

## OxEd AND ASSESSMENT LIMITED

### TERMS AND CONDITIONS

**PLEASE READ THIS AGREEMENT CAREFULLY. IF YOU SIGN UP FOR ANY OXED AND ASSESSMENT LIMITED'S SERVICES YOU ARE AGREEING TO ALL THE TERMS SET OUT IN THESE TERMS AND CONDITIONS, AS MAY BE VARIED FROM TIME TO TIME AS PERMITTED HEREIN.**

**OXED AND ASSESSMENT LIMITED** 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 (**OxEd**).

When you share your information for account creation or agree to our terms on our website <https://oxedandassessment.com> (or any subdomain) you are making an offer to enter into a contract as an **Account Holder** with OxEd on the terms set out herein.

If OxEd accepts the offer we will send a verification link to the email address you, the Account Holder, have registered in the Registration Form. Once you have accessed the link, a contract will be deemed to have been formed between you, the Account Holder, and OxEd.

OxEd reserves the right, at its sole discretion and without giving any reason, to reject any Registration Form and not to enter into any contract with any person.

If you, as an Account Holder, set up a **School Record** in any **Website** on behalf of a **Customer**, you become the initial **Owner** representing that Customer, with additional responsibilities set out below.

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

The above section forms part of this Agreement and is legally binding.

## 1. Definitions and Interpretation

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

**Account Holder:** an individual with an active account on one or more of the Websites;

**Administrator or Admin:** an Account Holder who has been granted administrative rights to manage School Records by the Owners of those School Records;

**Agreement:** these Terms and Conditions and the Registration Form and/or Order Submission, each as amended from time to time in accordance with Clause 11.2 (**Entire Agreement and Amendments**);

**Assessments:** the assessment tests carried out by OxEd in relation to the Registered Child's skills as part of the Services;

**Confidential Information:** the business, affairs, operations, processes, budgets, pricing policies, product information, technical and commercial information, strategies, developments, trade secrets, know-how, personnel, customers and/or suppliers of the disclosing Party, together with all information derived by the receiving Party from such information and any other information clearly designated by a Party as being confidential to it (whether or not it is marked 'confidential'), or which ought reasonably be considered to be confidential;

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

**Customer:** a school, organisation or individual which has been granted a Free Trial of the Services and/or purchased a Subscription to the Services;

**Customer's Confidential Data:** the non-public information provided by or on behalf of the Customer, including but not limited to personally identifiable data entered about an identifiable Registered Child, the answers given to the Assessments by or on behalf of an identifiable Registered Child and the content of the Outputs relating to an identifiable Registered Child;

**Customer's Data:** the Customer's Confidential Data and any other information inputted into the Services or Websites by or on behalf of the Customer (including the information in the Registration Form and/or Order Submission);

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

**Data Protection Legislation:** the General Data Protection Regulation 2016 ((EU) 2016/679) (**UK GDPR**), and The Privacy Act 1988 (Privacy Act) (Australia).

**Fees:** any fees payable outside of any Free Trial or non-chargeable service by the Customer to OxEd for the Services, as are set out on the relevant Website or quoted in advance by OxEd to the Customer, whether on contract formation or renewal. OxEd may change the Fees from time to time;

**Free Trial:** access to specified Services for the Customer, Users and Members of Staff associated with a particular School Record, granted by OxEd for purposes of evaluation, which Free Trials last seven days only unless otherwise specified;

**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;

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

**Order Submission:** has the meaning set out at the beginning of this Agreement;

**Outputs:** the results of the Assessments, and the reports and the recommendations provided by OxEd to the Customer in the course of OxEd providing the Services;

**Owner:** the Account Holder so identified on a Website or elsewhere in OxEd's Systems, who represents a Customer, has responsibility for managing that Customer's School Records, and who has the primary relationship with OxEd for that Customer for the purposes of this Agreement; the Owner of a School Record, with support of Administrators, can modify and reassign roles for that School Record and is otherwise recognised by OxEd as being entitled to exercise the Customer's rights under the Contract;

**OxEd's Confidential Information:** OxEd's Systems together with all other technology, tools and methodologies which OxEd or its suppliers use from time to time to provide the Services 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 Processors

or sub-Processors from time to time to provide the Services, each as updated, reconfigured and upgraded from time to time;

**OxEd's Trade marks:** OxEd's name, logos and all other trade marks (whether or not registered) used or owned by OxEd or any of its licensors from time to time in relation to the Services;

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

**Parties:** OxEd, the Account Holder and the Customers, 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;

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

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

**Registration Form:** has the meaning set out at the beginning of this Agreement;

**School:** a school, organisation, individual or other entity associated with Registered Children;

**School Record:** a record on a Website representing a School, along with the Registered Children who make up that School and the classes into which those Registered Children are organised;

**Services:** the range of services offered by OxEd from time to time, including digital assessment tools, training, and user support;

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

**Subscription:** access to specified Services for the Customer, Users and Members of Staff associated with a particular School Record, purchased by the Customer for an agreed period;

**Trainee:** a person enrolled for OxEd Training;

**Training:** an OxEd online training course;

**User:** an Account Holder associated with a particular School Record, including the Owner;

**VAT:** value added tax or any equivalent tax chargeable in the UK or elsewhere;

**Websites:** the domains, websites and online services owned, hosted or administered by OxEd, including: <https://oxedandassessment.com> and <https://nelisignup.oxedandassessment.com>;

**you:** the person submitting the Registration Form or Order Submission, and **your** shall be interpreted accordingly.

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; and references to a gender shall include all other genders.

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.

1.10 A reference to a Clause is to a clause in this Agreement.

1.11 References to **writing or written** include text stored or transmitted electronically.

## **2. The Services**

2.1 OxEd may, at its discretion, grant the Customer one or more Free Trials of its Services, pertaining to a specific School Record. Unless this Agreement is terminated earlier in accordance with Clause 8.2 or the Services are suspended under Clause 8.3, each Free Trial will end seven days after it begins, and no further Services will be provided unless a Subscription is purchased.

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

2.3 Only the Owner, Users and its Members of Staff working within a school or other organisation, and duly authorised by the Owner, may use the Services or the Outputs (or both). The Owner, Users and Members of Staff must not:

2.3.1 share the use of the Services with anyone outside of the Customer;

2.3.2 resell the Services;

2.3.3 distribute or make the Services available to any third party; or

2.3.4 use the Services or the Outputs for anyone else's benefit, except that of the Customer and its Registered Children.

2.4 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 any failure of the Customer's Members of Staff to so comply.

2.5 OxEd may, but is not obliged to, monitor the use of the Services. 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 Services, or block, any of the Customer's Data or any of the Output (or both).

2.6 The Customer, via the Owner, is responsible for setting the Services controls (accessible via the relevant Website) so that particular items of Customer's Data and the Outputs are accessible only by, and may be changed only by, its Members of Staff whom the Customer intends to have access to or to be able to change them.

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

2.7.1 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 Service and the Outputs (or any of them);

2.7.2 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

2.7.3 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 Services, 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 intervention 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 by the Customer 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 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

3.4.2 any and 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).

3.5 The Customer, via the Owner, will: (a) inform Users and Administrators of all Customer policies and practices that are relevant to their use of the Services and of any settings that may affect the processing of Customer Data; and, (b) ensure that the transfer and processing of Customer Data under the Agreement are lawful.

### **4. Data Protection**

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

4.2 OxEd's Privacy Statement shall apply as if set out in full in this Agreement.

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

## **5. Financial Arrangements**

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

5.2 OxEd may grant the Customer a Free Trial of its services, at OxEd's discretion. After this Free Trial, the Customer may choose to purchase a Subscription. The Customer will pay the Fees for a Subscription to OxEd in advance as invoiced by OxEd, without any deduction, set-off or withholding, before assessments of Registered Children can commence.

5.3 The Fees and all other charges payable under this Agreement carry no VAT. OxEd is not registered for VAT. There is no VAT payable on the Fees and any other charges payable under this Agreement in accordance with United Kingdom legislation in force at the tax point. OxEd shall notify the Customer in the event that VAT becomes chargeable on any Services, and in those circumstances, OxEd reserves the right to charge all VAT it is legally required so to do.

5.4 OxEd may increase or decrease the Fees for its Services periodically, and pricing will be in accordance with the information on the relevant Website, unless otherwise agreed in writing with the Customer.

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 from time to time. 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 Services 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 Websites or the Services will be available at any time or from time to time, and the Customer acknowledges that OxEd may from time to time take its Websites and the Services down for maintenance or for security or any other reason.



6.4 OxEd does not warrant that the Services will be provided without interruption or that the Outputs will be up to date and/or error free. The interruption or non-availability of the Services and/or the existence of any error in the Outputs (other than a material error caused as a direct result of an error in OxEd's Systems) will not constitute a breach of this Agreement. The Customer's sole remedy for an error in an Output caused as a direct result of an error in OxEd's Systems shall be the correction of that error by OxEd.

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 Services (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 Services 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 systems;

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

6.5.7 any other act or omission on the part of the Customer, its Members of Staff, Users or any Parent.

6.6 The Customer acknowledges and agrees that proper use of the Services is dependent on the accuracy of the Customer's Data, and on the Customer exercising proper skill and care in inputting data into the Services, checking the Outputs and correctly interpreting the Outputs. OxEd will not be liable for the Outputs (save as set out in Clause 6.4) or for the consequences of decisions taken on the basis of, or in reliance on, the Outputs.

6.7 The Customer acknowledges that: the Services 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 Services meet the Customer's requirements.

6.8 The means of access to the Websites and Services is the Customer's responsibility and cost.

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

6.10 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.

6.11 The express undertakings and warranties given by OxEd in this Agreement are in lieu of all other warranties, conditions, terms, undertakings and obligations on the part of OxEd, including those 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 such implied warranties, conditions, terms, undertakings and obligations are, to the extent permitted by law, excluded.

6.12 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 Services, OxEd's Systems, including in the methodologies used in connection with the provision of the Services 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 Services, OxEd's Systems, including the methodologies used in connection with the provision of the Services 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 Trade Marks are and will remain the Customer's property.

7.4 The Customer hereby grants OxEd a worldwide, non-exclusive, irrevocable, royalty-free licence to use the Customer's Data for the purpose of providing the Services and the Outputs to the Customer and for the purpose of carrying out research into children's skills.

7.5 OxEd may use the Customer's Trade Marks on the Websites provided OxEd complies with any guidelines as to the form of those trade marks 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 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 cannot pay its debts as and when they fall due, 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 arise in relation to the Customer. Such suspension will not prejudice OxEd's right to terminate this Agreement at any time thereafter, either for the same or for a different reason.

8.4 On the termination of this Agreement (whatever the cause), the Customer's right to use the Services will immediately and automatically terminate and the Customer will immediately disable any link between the Customer's website and every 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 Services and the provision of any Outputs to the Customer (and all interest on those Fees).

8.6 Any termination of this Agreement (whatever the cause) will not affect any accrued rights or liabilities of any 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, 3.4, 4, 7, this Clause 8, 9, 11, 12, 13, 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 legal obligation in respect of any 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, as necessary:

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 Services 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 required to be 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, which shall be limited to that which is necessary in order to comply; or

9.2.4 in the case of any of the Shared Personal Data which is confidential to OxEd, only as and if permitted under OxEd's Privacy Statement.

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

9.3.1 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 Services in accordance with this Agreement;

9.3.2 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 skills;

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

9.3.4 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

9.3.5 in the case of any of the Shared Personal Data which is confidential to the Customer, as permitted by OxEd's Privacy Statement.

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

9.5 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.

9.6 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.

9.7 Within 28 days after the termination of this Agreement (whatever the cause), each of the Parties will, if so requested in writing by the other Party, 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.

9.8 Nothing in this Clause 9 applies to any 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 Services 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 Services 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 OxEd's Privacy Statement 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/Order Submission 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, immediately upon that email being accessible by the intended recipient.

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

13.1 This Clause 13 (without prejudice to Clause 6.4) applies to the OxEd's entire liability (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 this Agreement, including any and all of the following:

13.1.1 any breach of this Agreement;

13.1.2 the Services, their provision to the Customer and the use made by the Customer of the Services;

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

13.1.4 the Websites and their 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 during the previous 12 months; and b) £1,000.

13.3 Notwithstanding 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 wasted expenditure; and

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

13.4 Notwithstanding 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 that of its personnel or for fraud or for any other matter which the law does not allow OxEd to limit or exclude.

#### **14. Delays**

14.1 Notwithstanding 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 Services, 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 any 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, any 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 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.