

TERMS AND CONDITIONS FOR THE SUPPLY OF SERVICES (v1 17 Feb 2018)

1. Definitions and Interpretation

1.1 The following definitions shall apply to the Contract.

<b>Applicable Laws:</b>	has the meaning set out in clause 6.3.2(a).
<b>Business Day:</b>	a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.
<b>Charges:</b>	the charges payable by the Customer for the supply of the Services by the Supplier, as set out in the Contract Details.
<b>Conditions:</b>	these terms and conditions, set out in clause 1 (Definitions and Interpretation) to clause 10 (General) (inclusive).
<b>Contract:</b>	the contract between the Customer and the Supplier for the supply of the Services in accordance with the Contract Details, these Conditions and the Data and Privacy Policy.
<b>Control:</b>	shall be as defined in section 1124 of the Corporation Tax Act 2010, and the expression <b>change of control</b> shall be construed accordingly.
<b>Controller:</b>	has the meaning given to it under the GDPR.
<b>Customer Materials:</b>	all materials, equipment and tools, drawings, specifications and data supplied by the Customer to the Supplier.
<b>Data and Privacy Policy</b>	the Supplier's data and privacy policy as may be updated by the Supplier from time to time, the current version of which can be found at <a href="http://www.InformedAssessment.co.uk">www.InformedAssessment.co.uk</a>
<b>Data Protection Legislation:</b>	the General Data Protection Regulation ((EU) 2016/679) ( <b>GDPR</b> ) and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK.
<b>Data Subject:</b>	has the meaning given to it under the GDPR.
<b>Deliverables:</b>	all documents, products and materials developed by the Supplier or its agents, subcontractors, directors and personnel as part of or in relation to the Services in any form, including without limitation computer programs, data, reports and specifications (including drafts) and the Key Deliverables set out in the Contract Details.
<b>Intellectual Property Rights:</b>	patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade-marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) 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.
<b>Personal Data:</b>	has the meaning given to it under the GDPR and relates only to a Party's Personal Data set out in clause 6.5 as the same may be updated and amended by that Party providing written notice to the other Party from time to time.
<b>Processing:</b>	has the meaning given to it under the GDPR and <b>Process</b> and <b>Processed</b> shall be construed accordingly.
<b>Processor:</b>	has the meaning given to it under the GDPR.
<b>Services:</b>	the services, including without limitation any Deliverables, to be provided by the Supplier pursuant to the Contract, as described in the Contract Details.
<b>Services Start Date:</b>	the day on which the Supplier is to start provision of the Services, as set out in the Contract Details.
<b>Supplier IPRs:</b>	all Intellectual Property Rights subsisting in the Deliverables excluding any Customer Materials incorporated in them.

- 1.2 The following rules of interpretation shall apply to the Contract.
- 1.2.1 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time. A reference to a statute or statutory provision includes any subordinate legislation made from time to time under that statute or statutory provision.
- 1.2.2 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.
- 1.2.3 A reference to **writing** or **written** includes email.

2. Commencement and term

Commencement is **either** upon the date when the Contract has been signed by both Parties and shall continue, unless terminated earlier in accordance with its terms, until either Party gives to the other not less than 30 days' prior written notice to terminate, expiring on or after the first anniversary of the Services Start Date; **or** upon written authorisation to proceed with an assessment by the

Customer. By placing an assessment order, the Customer agrees to comply with the Terms and Conditions.

3. Supply of services

- 3.1 In consideration of the payment of the Charges, the Supplier shall supply the Services to the Customer from the Services Start Date in accordance with the Contract.
- 3.2 In supplying the Services, the Supplier shall:
- 3.2.1 perform the Services with reasonable care and skill;
- 3.2.2 use reasonable endeavours to perform the Services in accordance with the service description set out in the Contract Details;
- 3.2.3 ensure that the Deliverables, and all goods, materials, standards and techniques used in providing the Services are of satisfactory quality and are fit for purpose;
- 3.2.4 comply with:
- (a) all applicable laws, statutes, regulations from time to time in force; and
- (b) the Data and Privacy Policy, provided that the Supplier shall not be liable under the Contract if, as a result of such compliance, it is in breach of any of its obligations under the Contract;
- 3.2.5 take reasonable care of all Customer Materials in its possession and make them available for collection by the Customer on reasonable notice and request, always provided that the Supplier may destroy the Customer Materials if the Customer fails to collect the Customer Materials within a reasonable period after termination of the Contract.

4. Customer's obligations

- 4.1 The Customer shall:
- 4.1.1 pay the Charges in accordance with the Contract Details and clause 7;
- 4.1.2 co-operate with the Supplier in all matters relating to the Services;
- 4.1.3 provide, in a timely manner, such information as the Supplier may reasonably require, and ensure that it is accurate and complete in all material respects.
- 4.2 If the Supplier's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants, employees or directors, the Supplier shall:
- 4.2.1 not be liable for any costs, charges or losses sustained or incurred by the Customer that arise directly or indirectly from such prevention or delay;
- 4.2.2 be entitled to payment of the Charges despite any such prevention or delay; and
- 4.2.3 be entitled to recover any additional costs, charges or losses the Supplier sustains or incurs that arise directly or indirectly from such prevention or delay.

5. Intellectual property

- 5.1 The Supplier and its licensors shall retain ownership of all Supplier IPRs. The Customer and its licensors shall retain ownership of all Intellectual Property Rights in the Customer Materials.
- 5.2 The Supplier grants the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free, licence to copy the Supplier IPRs for the purpose of receiving and using the Services and the Deliverables in the Customer's business during the term of the Contract.
- 5.3 The Customer grants the Supplier a fully paid-up, worldwide, non-exclusive, royalty-free, non-transferable licence to copy and modify the Customer Materials for the term of the Contract for the purpose of providing the Services to the Customer in accordance with the Contract.
- 5.4 The Customer shall indemnify the Supplier in full against any sums awarded by a court against the Supplier arising of or in connection with any claim brought against the Supplier for infringement of a third party's rights (including any Intellectual Property Rights) arising out of, or in connection with, the receipt or use of the Customer Materials by the Supplier.

6. Data Protection

- 6.1 Each Party warrants that it shall, in the course of performing its obligations under the Contract, comply with all applicable provisions of the Data Protection Legislation.
- 6.2 Each Party acknowledges that for the purposes of the Data Protection Legislation:
- 6.2.1 each Party is the Controller in respect of the Personal Data of its own directors, employees, agents, consultants and representatives; and
- 6.2.2 the Supplier is the Processor in relation to any Personal Data Processed by it in connection with the performance of its obligations under the Contract.
- 6.3 Without prejudice to the generality of clause 6.1:
- 6.3.1 each Party (in its capacity as Controller) will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of its Personal Data to the other Party for the duration and purposes of the Contract; and
- 6.3.2 the Supplier shall (in its capacity as Processor) in relation any Personal Data Processed by the Supplier in connection with the performance of its obligations under the Contract:
- (a) Process that Personal Data only in accordance with the Customer's written instructions from time to time unless it is required by the laws of the European Union applicable to it to Process the Personal Data (**Applicable Laws**). Where the Supplier is relying on Applicable Laws as the basis for Processing the Personal Data, it shall promptly notify the Customer of this before performing such Processing, unless those Applicable Laws prohibit it from doing so;
- (b) ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful Processing of the Personal Data and against accidental loss or destruction of, or damage to, the Personal Data, appropriate to the harm that might result from the unauthorised or unlawful Processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting the Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to the Personal Data can be restored in a timely manner after an incident, and regularly

- assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
- (c) ensure that all personnel who have access to and/or Process the Personal Data are obliged to keep the Personal Data confidential;
- (d) not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
- appropriate safeguards have been provided in relation to the transfer;
  - the Data Subject has enforceable rights and effective legal remedies;
  - the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
  - the Supplier complies with reasonable instructions notified to it in advance by the Customer with respect to the Processing of the Personal Data;
- (e) assist the Customer in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (f) notify the Customer without undue delay on becoming aware of a Personal Data breach;
- (g) at the written direction of the Customer, delete or return the Personal Data and copies thereof to the Customer on termination of the Contract unless required by Applicable Laws to store the Personal Data; and
- (h) maintain complete and accurate records and information to demonstrate its compliance with this clause 6.
- 6.4 The Customer consents to the Supplier appointing a third party Processor of Personal Data (a subcontractor) under the Contract, provided that the Supplier will enter into a written contract on terms which are substantially similar to those set out in this clause 6. As between the Customer and the Supplier, the Supplier shall remain fully liable for all acts or omissions of any third party Processor appointed by it pursuant to this clause 6.4.
- 6.5 The provisions below set out the scope, nature and purpose of the Processing by the Supplier under and/or in connection with the Contract, the duration of the Processing, the types of Personal Data, and the categories of Data Subject.
- 6.5.1 **Personal Data:** First names, surnames, email addresses, telephone number.
- 6.5.2 **Purpose:** (i) to contact and engage with the Data Subjects specifically for the purpose of providing the Services and/or complying with the Supplier's other obligations set out in the Contract where the Supplier may need to contact and engage with such Data Subjects, and (ii) for such other purposes as are expressly confirmed in writing by the Customer from time to time.
- 6.5.3 **Processing Period:** the period commencing on (i) the Commencement Date, or (ii) the date the Supplier first Processes Personal Data in respect of that Data Subject, (whichever is the later); and ending on the date (i) the Contract terminates, or (ii) that the Supplier no longer needs to Process the Personal Data in respect of that Data Subject for the purpose of the Contract (whichever is the earlier).
- 6.5.4 **Categories of Data Subject:** The Customer's employees, candidates or any other individual that the Customer requires an assessment in respect of.
- 7. Charges and payment**
- 7.1 In consideration for the provision of the Services, the Customer shall pay the Supplier the Charges in accordance with the Contract Details and this clause 7.
- 7.2 All amounts payable by the Customer exclude amounts in respect of value added tax (VAT), which the Customer shall additionally be liable to pay to the Supplier at the prevailing rate (if applicable), subject to receipt of a valid VAT invoice.
- 7.3 The Supplier shall submit invoices for the Charges plus VAT (if applicable) to the Customer monthly in arrears or as otherwise set out in the Contract Details. Each invoice shall include all reasonable supporting information required by the Customer.
- 7.4 The Customer shall pay each invoice due and submitted to it by the Supplier, within 30 days of receipt, to a bank account nominated in writing by the Supplier.
- 7.5 If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment, then, without limiting the Supplier's remedies under clause 9 (Termination):
- the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause will accrue each day at 3% a year above the Bank of England's base rate from time to time, but at 3% a year for any period when that base rate is below 0%;
  - the Supplier may suspend all Services, which may include withholding assessment results, until payment has been made in full.
- 7.6 Any discounts agreed with the Customer and set out in the Contract Details are offered on the basis that payment is properly made by the Customer in accordance with the terms of the Contract. The Supplier reserves the right to withdraw any discount and require payment in full on demand if the Customer does not make the discounted payment when due.
- 7.7 All amounts due under the Contract from the Customer to the Supplier shall be paid by in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 8. Limitation of liability**
- 8.1 Nothing in the Contract shall limit or exclude the Supplier's liability for:
- death or personal injury caused by its negligence, or the negligence of its personnel, agents or subcontractors;
  - fraud or fraudulent misrepresentation; or
  - any other liability which cannot be limited or excluded by applicable law.
- 8.2 Subject to clause 8.1, the Supplier shall not be liable to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for:
- loss of profits;
  - loss of sales or business;
  - loss of agreements or contracts;
  - loss of anticipated savings;
  - loss of use or corruption of software, data or information;
  - loss of or damage to goodwill; and
  - any indirect or consequential loss.
- 8.3 Subject to clause 8.1, the Supplier's total liability to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract shall be limited to the greater of £1,000 and one hundred and twenty five per cent (125%) of the amount of Charges that have been paid to the Supplier under this Contract in the immediately preceding 12 month period commencing on a given anniversary of the Service Start Date or, during the first 12 month period, 125% of the Charges paid in respect of the first 12 month period calculated from the Services Start Date.
- 9. Termination**
- 9.1 Without affecting any other right or remedy available to it, either Party to the Contract may terminate it with immediate effect by giving written notice to the other Party if:
- the other Party commits a material breach of any term of the Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
  - the other Party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
  - the other Party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
  - the other Party's financial position deteriorates to such an extent that in the terminating Party's opinion the other Party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 9.2 Without affecting any other right or remedy available to it, the Supplier may terminate the Contract:
- by providing the Customer with 30 days' prior written notice to terminate the Contract;
  - with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment; or
  - with immediate effect by giving written notice to the Customer if there is a change of control of the Customer.
- 9.3 On termination of the Contract for whatever reason:
- the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Supplier may submit an invoice, which shall be payable immediately on receipt;
  - any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination of the Contract shall remain in full force and effect; and
  - termination of the Contract shall not affect any of the 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 Contract which existed at or before the date of termination.
- 9.4 In the event that a participant fails to complete an assessment or withdraws from an assessment at any time following the Services Start Date, the Customer shall be liable to pay for the Services performed and liabilities incurred prior to the date on which the Supplier deems that the participant has withdrawn from the process.
- 10. General**
- 10.1 **Force majeure.** Neither Party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.
- 10.2 **Assignment and other dealings.**
- The Customer shall not assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract without the Supplier's prior written consent.
  - The Supplier may at any time assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights under the Contract.
- 10.3 **Confidentiality.**
- Each Party undertakes that it shall not at any time during the Contract, and for a period of five years after termination of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other Party, except as permitted by clause 10.3.
  - Each Party may disclose the other Party's confidential information:
    - to its directors, employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the Party's obligations under the Contract. Each Party shall ensure that its directors, employees, officers, representatives, subcontractors or advisers to whom it discloses the other Party's confidential information comply with this clause 10.3; and
    - as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
  - Neither Party shall use any other Party's confidential information for any purpose other than to perform its obligations under the Contract.
- 10.4 **Entire agreement.**
- 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.
  - 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. Each Party agrees that it shall have no claim for innocent or negligent

- misrepresentation or negligent misstatement based on any statement in the Contract.
- 10.5 **Variation.** No variation of the Contract shall be effective unless it is in writing and signed by the Parties (or their authorised representatives).
- 10.6 **Waiver.**
- 10.6.1 A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default.
- 10.6.2 A failure or delay by a Party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- 10.7 **Severance.** If any provision or part-provision of the Contract 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 the Contract.
- 10.8 **Notices.**
- 10.8.1 Any notice or other communication given to a Party under or in connection with the Contract shall be in writing and shall be: delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or sent by email to the address specified in the Contract Details].
- 10.8.2 A notice or other communication shall be deemed to have been received: if delivered by hand, on signature of a delivery receipt; if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; or, if sent by email, on the next Business Day after transmission.
- 10.8.3 This clause shall not apply to the service of any proceedings or other documents in any legal action.
- 10.9 **Third party rights.** The Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- 10.10 **Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by, and construed in accordance with the law of England.
- 10.11 **Jurisdiction.** Each Party irrevocably agrees that the courts of England shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.