

**OxEd AND ASSESSMENT LIMITED**

**LANGUAGESCREEN SERVICE**

**CUSTOMER TERMS AND CONDITIONS**

When you complete an online registration form and submit it to OxEd and Assessment Limited (**OxEd**), you are entering into a contract with OxEd. If OxEd accepts your offer, that contract will be on the terms set out below.

Where you are named as the Customer in the Registration Form, the offer to enter into a contract with OxEd is made by you personally and, by submitting the Registration Form to OxEd, you are confirming that you agree to this Agreement.

Where you submit the Registration Form on behalf of an organisation and that organisation is named as the Customer in the Registration Form, that offer is made on behalf of that organisation and, by submitting that Registration Form to OxEd, you are confirming that that organisation agrees to this Agreement and that you have authority to agree to this Agreement and to enter into a contract with OxEd on behalf of that organisation.

Please read this Agreement carefully. If you do not agree to it, do not submit the Registration Form.

After you have registered on our website to use the LanguageScreen assessment service, OxEd will send a verification link to your registered email address. OxEd reserves the right to reject any Registration Form and not enter into any contract with the Customer, as OxEd sees fit, without giving any reason.

A contract between the Customer and OxEd will come into existence when OxEd accepts the Registration Form and sends you a verification link to your registered email address.

OxEd is a company registered in England, under company number 12325592. Our registered office is c/o Botting & Co Ltd, 8 Clifton Moor Business Village, James Nicolson Link, York, England, YO30 4XG.

If you wish to contact OxEd about the LanguageScreen Service or this Agreement, please email us at [support@oxedandassessment.com](mailto:support@oxedandassessment.com)

## 1. Definitions and Interpretation

1.1 In this Agreement the following expressions have the following meanings:

**this Agreement:** these Terms and Conditions and the Registration Form, each as amended from time to time in accordance with Clause 11.2 or clause 6;

**the LanguageScreen Service:** the online assessment service offered by OxEd from time to time designed to assess children's language skills;

**a Clause:** a clause in the body of this Agreement;

**a Controller:** has the meaning given to that expression in the Data Protection Legislation;

**the Customer:** the customer named in the Registration Form;

**the Customer's Confidential Data:** the information provided by or on behalf of the Customer about an identifiable child, the answers to the Tests input into the LanguageScreen Service on behalf of an identifiable Registered Child and the content of the Outputs relating to an identifiable Registered Child;

**the Customer's Data:** the Customer's Confidential Data and any other information inputted into the LanguageScreen Service or OxEd's website by or on behalf of the Customer (including the information in the Registration Form);

**the Customer's Trade Marks:** the Customer's name and logo;

**the Data Protection Legislation:** any and all of the following while they are in force from time to time in the United Kingdom: the General Data Protection Regulation 2016 ((EU) 2016/679); the Data Protection Act 2018; the mandatory requirements of any code of practice issued from time to time by the ICO and relating to the Processing of Personal Data; and any other legislation and regulatory requirements in force from time to time which apply to a Party and which relate to the Processing of Personal Data;

**the Fees:** the fees payable by the Customer to OxEd for the LanguageScreen Service are set out on the Company Website and may change from time to time;

**Intellectual Property Rights:** patents, rights to any invention, copyrights and related rights, moral rights, rights in computer software, trade marks, service marks, trade names, domain names, rights in any get-up, goodwill and the right to sue for passing off or unfair competition, registered designs, other rights in designs, rights of confidence, rights in any know-how, trade secrets, rights to extract and exploit data, database rights, any similar or equivalent rights protected in any jurisdiction, whether now existing or coming into existence at some future date and whether or not registered, any application for (and rights to apply for and be granted) any of the above, any renewals or extensions of, and rights to claim priority from, any such rights, and any accrued rights of action in respect of any of the above;

**Malicious Code:** any virus, bot, worm, time bomb, trojan horse, time lock, drop dead device, trap, access code spyware, adware or anything else which might disrupt, disable, harm or impede the operation of any information system, or which might corrupt, damage, destroy or render inaccessible or allow anyone to monitor any software, data or file on, or which may allow any unauthorised person to gain access to, any information system or any software, data or file on it;

**OxEd's Confidential Information:** the technology, systems, tools and methodologies which OxEd or its suppliers use from time to time to provide the LanguageScreen Service or any Output; any and all other information which relates to OxEd's or its suppliers' business, financial affairs, business plans and strategies and which, in each case, is not available to the public; and any Personal Data provided by OxEd to the Customer, except the content of the Outputs relating to an identifiable Registered Child;

**OxEd's Systems:** the equipment, software, databases, data feeds, telecommunications systems, network connections and other systems used by OxEd, its suppliers, its Processor or sub-Processors from time to time to provide the LanguageScreen Service, each as updated, reconfigured and upgraded from time to time;

**OxEd's Trademarks:** any and all of the trademarks used by OxEd or any of its licensors from time to time in relation to the LanguageScreen Service;

**the Outputs:** the results of the Tests, and the report and the recommendations provided by OxEd to the Customer in the course of providing the LanguageScreen Service;

**a Parent:** any individual (including a parent or guardian) or organisation which has parental responsibility for a Registered Child;

**the Parties:** OxEd and the Customer, and each of them is a Party;

**Personal Data:** has the meaning given to that expression in the Data Protection Legislation;

**to Process:** has the meaning given to that expression in the Data Protection Legislation;

**a Processor:** has the meaning given to that expression in the Data Protection Legislation;

**a Registered Child:** a child whose language skills the Customer has asked OxEd to assess;

**the Registration Form:** the online registration form completed by or on behalf of the Customer and submitted to OxEd for the purposes of the Customer registering to use the LanguageScreen Service;

**the Shared Personal Data:** any Personal Data which is provided or received by one of the Parties to or from the other Party in connection with the provision or use of the LanguageScreen Service (except the Personal Data referred to in Clause 4.2);

**a Member of Staff:** an employee, worker, contractor, or volunteer working for or with the relevant Party;

**the Start Date:** the start date referred to in the email sent by OxEd to the Customer confirming OxEd's acceptance of the Registration Form;

**the Tests:** the assessment tests carried out by OxEd in relation to the Registered Child's language skills as part of the LanguageScreen Service;

**You:** the person submitting the Registration Form;

**VAT:** value added tax imposed in any member state of the European Union pursuant to Council Directive (EC) 2006/112 on the common system of value added tax and national legislation implementing that Directive or any predecessor to it, or supplemental to that Directive, or any similar tax which may be substituted for or levied in addition to it, or any value added, sales, turnover or similar tax imposed in any country which is not a member of the European Union;

**Writing or written:** includes text stored or transmitted electronically.

1.2 Any reference in this Agreement to a statute or regulation is to be construed as a reference to that statute or regulation as amended, extended or re-enacted from time to time, and it includes any subordinate legislation from time to time in force made under it.

1.3 Unless the context otherwise requires, in this Agreement, words in the singular include the plural and words in the plural include the singular.

1.4 The headings in this Agreement are for ease of reference only; they do not affect its interpretation or construction.

1.5 The rule known as the *ejusdem generis* rule does not apply to this Agreement. Accordingly, general words introduced by the word **other** will not be given a restrictive meaning because they are preceded by words indicating a particular class of acts, matters or things.

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

1.7 Any words in this Agreement following the expressions **including, include, in particular,** or any similar expression, are merely illustrative and do not limit the sense of the words, description, definition, phrase or expression preceding those expressions.

1.8 In this Agreement a **person** includes a natural person, a corporate or unincorporated body (whether or not it has a separate legal personality) and that person's personal representatives, successors and permitted assigns.

1.9 A reference in this Agreement to a Party includes that Party's permitted assigns.

## **2. The LanguageScreen Service**

2.1 The LanguageScreen Service will begin on the Start Date and, unless this Agreement is terminated earlier in accordance with Clause 8.2 or the LanguageScreen Service is suspended under Clause 8.3, the ability to conduct assessments will end one calendar year after the account is opened, unless the subscription is renewed.

2.2 OxEd may provide the LanguageScreen Service to other customers and the number of customers registered with OxEd at any time is not limited in any way.

2.3 Only the Customer and its Members of Staff working within the Customer's organisation for the Customer's benefit may use the LanguageScreen Service or the Outputs (or both). The Customer and its Members of Staff must not:

2.3.1 share the use of the LanguageScreen Service or the Outputs with anyone else;

2.3.2 resell the LanguageScreen Service;

2.3.3 distribute or make the LanguageScreen Service or the Outputs available to any third party; or

2.3.4 use the LanguageScreen Service or the Outputs for anyone else's benefit, except Registered Children.

2.4 The Customer may use the LanguageScreen Service and the Outputs only for the purpose of assessing the language skills of Registered Children.

2.5 The Customer is responsible for the Customer's Members of Staff complying with this Agreement and will be liable to OxEd for the consequences of each failure to comply with this Agreement by any of the Customer's Members of Staff.

2.6 OxEd may, but is not obliged to, monitor the use of the LanguageScreen Service. OxEd may, in order to avail itself of any defence allowed to it by law, or to reduce its liability to any third party, remove from the LanguageScreen Service, or block, any of the Customer's Data or any of the Output (or both).

2.7 The Customer is responsible for setting the controls so that particular items of Customer's Data and the Outputs are accessible only by, and may be changed only by, those Members of the Customer's Staff whom the Customer intends to have access to or to be able to change them.

2.8 OxEd may suspend access to the LanguageScreen Service and any of the Outputs (or any of them) for such period as OxEd thinks appropriate, without liability if:

2.8.1 there has been, or if OxEd has reasonable grounds to suspect that there may have been, a breach of security (including the introduction of any Malicious Code), a breach of this Agreement, or any unlawful or illegal use of the LanguageScreen Service and the Outputs (or any of them);

2.8.2 OxEd knows, or has reasonable grounds to suspect, that any of the Customer's Data infringes the Intellectual Property Rights or other rights of any third party, or is in any way unlawful, or is likely to lead to any third party instituting or threatening legal proceedings against OxEd or any other person; or

2.8.3 the Customer or any Member of the Customer's Staff causes, or OxEd has reasonable grounds to suspect that the Customer or any Member of the Customer's Staff has caused any technical or security issue which affects the LanguageScreen Service, any Outputs, OxEd's Systems or any other customer of OxEd from time to time.

### **3. The Customer's Obligations**

3.1 As between OxEd and the Customer, the Customer will be responsible for deciding whether to act on the Outputs and for taking any other decision relating to any Registered Child, whether based on any of the Outputs or otherwise and for the provision of any teaching or training to any Registered Child.

3.2 OxEd is not responsible for the Customer's Data. The Customer will:

3.2.1 ensure that the Customer's Data is accurate and up-to-date and is not misleading in any way;

3.2.2 inform OxEd of any change in circumstances or any other matter which results in any of the Customer's Data no longer being accurate and up-to-date or in it being misleading in any other way, in each case as soon as possible after the Customer becomes aware of the same; and

3.2.3 ensure that none of the Customer's Data includes anything which is pornographic, obscene, offensive, indecent, abusive, menacing, unlawful, blasphemous, an invasion of privacy, an infringement of Intellectual Property Rights or of any of the Data Protection Legislation, defamatory, a malicious falsehood or seditious libel, a contempt of court, or anything which is likely to incite, or is capable of inciting, violence, racial hatred, sadism, cruelty, or which encourages any unlawful or illegal act or omission.

3.3 The Customer will make, retain and, where necessary reconstruct from, sufficient back-ups of the Outputs and the Customer's Data to ensure that, if any of the Outputs or any of the Customer's Data held on OxEd's Systems is lost or corrupted, the same can be restored and any disruption to the Customer's business or other activities is avoided.

3.4 The Customer will indemnify OxEd on demand and will keep OxEd indemnified against:

3.4.1 any and all claims made against OxEd by or on behalf of any Parent or Guardian and against any and all liabilities, losses, damages, costs and expenses awarded against or incurred by OxEd as a result of all and any such claims; and

3.4.3 all liabilities, losses, damages, costs and expenses awarded against or incurred by OxEd as a result of any and all breaches by the Customer of Clauses 3.2 and 3.3 (or either of those Clauses).

#### **4. Data Protection**

4.1 The Customer's use of the LanguageScreen Service will involve OxEd and the Customer sharing Personal Data.

4.2 OxEd may use the data about the Customer's members of staff (and contacts) as set out in OxEd's Privacy Notice. For this usage OxEd is the Data Controller.

#### **5. Financial Arrangements**

5.1 In consideration of the provision of the LanguageScreen Service, the Customer will pay OxEd the Fees.

5.2 The Customer will be able to assess LanguageScreen and its operation by accessing the free assessments offered on the company website. After this free trial, the Customer will pay the Fees for further assessments conducted with LanguageScreen to OxEd in advance, without any deduction, set off or withholding, before assessments of children using LanguageScreen can commence.

5.3 The Fees and all other charges payable under this Agreement are exclusive of VAT. The Customer will pay VAT on the Fees and any other charges payable under this Agreement in accordance with United Kingdom legislation in force at the tax point.

5.4 OxEd may increase or decrease the Fees for using LanguageScreen periodically, pricing will be in accordance with the information on the company website

5.5 Without prejudice to any other right or remedy available to OxEd under this Agreement, at law or in equity, if the payment of any Fees is overdue, the Customer will pay OxEd, on demand, interest calculated on a daily basis on all sums not paid to OxEd on or before the due date in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 as amended by the Late Payment of Commercial Debts Regulations 2013. The Customer will also pay all reasonable expenses (on an indemnity basis) of OxEd associated with the Customer's failure to pay any amount when due, including OxEd's legal expenses and the costs of collection.

#### **6. Warranties**

6.1 OxEd warrants to the Customer that OxEd will use reasonable skill and care in the provision of the LanguageScreen Service to the Customer.

6.2 All Outputs which OxEd supplies are supplied in good faith, but the accuracy and completeness of any information obtained from, or based on, any of the Customer's Data or other information obtained from the Customer, or any of the Customer's Members of Staff is not warranted by OxEd. It is not within the scope of OxEd's obligations to enquire as to, or to verify, the accuracy or completeness of the Customer's Data or that other information.

6.3 OxEd does not warrant that its website or the LanguageScreen Service will be available at any time or from time to time, and the Customer acknowledges that OxEd may from time

to time take its website and the LanguageScreen Service down for maintenance, for security reasons or for other reasons.

6.4 OxEd does not warrant that the LanguageScreen Service will be provided without interruption or that the Outputs will be up to date and error free. The interruption or non-availability of the LanguageScreen Service and the existence of any error in the Outputs will not constitute a breach of this Agreement.

6.5 OxEd will not be liable under any warranty or any other provision of this Agreement to the extent that any loss results from any of the following:

6.5.1 the Customer not having complied with its obligations under this Agreement;

6.5.2 any error or incompleteness in any of the Customer's Data or any of the Customer's Data not being up to date;

6.5.3 the Customer having failed to comply with any technical requirements specified from time to time by the licensor of any software or the manufacturer of any equipment; the Customer's failure to implement, or delay in implementing, any firewall, anti-virus software, security patch, upgrade, update, new release, revision, version, workaround or modification which would have remedied or mitigated the effects of any Malicious Code; or the failure of any firewall;

6.5.4 any problem with, or any delay or interruption in OxEd's Systems and the LanguageScreen Service (or either of them), or for any failure or delay in delivery, or for any loss or damage resulting from the transfer of data (or the failure to transfer data) over any communications network or facility, including the Customer's network connections or telecommunications links and the internet, and the Customer acknowledges and agrees that OxEd's Systems and the LanguageScreen Service may be subject to limitations, delays and other problems inherent in the use of such communications networks and facilities;

6.5.5 any failure of, or fault, error or bug in, the Customer's equipment, software, network or telecommunications system;

6.5.6 any degradation in performance or reduction in functionality caused by using the LanguageScreen Service with any operating system, equipment or network or telecommunications system which is incompatible with OxEd's Systems; and

6.5.7 any other act or omission on the part of the Customer or any Parent or Guardian.

6.6 The Customer acknowledges and agrees that proper use of the LanguageScreen Service is dependent on the accuracy of the Customer's Data, and on the Customer exercising proper skill and care in inputting data into the LanguageScreen Service, checking the Outputs and correctly interpreting the Outputs. OxEd will not be liable for the Outputs or for the consequences of decisions taken on the basis of, or in reliance on, the Outputs.

6.7 The Customer acknowledges that: the LanguageScreen Service is a standard service provided to OxEd's customers generally; it has not been developed to meet the Customer's



requirements; and it is the Customer's responsibility to check that the features, facilities and functions of the LanguageScreen Service meet its requirements.

6.8 If the LanguageScreen Service allows the Customer to access the website or content of any third party, that will be at the Customer's (and not OxEd's) risk. OxEd does not endorse or approve any third party website or content made available via the LanguageScreen Service or OxEd's website, and OxEd will have no liability and no obligation in relation to any website or content provided by any third party.

6.9 The internet, the world-wide-web, telecommunications networks and services and the Customer's Data are outside OxEd's control, and OxEd will not be responsible or liable for any error, omission, delay in the same, or the inability to use such service or for any content introduced by any such service.

6.10 The express undertakings and warranties given by OxEd in this Agreement are in lieu of all warranties, conditions, terms, undertakings and obligations on the part of OxEd implied by statute, common law, custom, trade usage, course of dealing or in any other way, including any warranty or condition relating to satisfactory quality or fitness for purpose. All these implied warranties, conditions, terms, undertakings and obligations are, to the extent permitted by law, excluded.

6.11 The Customer warrants that it has not been induced to enter into this Agreement by any representation or by any warranty (whether oral, or in writing) except those specifically set out in this Agreement as warranties. The Customer waives all claims for breach of any warranty and all claims for any misrepresentation, (negligent or of any other kind, unless made by OxEd fraudulently) which is not specifically set out in this Agreement as a warranty.

## **7. Intellectual Property Rights**

7.1 The Customer acknowledges and agrees that: all Intellectual Property Rights in the LanguageScreen Service, in the methodologies used in connection with the provision of the LanguageScreen Service and the Outputs, in OxEd's Trade Marks, and in the format of the Outputs, as between the Customer and OxEd, are and will remain OxEd's property or that of OxEd's licensors, and OxEd may allow others to use any of them.

7.2 Except as expressly stated in this Agreement, this Agreement does not grant the Customer or any other person any rights in respect of the LanguageScreen Service, the methodologies used in connection with the provision of the LanguageScreen Service or the Outputs, OxEd's Trade Marks or the format of the Outputs.

7.3 OxEd acknowledges and agrees that all Intellectual Property Rights in the Customer's Data and in the Customer's Trademarks are and will remain the Customer's property.

7.4 OxEd may use the Customer's Data for the purpose of providing the LanguageScreen Service and the Outputs to the Customer and for the purpose of carrying out research into children's language skills.

7.5 OxEd may use the Customer's Trade Marks on OxEd's website provided OxEd complies with any guidelines as to the form of those trademarks made known by the Customer to OxEd from time to time.

## **8. Termination**

8.1 Either Party may terminate this Agreement at any time by giving to the other not less than 30 days' written notice in advance.

8.2 Either Party may terminate this Agreement with immediate effect on giving notice in writing to the other if:

8.2.1 the other commits any other material or persistent breach of this Agreement and (in the case of a breach which is capable of being remedied) it has failed to remedy it within 30 days after receiving notice requiring it to remedy that breach (a persistent breach being one which occurs three or more times in any 12 month period); or

8.2.2 the other has a receiver or administrative receiver appointed over it or over any part of its undertaking or assets, or it passes a resolution for winding-up (except for the purpose of a bona fide scheme of solvent amalgamation or reconstruction), or if a court of competent jurisdiction makes an order to that effect, or if it becomes subject to an administration order, or if it enters into any voluntary arrangement with its creditors, or if any similar process to any of the above is begun in any jurisdiction, or if it ceases or threatens to cease to carry on business.

8.3 OxEd may suspend its performance of this Agreement if any of the circumstances mentioned in Clause 8.2 arises in relation to the Customer. That suspension will not prejudice OxEd's right later to terminate this Agreement, either for the same or for a different reason.

8.4 On the termination of this Agreement (however it happens), the Customer's right to use the LanguageScreen Service will immediately and automatically terminate and the Customer will immediately disable any link between the Customer's website and OxEd's website.

8.5 The Customer's obligation to pay the Fees to OxEd and the provisions of Clause 5 will survive the termination of this Agreement and will continue until the Customer has paid OxEd all the Fees in respect of the use of the LanguageScreen Service and the provision of any Outputs to the Customer (and all interest on those Fees and any VAT).

8.6 Any termination of this Agreement (however it happens) will not affect any accrued rights or liabilities of either Party, nor will it affect the coming into force or the continuance in force of any provision of this Agreement which is expressly, or by implication, intended to come into or to continue in force on or after termination.

8.7 Clauses 1, 2.2-2.8 (both inclusive), 3, 4, 6 (except 6.1), 7, 8.4, 8.5, 8.6, 8.7, 9, 10.2, 11, 12, 13, 14, 15, 16, 17, 18 and 19 will survive the termination of this Agreement and continue in force without limit in time.

## **9. Confidentiality**

9.1 Each of the Parties will keep the other Party's Confidential Information confidential and, except as permitted elsewhere in this Agreement, not disclose that information to any other person, or use it for any purpose except the exercise of its rights, or the performance of its obligations, under this Agreement or, in relation to any of the Shared Personal Data.

9.2 The Customer will not, without first obtaining OxEd's written consent, disclose any of OxEd's Confidential Information to anyone except:

9.2.1 the Customer's Members of Staff, and then only to those Members of Staff who need to know or to have access to that information in order to use the LanguageScreen Service in accordance with this Agreement;

9.2.2 the Customer's auditors, HM Customs & Excise and any regulatory body to which the Customer is subject;

9.2.3 where it is disclosed pursuant to the requirement of any law or regulation (provided, in the case of a disclosure under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004, none of the exceptions to that Act or those Regulations applies to the information disclosed) or pursuant to the order of any Court of competent jurisdiction or the requirement of any competent regulatory authority, and that, in each case where the law permits, the Customer has informed OxEd, within a reasonable time after being required to make the disclosure, of the requirement to disclose and the information required to be disclosed; or

9.2.4 in the case of any of the Shared Personal Data which is confidential to the OxEd, as permitted under clause 2.19.

9.3 The Customer will ensure that the people mentioned in Clause 9.2 are made aware, before the disclosure to them of any of OxEd's Confidential Information, that it is confidential and that they owe a duty of confidence to OxEd.

9.4 OxEd will not, without first obtaining the Customer's written consent, disclose any of the Customer's Confidential Information to anyone except:

9.4.1 OxEd's Members of Staff and then only to those of OxEd's Members of Staff who need to know or to have access to that information in order to provide the LanguageScreen Service in accordance with this Agreement;

9.4.2 OxEd's Members of Staff and to any individual or organisation with which OxEd is collaborating on research into children's language skills, and then (in each case) only to those persons who need to know or to have access to that information in order to carry out research into children's language skills;

9.4.3 OxEd's auditors, HM Customs & Excise and any regulatory body to which OxEd is subject;

9.4.4 where it is disclosed pursuant to the requirement of any law or regulation or pursuant to the order of any Court of competent jurisdiction or the requirement of any competent regulatory authority, and that, in each case where the law permits, OxEd has informed the Customer, within a reasonable time after being required to make the disclosure, of the requirement to disclose and the information required to be disclosed; or

9.4.5 in the case of any of the Shared Personal Data which is confidential to the Customer, as permitted under clause 2.19.

9.5 The Customer and OxEd will each ensure that the people mentioned, respectively, in Clauses 9.2 and 9.4 are made aware, before the disclosure to them of any of the other Party's Confidential Information, that it is confidential and that they owe a duty of confidence to OxEd.

9.6 The Customer and OxEd will each immediately notify the other if it becomes aware of any breach of confidence by anyone to whom, respectively, the Customer and OxEd disclose the other's Confidential Information, and will give the other all assistance reasonably required by the other in connection with any action or proceedings which the other may institute against that person for breach of confidence.

9.7 Each of the Parties will effect and maintain adequate security measures to safeguard the other's Confidential Information from access or use by any unauthorised person, will retain it and all copies of it under its possession and control, will keep a full and accurate record of its copying and disclosure of it, and will produce that record to the other Party from time to time on request.

9.8 Within 7 days after the termination of this Agreement (however it happens), each of the Parties will destroy all copies of the other's Confidential Information in its possession or control, and certify to the other that this has been done, provided that each of the Parties may retain a copy of the other's Confidential Information which it needs in order to fulfil its obligations under this Agreement which continue after the termination of this Agreement or for legal, tax or regulatory reasons.

9.9 Nothing in this Clause 9 applies to any of either Party's Confidential Information which is or comes into the public domain through no breach of this Clause 9, or which is trivial or obvious, or which by its nature cannot be confidential.

## **10. The Customer's Co-operation and Facilities**

10.1 The Customer will ensure that Members of its Staff and other suppliers co-operate fully with OxEd and cause no delay. Where OxEd requests the Customer to provide information or to take a decision, the Customer will do so promptly and so as not to cause any delay.

10.2 The Customer is solely responsible for:

10.2.1 procuring and maintaining equipment, operating systems and software data feeds, network connections and telecommunications links from its systems necessary to allow it to use the LanguageScreen Service in a way which meets the Customer's requirements;

10.2.2 all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to any of that or those equipment, operating systems and software, data feeds, network connections and telecommunications links from its systems; and

10.2.3 without prejudice to Clause 10.2.1, obtaining and maintaining a current licence to use any third-party software which may be necessary to allow the Customer to use the LanguageScreen Service in a way which meets the Customer's requirements.

## **11. Entire Agreement and Amendments**

11.1 This Agreement supersedes all earlier agreements, arrangements and understandings between the Parties relating to its subject matter and constitutes the complete agreement between the Parties relating to that subject matter.

11.2 No addition or amendment to this Agreement will be binding on either Party unless it is recorded in writing and signed by the duly authorised signatory of each of them.

## **12. Notices**

12.1 Except in relation to the Processing of the Shared Personal Data, when clause 8 will apply:

12.1.1 all notices given by OxEd under this Agreement must be in writing and be sent to the postal address or email address of the Customer set out in the Registration Form or any other address or email address which the Customer may designate by notice given to OxEd in accordance with this Clause 12; and

12.1.2 all notices given by the Customer under this Agreement must be in writing and sent to OxEd's registered office, or contact email address given in this Agreement, or any other address or email address which OxEd may designate by notice given to the Customer in accordance with this Clause 12.

12.2 Any notice may be delivered by hand, or by first class pre-paid post, or by email and will be deemed to have been served: if by hand, when delivered; if by first class post, 48 hours after posting, and if by email, on that email being accessible by the intended recipient.

## **13. Limitations and Exclusions of Liability**

13.1 This Clause 13 applies to the liability of OxEd (including any liability for the acts or omissions of its Members of Staff, Processors, sub-Processors and sub-contractors) in respect of any and all claims by the Customer (**a Claim**) in connection with any and all of the following:

13.1.1 any breach of this Agreement;

13.1.2 the LanguageScreen Service, its provision to the Customer and the use made by the Customer of the LanguageScreen Service;

13.1.3 the Outputs, their provision to the Customer, or the use made of the Outputs;

13.1.4 OxEd's website and its availability or non-availability;

13.1.5 any tortious act or omission (including negligence) arising under or in connection with this Agreement;

13.1.6 any representation or statement relating to the subject matter of this Agreement; and

13.1.7 any breach of any statutory duty in relation to the subject matter of this Agreement, or arising in any other way.

13.2 Subject to Clause 13.6, OxEd's aggregate total liability for all and any Claims will not exceed the higher of: a) the Fees received by OxEd from the Customer at the time the claim is made; and b) £500.

13.3 Despite anything else contained in this Agreement (except Clause 13.6), OxEd will not be liable for:

13.3.1 any loss of profits;

13.3.2 any loss of savings;

13.3.3 any loss of use;

13.3.4 any loss of business;

13.3.5 any loss of opportunity;

13.3.6 any degradation, loss, destruction, corruption, unauthorised alteration or unauthorised disclosure of any data;

13.3.7 any loss of contracts;

13.3.8 any loss or damage to reputation or goodwill, in each case whether direct or indirect.

13.4 Despite anything else contained in this Agreement (except Clause 13.6), OxEd will not be liable for any indirect or consequential loss, whether arising from negligence, or breach of contract, or in any other way, even if OxEd had been advised of, or knew of, the likelihood of that loss or type of loss arising.

13.5 The Customer acknowledges that the above limitations of and exclusions on OxEd's liability are reasonable in the light of OxEd's insurance arrangements and the financial arrangements in this Agreement and that OxEd is willing to accept a higher limitation on its liability provided it is able to obtain full insurance cover for its liabilities and the Customer pays the costs of obtaining and maintaining any increased cover.

13.6 Nothing in this Agreement limits or excludes OxEd's liability for death or personal injury caused by its negligence or for fraud or for any other matter which the law does not allow OxEd to limit or exclude.

#### **14. Delays**

14.1 Despite anything else contained in this Agreement, OxEd will not be liable for any delay in performing or failure to perform its obligations caused by circumstances beyond its control (including any act or omission on the Customer's part or on the part of any third party) and OxEd will be granted a reasonable extension of time for the performance of its obligations.

14.2 OxEd will endeavour to meet any timetable, project plan or dates which it has given to the Customer for the provision of the LanguageScreen Service, but they are estimates only, and OxEd will not be liable for any delay or failure to supply or perform in accordance with that timetable or project plan, or those dates.

#### **15. Assignment**

The Customer may not assign, or transfer, or sub-contract this Agreement or any of its rights or obligations under it, whether in whole or in part, without first obtaining OxEd's written consent.

#### **16. Severability**

If any part of this Agreement is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remainder of this Agreement will not be affected.

#### **17. Waiver**

No forbearance or delay by either Party in enforcing its rights will prejudice or restrict those rights. No waiver of any right will operate as a waiver of any later right or breach. No right, power or remedy conferred on, or reserved to, either Party is exclusive of any other right, power or remedy available to it, and each of those rights, powers, and remedies is cumulative.

#### **18. Law**

18.1 This Agreement, 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 will be governed by and construed in accordance with the law of England and Wales.

18.2 Each of the Parties irrevocably agrees that the courts of England and Wales (or any other courts of OxEd's choosing) will have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Agreement.

#### **19. Partnership and Third Parties**

19.1 Nothing in this Agreement creates, evidences or implies any partnership or joint venture between the Parties, or the relationship between them of principal and agent.

19.2 No one except the Parties or any lawful assignee of a Party is entitled to the benefit of this Agreement by virtue of the Contracts (Rights of Third Parties) Act 1999 or otherwise.