be responsible for any Authorised User's breach of the Contract;

      (d)   obtain and shall maintain all necessary licences, consents, and permissions necessary for the Supplier, its contractors and agents to perform their obligations under the Contract, including without limitation the Services;

      (e)   ensure that its network and systems comply with the relevant specifications provided by the Supplier from time to time; and

      (f)   be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to the Supplier's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.

7.   Charges and payment

7.1   The Customer shall pay the Fees in accordance with this clause 7 and Schedule 1 of the Order Form.

7.2   The Customer shall on the Commencement Date provide to the Supplier approved purchase order information and any other relevant valid, up-to-date and complete contact and billing details and the Supplier shall invoice the Customer in respect of:

      (i)   the Implementation Services Fees; and

      (ii)   the Live Service Fees;

on the dates specified in the Order Form and, in respect of Live Services Fees, annually on each anniversary of the first payment date as set out in the Order Form.

7.3   The Customer shall pay each invoice submitted in accordance with clause 7.2 as follows:

     (a)   any invoice for the Implementation Services Fees within 7 days of the date of invoice;

     (b)   any invoice for the Live Services Fees or any other invoice raised by the Supplier pursuant to these Terms within 30 days after the date of such invoice.

7.4   If the Supplier has not received payment within 30 days after the due date, and without prejudice to any other rights and remedies of the Supplier:

     (a)   the Supplier may, without liability to the Customer, disable the Customer's password, account and access to all or part of the Services and the Supplier shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and interest shall accrue on a daily basis on such due amounts at an annual rate equal to 2% over the Bank of England base rate from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.

7.5   All amounts and fees stated or referred to in the Contract:

     (a)   Shall, unless otherwise specified in the Order Form, be payable in pounds sterling;

     (b)   are non-cancellable and non-refundable;

     (c)   are exclusive of value added tax, which shall be added to the Supplier's invoice(s) at the appropriate rate.

7.6   If, at any time whilst using the Services, the Customer exceeds the amount of storage specified in the Documentation or this Contract, the Supplier shall charge the Customer, and the Customer shall pay, the Supplier's then current excess data storage fees.

8.   Proprietary rights

8.1   The Supplier acknowledges and agrees that the Customer shall own all right, title and interest in and to all of the Customer Data that is not personal data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of all such Customer Data.

8.2   The Customer acknowledges and agrees that the Supplier and/or its licensors own all intellectual property rights in the Services, the Software and the Documentation. Except as expressly stated herein, the Contract does not grant the Customer any rights to, under or in, any patents, copyright, database rights, designs, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Services, the Software or the Documentation.

8.3   The Supplier confirms that it has all the rights in relation to the Services, the Software and the Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of the Contract.

9.   Confidentiality

9.1   Each party may be given access to Confidential Information from the other party in order to perform its obligations under the Contract. A party's Confidential Information shall not be deemed to include information that:

(a) is or becomes publicly known other than through any act or omission of the receiving party;

(b) was in the other party's lawful possession before the disclosure;

(c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or

(d) is independently developed by the receiving party, which independent development can be shown by written evidence.

9.2 Subject to clause 9.4, each party shall hold the other's Confidential Information in confidence and not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of the Contract.

9.3 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of the Contract.

9.4 A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction, provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 9.4, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.

9.5 Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.

9.6 The Customer acknowledges that details of the Software, and the results of any performance tests of the Software, constitute the Supplier's Confidential Information.

9.7 The Supplier acknowledges that the Customer Data is the Confidential Information of the Customer.

9.8 No party shall make, or permit any person to make, any public announcement concerning the Contract without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.

9.9 The above provisions of this clause 9 shall survive termination of the Contract, however arising.

10. **Indemnity**

10.1 The Customer shall defend, indemnify and hold harmless the Supplier against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Customer's use of the Services and/or Documentation, provided that:

(a) the Customer is given prompt notice of any such claim;

(b) the Supplier provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and

(c)   the Customer is given sole authority to defend or settle the claim.

10.2   The Supplier shall defend the Customer, its officers, directors and employees against any claim that the Software or Documentation infringes any United Kingdom patent effective as of the Commencement Date, copyright, trade mark, database right or right of confidentiality, and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that:

    (a)   the Supplier is given prompt notice of any such claim;

    (b)   the Customer provides reasonable co-operation to the Supplier in the defence and settlement of such claim, at the Supplier's expense; and

    (c)   the Supplier is given sole authority to defend or settle the claim.

10.3   In the defence or settlement of any claim, the Supplier may procure the right for the Customer to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate the Contract on two Business Days' notice to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer.

10.4   In no event shall the Supplier, its employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on:

    (a)   a modification of the Services or Documentation by anyone other than the Supplier; or

    (b)   the Customer's use of the Services or Documentation in a manner contrary to the instructions given to the Customer by the Supplier; or

    (c)   the Customer's use of the Services or Documentation after notice of the alleged or actual infringement from the Supplier or any appropriate authority.

10.5   The foregoing and clause 11.3 (b) states the Customer's sole and exclusive rights and remedies, and the Supplier's (including the Supplier's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.

11.   Limitation of liability

11.1   Except as expressly and specifically provided in the Contract:

    (a)   the Customer assumes sole responsibility for results obtained from the use of the Services and the Documentation by the Customer, and for conclusions drawn from such use. The Supplier shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to the Supplier by the Customer in connection with the Services, or any actions taken by the Supplier at the Customer's direction;

    (b)   all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from the Contract; and

    (c)   the Services and the Documentation are provided to the Customer on an "as is" basis.

11.2   Nothing in the Contract excludes the liability of the Supplier:

        (a)   for death or personal injury caused by the Supplier's negligence; or

        (b)   for fraud or fraudulent misrepresentation.

11.3   Subject to clause 11.1 and clause 11.2:

        (a)   the Supplier shall not be liable whether in tort (including for [negligence or] breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under the Contract; and

        (b)   the Supplier's total aggregate liability in contract (including in respect of any indemnity), tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to three times the Live Services fee payable in a single year.

12.   Term and termination

12.1   The Contract shall, unless otherwise terminated as provided in this clause 12, commence on the Commencement Date and shall continue for the Initial Term and, thereafter, the Contract shall be automatically renewed for successive periods of 12 months (each a **Renewal Period**), unless:

        (a)   either party notifies the other party of termination, in writing, at least 60 days before the end of the Initial Term or any Renewal Period, in which case the Contract shall terminate upon the expiry of the applicable Initial Term or Renewal Period; or

        (b)   otherwise terminated in accordance with the provisions of the Contract;

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12.2   Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

        (a)   the other party fails to pay any amount due under the Contract on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment;

        (b)   the other party commits a material breach of any other term of the Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;

        (c)   the other party repeatedly breaches any of the terms of the Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Contract;

        (d)   the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts

within the meaning of section 123 of the Insolvency Act 1986, as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the Insolvency Act 1986;

(e)   the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

(f)   a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

(g)   an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party;

(h)   the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;

(i)   a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;

(j)   a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;

(k)   any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 12.2 (d) to clause 12.2 (j) (inclusive);

(l)   the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

12.3   On termination of the Contract for any reason:

(a)   all licences granted under the Contract shall immediately terminate and the Customer shall immediately cease all use of the Services and/or the Documentation;

(b)   each party shall return and make no further use of any equipment, property, Documentation and other items (and all copies of them) belonging to the other party;

(c)   the Supplier may destroy or otherwise dispose of any of the Customer Data in its possession, unless the Supplier receives, no later than ten days after the effective date of the termination of the Contract, a written request for the delivery to the Customer of the then most recent back-up

of the Customer Data. The Supplier shall use reasonable commercial endeavours to deliver the back-up to the Customer within 30 days of its receipt of such a written request, provided that the Customer has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The Customer shall pay all reasonable expenses incurred by the Supplier in returning or disposing of Customer Data; and

(d)   any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination shall not be affected or prejudiced.

13.   Force majeure

The Supplier shall have no liability to the Customer under the Contract if it is prevented from or delayed in performing its obligations under the Contract, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors, provided that the Customer is notified of such an event and its expected duration.

14.   Conflict

If there is an inconsistency between any of the provisions in the main body of the Contract and the Schedules, the provisions in the main body of the Contract shall prevail.

15.   Change Control Procedure

15.1   All amendments or variations or other changes to this Agreement ("Change") shall take place in accordance with the following Change Control Procedure. Either party may submit at any time a request for Change to the other party.

15.2   Where the Supplier originates a Change, it shall provide with the Change request, a Change Control Note.

15.3   Where the Customer originates a proposed Change, it shall provide the Supplier with such information (as is within the Customer's reasonable possession or control) which the Supplier reasonably considers is relevant to such Change or may assist the Supplier in the preparation of the Change Control Note. Supplier will provide the Customer within 14 days of receiving the request for a Change (or such other period as may be agreed between the parties) with a Change Control Note.

15.4   The recipient of a Change request shall act reasonably and in good faith in deciding whether to accept or decline it in its sole discretion, but in any event do so within 14 days of receipt of the Change request (or such later time as may be agreed) indicating acceptance of the change or setting out in full its reasons for declining.

15.5   Where the Customer and the Supplier agree to implement a Change, the costs of implementing a Change shall be paid in addition to the amounts due for providing the Services as set out in the Change Control Note, except where the parties (acting reasonably) agree in writing that the Change is attributable to some act or default of the Supplier in which case the Change shall be at the Supplier's expense.

15.6   The parties shall have no obligations in respect of a Change Control Note unless they expressly agree to do so by them both executing the Change Control Note or otherwise agree to do so in writing.

16. **Variation**

No variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

17. **Waiver**

No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

18. **Rights and remedies**

Except as expressly provided in the Contract, the rights and remedies provided under the Contract are in addition to, and not exclusive of, any rights or remedies provided by law.

19. **Severance**

19.1   If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract.

19.2   If any provision or part-provision of the Contract is deemed deleted under clause 19.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

20. **Entire agreement**

20.1   The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

20.2   Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract.

20.3   Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in the Contract.

20.4   Nothing in this clause shall limit or exclude any liability for fraud.

21.   Assignment

21.1   The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.

21.2   The Supplier may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.

22.   No partnership or agency

Nothing in the Contract is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

23.   Third party rights

The Contract does not confer any rights on any person or party (other than the parties to the Contract and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

24.   Notices

24.1   Any notice required to be given under the Contract shall be in writing and shall be delivered to the Supplier Contract Manager by hand, email or by pre-paid first-class post or recorded delivery post to the other party at its address set out in the Contract, or such other address as may have been notified by that party for such purposes.

24.2   A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9 am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post.

25.   Governing law

The Contract 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.

26.   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 the Contract or its subject matter or formation (including non-contractual disputes or claims).

DATA PROCESSING ADDENDUM

1.1   The following words and phrases have the meaning defined in Data Protection Legislation: '**Data Subject**', '**Personal Data**', '**Personal Data Breach**', '**Process**' (and 'processing' will be similarly interpreted), '**Supervisory Authority**'.

2.   PERSONAL DATA TYPES AND PROCESSING PURPOSES

2.1   In the context of all Personal Data provided to the Supplier by the Customer for processing under this addendum, the parties intend that the Customer is the controller (or is acting on behalf of a controller) and the Supplier is the processor. The Customer retains control of the Personal Data and remains responsible for its compliance obligations under the applicable Data Protection Legislation, including providing any required notices and obtaining any required consents, and for the processing instructions it gives to the Supplier.

2.2   0Description of Data Processing describes the processing that the Supplier may conduct in respect of the Customer's Personal Data.

3.   SUPPLIER'S OBLIGATIONS

3.1   The Supplier shall:

     3.1.1   process the Personal Data strictly in accordance with the Customer's instructions only and/or to perform the Supplier's obligations under the Contract.

     3.1.2   be entitled to appoint the Sub-Processor to process Confidential Data and provide services under the Contract.

     3.1.3   enter with the Sub-Processor into a written agreement incorporating terms which are substantially similar to those set out in this Addendum. As between the Customer and the Supplier, the Supplier shall remain fully liable for all acts or omissions of the Sub-Processor appointed by it pursuant to this Addendum.

     3.1.4   assist the Customer to meet the Customer's compliance obligations under the Data Protection Legislation.

     3.1.5   ensure that all its employees are informed of the confidential nature of the Personal Data and are bound by confidentiality obligations and use restrictions in respect of the Personal Data;

     3.1.6   implement appropriate technical and organisational measures against unauthorised or unlawful processing, access, disclosure, copying, modification, storage, reproduction, display or distribution of Personal Data, and against accidental or unlawful loss, destruction, alteration, disclosure or damage of Personal Data; and

     3.1.7   make available to Customer all information necessary to demonstrate compliance with the obligations laid down in this agreement.

4.   CROSS-BORDER TRANSFERS OF PERSONAL DATA

4.1   The Supplier shall not process Personal Data (or permit any sub-processor to process such Personal Data) outside the EEA without Customer consent and without ensuring the Personal Data is afforded adequate protection within the meaning of the Data Protection Legislation. The Supplier will not be in breach of this clause 4 merely by reason of the Supplier continuing to process or host Personal Data in the United Kingdom after a date when the United Kingdom ceases to be a member of the EEA.

5.   TERM AND TERMINATION

5.1   This addendum will remain in full force and effect so long as:

5.1.1   the Contract remains in effect, or

5.1.2   the Supplier retains any Personal Data related to the Contract in its possession or control.

5.2   Any provision of this addendum that expressly or by implication should come into or continue in force on or after termination of the Contract in order to protect Personal Data will remain in full force and effect.

6.   DATA RETURN AND DESTRUCTION

6.1   At the Customer's request, the Supplier shall give the Customer a copy of or access to all or part of the Customer's Personal Data in its possession or control in the format it exists at the date of the request.

6.2   On termination of the Contract, the Supplier shall securely delete or destroy or, if directed in writing by the Customer, return and not retain, all or any Personal Data related to this addendum in its possession or control, except for one copy that it may retain and use for six years for audit and/or legal compliance purposes only.

DESCRIPTION OF PERSONAL DATA PROCESSING

Subject matter of processing: The processing of Personal Data is performed as part of the services as set out in the Agreement.

The types of Personal Data processed may include part/all of: User name, email address, mobile number, IP address.

Duration of Processing: for the duration of the Agreement

Nature of Processing: electronic processing

Purposes of Processing: to facilitate the set up and operation of the services so that the Customer can develop assessments using the Software.

Data Subject Types: Users

Authorised subcontractors: Nexmo, AWS, MongoDB