

Centre for Evaluation & Monitoring

# Monitoring Systems Provided by CEM

(Centre for Evaluation and Monitoring)

## End User Licence Agreement 2024

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This agreement (the "**Agreement**") is made between:

- (1) The end user of the Licence (the "**Client**"); and
- (2) The Chancellor, Masters and Scholars of the University of Cambridge, acting through its department Cambridge University Press & Assessment of the Triangle Building, Shaftesbury Road Cambridge, CB2 8EA (hereinafter to be referred to as "**Centre for Evaluation and Monitoring**" or "**CEM**");

(each a "**Party**", and together the "**Parties**").

## **WHEREAS:**

- A. By placing an Order, the Client agrees to purchase the Licence from CEM or a CEM Affiliate and understands that in doing so enters into a legally binding agreement with CEM in respect of the Licence.
- B. On the terms set out in this Agreement, CEM agrees to grant the Licence to the Client.

## **I. COMMENCEMENT AND DURATION**

This Agreement shall commence on the Agreement Start Date and shall remain in full force and effect indefinitely, unless terminated earlier in accordance with the provisions of clause 13 (Termination) or unless the Client opts out in accordance with clause 4 (Opt-out).

## **2. THE LICENCE**

- 2.1. CEM hereby grants to the Client the right to install the CEM Systems and use multiple copies of the CEM Assessment Product only on such of the Client's computers that are running validly licensed copies of the operating system for which the CEM Assessment Product was designed.
- 2.2. CEM hereby grants to the Client the right to access online or download multiple copies of the CEM Reports for use by the Client, in accordance with the terms of this Agreement.
- 2.3. CEM provides the Client with a non-exclusive, non-transferable, revocable, royalty-free licence, without the right to sub-licence, to use the CEM IPR during the term of this Agreement for the purposes set out herein.
- 2.4. CEM agrees to provide the CEM Assessment Product as detailed in the Client's Order in accordance with the terms and conditions of this Agreement. CEM will use its reasonable endeavours to ensure that the CEM Assessment Product is provided under the best care, skill and diligence and in accordance with best industry practice as outlined by the guidelines of the British Educational Research Association (BERA), and in accordance with CEM's ethical research framework, and in accordance with all applicable laws and regulations, and in consultation with the Client.

## **3. THE LICENCE FEE**

- 3.1. In consideration of the rights granted to the Client hereunder, the Client undertakes and agrees to pay the Licence Fee. The Licence Fee is stated exclusive of any taxes or imposts.
- 3.2. Notwithstanding clause 3.1 or any other provision of this Agreement, CEM or a CEM Affiliate reserves the right to charge VAT to the Client where VAT is chargeable in addition to any other taxes that CEM or a CEM Affiliate may be entitled to charge to the Client.
- 3.3. The Client will be obliged when placing the Order to provide an estimate of the number of pupils who will sit the CEM Assessment. At any time before CEM or any CEM Affiliate issues its invoice, the Client will be given an opportunity to revise the estimate within the Order downwards by up to 20% or upwards (without limit).
- 3.4. In the event that the number of pupils actually sitting the CEM Assessment is higher than the number of pupils included in the Order, the Client accepts that the Licence Fee will be calculated based on the actual number of pupils sitting the CEM Assessment.
- 3.5. In the event that the number of pupils actually sitting the CEM Assessment is lower than the estimated number of pupils included in the Order, the Licence Fee will be calculated based on the estimated number of pupils in the Order (as revised by any notice given by the Client in accordance with this clause 3).
- 3.6. In the event that no pupils sit the CEM Assessment, the Licence Fee will be calculated based on the estimated number of pupils in the Order (as revised by any notice given by the Client in accordance with this clause 3), subject however to the terms of clause 13 (Termination) if this occurrence is due to the termination of this Agreement.
- 3.7. Notwithstanding any other provision of this Agreement, CEM may increase the Licence Fee with effect from the 1st day of May in any calendar year, and CEM or a CEM Affiliate shall give the Client reasonable notice in writing of the proposed change.
- 3.8. Where an Order expresses that a CEM Assessment Product is a trial, the Client shall not need to pay a Licence Fee. CEM shall be entitled to utilise any data submitted by the Client in the process of using the trial for the purpose of improving, amending, assessing, analysing, creating and otherwise for the purpose of offering the CEM Assessment Product. During a trial, the Client accepts that the CEM Assessment Product is not a finished product and is not a "sale of goods or services", and therefore no implied terms under the Sale of Goods and Services Act 1982 shall apply.

- 3.9. In the event of (a) late payment or non-payment of the Licence Fee or other sums payable by the Client under this Agreement or (b) any other material breach of this Agreement, and without prejudice to any other right or remedy CEM may be entitled to, CEM may: (i) seek the remedies under the Late Payment of Commercial Debts (Interest) Act 1998; and/or (ii) immediately terminate this Agreement by giving notice in writing to the Client, including, but not limited to, the termination of the Client's access to the CEM Assessment Product or the provision of the CEM Assessment Product.

#### **4. OPT-OUT**

- 4.1. Where the Client purchases the CEM Assessment Product for the upcoming Assessment Period and it does so before the Annual Opt-out Notice Cut-off Date, the Client may notify CEM in writing not later than the Annual Opt-out Notice Cut-off Date that it wishes to opt-out of receiving access to the same CEM Assessment Product for the subsequent Assessment Period as well or that it wishes to reduce the number of pupils for the subsequent Assessment Period.
- 4.2. Where the Client purchases the CEM Assessment Product after the Annual Opt-out Notice Cut-off Date and it does so for a current or upcoming Assessment Period, the Client shall have eight weeks from the date of purchase to notify CEM in writing that it wishes to opt-out of receiving access to the same CEM Assessment Product for the subsequent Assessment Period as well or that it wishes to reduce the number of pupils for the subsequent Assessment Period.
- 4.3. Where the Client has given notice to opt-out in accordance with clause 4.1 or clause 4.2, the Client's access to the CEM Assessment Product shall cease at the end of the Assessment Period.

#### **5. SET-OFF AND WITHHOLDING TAX**

- 5.1. All amounts due from the Client under this Agreement shall be paid by the Client to CEM or to a CEM Affiliate in full without any set-off, deduction or withholding, other than any deduction or withholding of tax as required by law.
- 5.2. Where the Client is obliged to deduct or withhold any parts of the monies due to CEM or to a CEM Affiliate, in accordance with clause 5.1, the sum due and owing to CEM or a CEM Affiliate shall be increased to the extent that the sum received by CEM or a CEM Affiliate shall be the same as the sum that would have been received had there been no such deduction or withholding of tax. The Client must account to the relevant authorities in a timely manner all monies required to be withheld from CEM or a CEM Affiliate, and provide CEM or a CEM Affiliate with an official receipt from the authority of the same within 30 days of that payment.

#### **6. INTELLECTUAL PROPERTY**

- 6.1 The Client acknowledges and agrees that any and all of the CEM IPR, are and shall remain the sole and exclusive property of CEM. The Client may not reproduce or use the CEM IPR other than as set out in this Agreement or as specified in writing by CEM. For the purposes of this Agreement.
- 6.2 CEM shall at its own expense obtain written permission for the inclusion of any copyright material in the CEM Assessment Product and shall be responsible for the payment of all fees charged for the use of such material subject to copyright.
- 6.3 CEM warrants to the Client that the Intellectual Property Rights in the CEM Assessment Product, so far as it is aware and to the best of its knowledge and belief, do not infringe the rights of any third party and that no third party has threatened or is currently threatening proceedings in respect of such infringement, and none of its Intellectual Property Rights in the CEM Assessment Product is the subject of any actual or, so far as it is aware, threatened challenge, opposition or revocation proceedings.
- 6.4 The Client undertakes that under no circumstance shall the Client:
- (a) copy, reproduce or create derivative works from the CEM Assessment Product unless otherwise expressly permitted by this Agreement;
  - (b) provide access to the CEM Assessment Product to any a third party, other than as contemplated under this Agreement, without the express written permission of CEM;
  - (c) sublicense, rent, sell or lease any portion of the CEM Assessment Product;
  - (d) alter, modify, disassemble, reverse engineer all or any part of the CEM Assessment Product;
  - (e) translate, merge, adapt or modify all or any part of the CEM Assessment Product;
  - (f) infringe the CEM IPR or those of any third party in relation to their use of the CEM Assessment Product;
  - (g) use the CEM Assessment Product in a way that could damage, disable, overburden, impair or compromise CEM's systems or security or interfere with other users; nor
  - (h) use the CEM Assessment Product in any manner not authorised by these terms.

## **7. DATA PROTECTION**

- 7.1 The Parties agree at all times to handle personal information of the candidates strictly in accordance with the Data Protection Legislation. Each Party shall have the rights and obligations subscribed to it under the Data Sharing Schedule 2 set out below.
- 7.2 Both Parties will act as Data Controller in respect of any personal data entered into the System or otherwise supplied to CEM for the purpose of this Agreement and will do so in accordance with the terms of the Data Sharing Schedule 2.
- 7.3 Both Parties agree they are responsible for ensuring they have a lawful basis for sharing any of the personal data provided to CEM as part of the System.
- 7.4 The Client agrees that it shall inform all of its candidates that sit a CEM Assessment how their data is used by reference to the CEM privacy statement as published on the CEM.org website.

## **8. FREEDOM OF INFORMATION**

- 8.1. The Client hereby acknowledges that CEM is subject to the requirements of the Information Legislation and the Client agrees to assist and co-operate with CEM (at their own expense) to enable CEM to comply with these information disclosure requirements.
- 8.2. Further, in the event that the Client is also subject to Information Legislation, CEM agrees to assist and co-operate with the Client (at their own expense) to enable the Client to comply with these information disclosure requirements.
- 8.3. In the event that the Client receives an information disclosure request regarding CEM or any information the Client holds arising out or in connection with this Agreement, the Client shall promptly notify CEM with details of the request and shall take CEM's representations into consideration while deciding the response to that particular request.
- 8.4. Any disclosure made by either Party pursuant to such Party's obligations under the provisions of Information Legislation, shall not constitute a breach of this Agreement.
- 8.5. CEM shall not be liable for any loss, damage, harm or other detriment however caused arising from the disclosure (pursuant to the obligations of Information Legislation) of any information relating to this Agreement or the Client.
- 8.6. The provisions of this clause 8 shall apply during the continuance of this Agreement and indefinitely after its expiry or termination.

## **9. CONFIDENTIALITY**

- 9.1 Each Party undertakes that it shall not disclose the other party's Confidential Information, except as permitted by clause 9.2.
- 9.2 Each Party may disclose the other party's Confidential Information:
  - (a) to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this Agreement. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's Confidential Information comply with this clause 9; and
  - (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 9.3 Without prejudice to the generality of the foregoing, the Client understands and accepts that information consisting of the raw scores of candidates that have taken a CEM Assessment or the average raw scores for the entire cohort would if disclosed reveal CEM's Confidential Information and that disclosure of these test scores is therefore restricted by the undertaking given by the Client in clause 9.1.
- 9.4 The provisions of this clause 9 shall continue to apply after termination or expiry of this Agreement.

## **10. LIABILITY OF THE PARTIES**

- 10.1 The following sets out the entire financial liability of CEM to the Client in respect of any breach by CEM of this Agreement, non-performance or incomplete performance or contemplated performance by CEM of this Agreement, negligence for which CEM is liable, and any representation or statement arising under or in connection with this Agreement or by or on behalf of CEM:
  - (a) CEM shall in no circumstances be liable for any loss of profits, loss of business or production, depletion of goodwill, loss of or corruption to data, and/or any other indirect loss; and
  - (b) in respect of all other losses and claims, the aggregate liability of CEM for any breach, negligence and/or liability arising in any other way out of the subject matter of this Agreement or the performance of the Assessment will not exceed in total the amounts actually received by CEM from the Client for the use of the Licence under this Agreement.
- 10.2 CEM will in no event be liable for any statement or representation about the Client, their business, products or services made or communicated in or by any item, material or work approved by the Client in writing.
- 10.3 For clarity, nothing in this Agreement limits or excludes either Party's liability for death or personal injury caused by such Party's negligence or any fraud or for any sort of liability that by law cannot be limited or excluded.

## II. CEM SYSTEMS

- 11.1 The Client hereby acknowledges that certain elements of the CEM Assessment Product may at any time be in the process of being developed and CEM does not guarantee access on demand. The CEM Assessment Product may subsequently be substantially modified or withdrawn at the sole discretion of CEM.
- 11.2 The Client's installation of the CEM Systems and use of the CEM Assessment Product are at the Client's sole discretion and risk and may produce unintended or erroneous results and may contain bugs, errors and other problems that could cause system or other failures and data loss. The Client accepts that the CEM Systems and the CEM Assessment Product are provided to the Client "as is" without any warranty, and CEM expressly disclaims any and all warranties, including, but not limited to, warranties of merchantability, fitness for a particular purpose or error free operation.
- 11.3 CEM is not obligated to provide Updates to the Client. However, in the event CEM elects in its sole discretion to provide Updates to the Client, such Updates shall be deemed to constitute part of the CEM Assessment Product and shall therefore be subject to these terms.

## 12. PUBLICITY

The Client warrants to CEM it shall at no point:

- (a) take any action which is intended, or could reasonably be expected, to harm in any way the reputation of CEM or any part of it; or
- (b) take any action which is intended, or could reasonably be expected to lead to any unwanted or unfavourable publicity for CEM or any part of it.

## 13. TERMINATION

- 13.1 Subject to clauses 13.4, 13.5 and 13.6, from the date the Client placed the Order and purchased the Licence, the Client may terminate this Agreement by written notice to CEM.
- 13.2 If either Party has given notice to terminate this Agreement in accordance with this clause 13, this Agreement shall terminate on the date on which notification was given.
- 13.3 CEM reserves the right to perform credit checks on the Client at any point before or after the Agreement Start Date (as may be applicable). Should the credit check on the Client not be, in CEM's sole opinion, favourable, CEM shall be entitled to terminate the Agreement with immediate effect upon notice in writing to the Client if the Agreement has already commenced.
- 13.4 If the Client terminates this Agreement in less than thirty (30) days from the date it placed the Order and has neither installed the CEM System nor used the CEM Assessment Product, no fee shall be payable by the Client.
- 13.5 If the Client terminates this Agreement on any date falling between thirty (30) and sixty (60) days of placing the Order and has neither installed the CEM System nor used the CEM Assessment Product, a fee of £50 shall be payable by the Client.
- 13.6 If the Client terminates this Agreement more than sixty (60) days from the date it placed the Order or has installed the CEM System and used the CEM Assessment Product, the Client shall pay to CEM or to a CEM Affiliate the full price for the services ordered by it pursuant to the Order.
- 13.7 Any payments to be made by the Client to CEM or to a CEM Affiliate pursuant to this clause 13 or under any provision of this Agreement shall be made upon receipt by the Client of an invoice from CEM or from a CEM Affiliate and within the period of time specified in the invoice.

## 14. MODERN ANTI-SLAVERY

- 14.1 The Client shall:
  - (a) comply with the anti-slavery policy of the University of Cambridge as set out at <http://www.registraryoffice.admin.cam.ac.uk/governance-and-strategy/anti-slavery-and-anti-trafficking> and as amended from time to time;
  - (b) not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4 of the Modern Slavery Act 2015 if such activity, practice or conduct was carried out in the UK;
  - (c) include in all its contracts with its subcontractors and suppliers' anti-slavery and anti-human trafficking terms that are at least as onerous as those set out in this clause 14; and
  - (d) promptly report to CEM any suspected or known slavery or human trafficking in connection with the performance of this Agreement, any breach or potential breach of this clause 14 (Modern Anti-Slavery) or any breach or potential breach of CEM's anti-slavery policy.
- 14.2 The Client represents that:
  - (a) it, its officers and its employees have not been convicted of any offence under the Modern Slavery Act 2015 or any equivalent offence in any jurisdiction involving slavery and human trafficking;
  - (b) neither it, its officers or its employees have been or are subject to any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence in any jurisdiction involving slavery or human trafficking; and

(c) it has and shall maintain in place throughout the term of this Agreement its own policies, training and procedures, to ensure compliance with clauses 14 (Modern Anti-Slavery) and 15 (Anti-Bribery).

14.3 The Client shall ensure it performs adequate due diligence procedures for its direct subcontractors and suppliers in connection with the performance of this Agreement, to ensure there is no slavery or human trafficking in the contractual chain.

## **15. ANTI-BRIBERY**

15.1 The Parties represent to one another that:

- (a) they have not committed any offence under the UK Bribery Act 2010 or done any of the following (referred to hereafter as "Prohibited Acts"):
- (b) offered, given or agreed to give any Representative of the other Party any gift or consideration of any kind as an inducement or reward for doing or not doing or for having done or not having done any act in relation to the obtaining of performance of this Agreement or any other agreement with the other Party or for showing or not showing favour or disfavour to any person in relation to this Agreement or any other agreement with the other Party; or
- (c) in connection with this Agreement paid or agreed to pay any commission other than a payment, particulars of which (including the terms and conditions of the agreement for its payment) have been disclosed in writing to the other Party; and
- (d) they have in place adequate procedures to prevent bribery and corruption, as contemplated by section 7 of the UK Bribery Act 2010.

## **16. SEVERABILITY**

In the event that any Court or other competent authority decides that any provision of this Agreement is void or otherwise ineffective in whole or in part then any other part and the other terms and conditions of this Agreement shall continue in full force and effect.

## **17. RIGHTS OF THIRD PARTIES**

The Parties do not intend that any term of this Agreement shall be enforceable solely by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to this Agreement.

## **18. NO PARTNERSHIP**

Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the Parties, constitute any Party the agent of another Party, or authorise any Party to make or enter into any commitments for or on behalf of any other Party.

## **19. ASSIGNMENT AND NOVATION**

CEM reserves the right to at any time assign or novate any or all of its rights and/or obligations under this Agreement. The Client may only assign or novate any or all of their rights and/or obligations upon written confirmation by CEM, which CEM shall not be obliged to approve.

## **20. AMENDMENTS AND VARIATIONS**

20.1 CEM has the right to amend and vary the terms of this Agreement from time to time.

20.2 Notwithstanding clause 20.1, CEM will only notify the Client in writing where there is a Material Change, provided however, that CEM shall not be held liable for a failure to notify the Client of a Material Change.

20.3 The Client hereby acknowledges that all amendments and variations of this Agreement shall be published by CEM on the CEM.org website and that the Client has an obligation to monitor the CEM.org website for all amendments and variations of this Agreement.

## **21. ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement between the Parties with respect to the subject matter of this Agreement and supersedes all previous agreements, arrangements or undertakings between the Parties relating to the subject matter of this Agreement and any representations or warranties previously given or made to it.

## **22. GOVERNING LAW AND JURISDICTION**

This Agreement is governed by and interpreted in accordance with English law. Any disputes or claims relating to this Agreement shall be subject to the exclusive jurisdiction of the English Courts.

## **23. NOTICES**

23.1 Any notice given to the Client by CEM under or in connection with this Agreement will be effective if:

- (a) posted on CEM's website and/or in a prominent position on the CEM System; or
- (b) sent to the Client at the address or email address given in the Order or such other address as the Client may notify to CEM. The Client shall ensure that it promptly notifies CEM of any changes to its postal and email address.

Any notice given by the Client to CEM under or in connection with this Agreement will be effective if sent to one of the following addresses:

Address: The Triangle Building, Shaftesbury Road, Cambridge CB2 8EA; or Email: Customer Support: cem@cambridge.org

23.2 A notice is given by either party in accordance with clause 23 shall be deemed to have been received:

- (a) if delivered by hand, at the time the notice is left at the address;
- (b) if sent from the UK by pre-paid first-class post or other next working day delivery service, at 09.00am on the second working day after posting;
- (c) if sent by pre-paid airmail, at 09.00am on the seventh working day after posting; or
- (d) if sent by email, at the time of transmission provided that if this would occur outside business hours in the UK

it shall be deferred until business hours resume.

## Schedule 1 – Definitions and Interpretation

### I. DEFINITIONS AND INTERPRETATION

The following definitions and rules of interpretation apply in this Agreement:

1.1 Definitions:

**“Assessment Period”** means the period recommended by CEM at its cem.org website as the period during which a CEM Assessment Product should be used by customers once purchased.

**“Agreement Start Date”** means the date on which the Client places the Order and purchases the Licence.

**“Annual Opt-out Notice Cut-off Date”** means, for the time being, the 1st day of May in each calendar year.

**“CEM Affiliate”** means any agent and/or other third-party licensed to sell any of the CEM Assessment Products.

**“CEM Assessment”** means the test materials that are administered by the Client and that are derived from the CEM Assessment Product.

**“CEM Assessment Collateral”** means all information relating to the development, performance and/or marking of CEM Assessments (whether past, present or future assessments), including all question papers, answer sheets, mark schemes and model answers, question banks and specifications; the process for standardising the results of CEM Assessments; and all guidance relating to CEM Assessments provided by CEM in order to support its customers.

**“CEM Assessment Product”** means any one or more of the following CEM computer- based assessment products:

- i. ASPECTS, BASE, PIPs Baseline, PIPS and/or InCAS or Cambridge Primary Insights (a “Primary Product”);
- ii. MidYIS, Yellis (a “Secondary Product”);
- iii. Alis, CEM IBE (a “Post-16 Product”),

together with the CEM Reports, as accessed via the CEM Systems and as replaced or updated from time to time.

**“CEM IPR”** means any and all Intellectual Property Rights held in the CEM Systems, CEM Assessment Product and CEM Reports (excluding data provided or owned by the Client) including but not limited to all copyright therein.

**“CEM Reports”** means access to online or downloadable analysis of assessment data and other data provided by the Client, including additional guidance material that are the subject of the Order.

**“CEM Systems”** means the online systems installed or accessed by the Client that are subject to the terms and conditions of the Licence and that provide access to the relevant CEM Assessment Product.

**“Confidential Information”** means all information of a confidential nature (in whatever form) which is disclosed by either party and includes:

- (a) any know-how, trade secrets, financial, commercial, technical, tactical or strategic information of any kind;
- (b) where CEM is the disclosing party, information consisting of CEM Assessment Collateral;
- (c) all information produced or developed in the performance of this Agreement;
- (d) all information agreed to be, or marked as, confidential; and
- (e) any information the receiving party knows, or could reasonably be expected to know, is confidential.

**“Data Controller”** has the meaning given to it in the Data Protection Legislation.

**“Data Protection Legislation”** has the meaning given to it in Schedule 2.

**“Information Legislation”** means the Freedom of Information Act 2000 (“FOIA”), the Environmental Information Regulations 1992 (“EIR”) or any other applicable legislation or codes governing access to information.



**“Intellectual Property Rights”** means all patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, 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, the Confidential Information and all other intellectual property rights, whether registered or not, which subsist or will subsist now or in the future in any part of the world.

**“Licence”** means the software licence granted by CEM to the Client on the terms and conditions herein to use one or more of the CEM Assessment Products and to install and access the CEM Systems.

**“Licence Fee”** means the fee payable by the Client to CEM or to a CEM Affiliate in accordance with clause 3.1.

**“Material Change”** means any change to the terms of this Agreement that would be reasonably considered to adversely affect the Client.

**“Order”** means the purchase of the Licence as effected via the CEM.org website and subject to the terms and conditions herein.

**“Updates”** means, depending on the context, any changes, amendments, or upgrades to the CEM Systems and/or the CEM Assessment Product.

- 1.2 Headings. Clause, Schedule and paragraph headings shall not affect the interpretation of this Agreement.
- 1.3 Definition of person. A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality)
- 1.4 Clause and paragraph references. References to Clauses and Schedules are to the clauses and schedules of this Agreement and references to Paragraphs are to paragraphs of the relevant Schedule.
- 1.5 Schedules. The Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Schedules.
- 1.6 Company. A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.7 Singular and plural. Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.8 Gender. Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.9 Party. A reference to any party shall include that party’s personal representatives, successors and permitted assigns.
- 1.10 Statute. A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.11 Subordinate legislation. A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.12 Writing and written. A reference to **writing** or **written** includes fax and email.
- 1.13 Negative obligations. Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.14 Inclusionary language. Any words following the terms including, include, in particular 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.

## Schedule 2 – Data Sharing

### Data Controller to Data Controller

#### I. DEFINITIONS AND INTERPRETATION

- 1.1 In this Schedule 2, the following words have the following meanings:

**Adequate Country:** a country or territory that is recognised under Data Protection Legislation from time to time as providing adequate protection for processing personal data.

**Agreed Purposes:** the purposes set out in the Annex to this Schedule 2;

**Data Subject Request:** means a request made by a Data Subject to exercise any rights of Data Subjects under Data Protection Legislation;

**Data Protection Legislation:** all applicable laws including: (a) to the extent the UK GDPR applies, the laws of the United Kingdom or a part of the United Kingdom which relates to the protection of personal data; (b) to the extent the EU GDPR applies, the law of the European Union or any member state of the European Union to which the relevant party is subject, which relate to the protection of personal data;

**Data Sharing:** the transfer of the Shared Personal Data;

**EEA:** European Economic Area.

**EU GDPR:** the General Data Protection Regulation ((EU) 2016/679).

**Shared Data Breach:** any security breach or other action or inaction leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure or access to Shared Personal Data;

**Shared Personal Data:** any personal data shared between the Parties in connection with the Agreement.

**Transfer Mechanism:** Standard Contractual Clauses approved by the European Commission Decision of 4 June 2021 (as amended from time to time), for the transfer of personal data from the EEA or Adequate Country to a third country and International Data Transfer Addendum issued by the Information Commissioner's Office under Section 119A of the Data Protection Act 2018, effective from 21 March 2022.

**UK GDPR:** has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the UK Data Protection Act 2018.

- 1.2 Where used in this Schedule 2, the terms **Data Controller, Data Processor, Data Subject, Personal Data, Data Importer, Data Exporter** and **processing** and **Special Category Data** all have the meanings given to those terms in the Data Protection Legislation.
- 1.3 This Schedule 2 is intended to be legally binding and shall prevail over all other agreements, arrangements and understandings between the Parties relating to the Data Sharing, whether made before or after the date of this Schedule 2 and notwithstanding any wording to the contrary in such agreements, arrangements and understandings between the Parties.
- 1.4 In case of any conflict or inconsistency between the provisions of this Agreement, this shall be the order on precedence: Schedule 3, Schedule 2; Schedule 1; the main terms of the Agreement.
- 1.5 To the extent that a term of this Schedule 2 requires the performance by a party of an obligation "in accordance with Data Protection Legislation" (or similar), unless otherwise expressly agreed in this Schedule 2, this requires performance in accordance with the relevant requirements of such Data Protection Legislation as is in force and applicable at the time of performance (if any).

## 2. PURPOSE

- 2.1 In relation to the Shared Personal Data, each of the Parties agrees that it is a Data Controller.
- 2.2 During the term of this Agreement, the Parties shall share with each other certain Personal Data. The Data Sharing is necessary to support the Agreed Purposes of both Parties.
- 2.3 The Annex to this Schedule 2 describes the categories of Data Subjects to whom the Shared Personal Data relate, the types of Personal Data that may be processed and the limited purposes of the processing of Shared Personal Data.
- 2.4 For the avoidance of doubt, the parties shall only use the Shared Personal Data for lawful purposes in connection with the Agreed Purposes and not process the Shared Personal Data in a way that is incompatible with the Agreed Purposes or Data Protection Legislation.

## 3. DATA PROTECTION COMPLIANCE

- 3.1 Each Party shall comply with all the obligations imposed on a controller under the Data Protection Legislation. Any material breach of the Data Protection Legislation by a Party in connection with the Data Sharing shall constitute a material breach of this Schedule 2.
- 3.2 Each Party shall:
  - (a) process the Shared Personal Data fairly and lawfully, each of them as a Data Controller;
  - (b) for each Agreed Purpose, ensure that it has legitimate grounds under the Data Protection Legislation for the processing of the Shared Personal Data;
  - (c) inform, or otherwise make information available to the Data Subjects of the purposes for which it will process Personal Data and provide or make available all information that it must provide in accordance with its own applicable law to ensure that Data Subjects understand how their Personal Data will be processed by that Party;
  - (d) ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data;
  - (e) not transfer any personal data outside the UK or European Economic Area otherwise than in compliance with the Data Protection Legislation.

#### **4. COOPERATION BETWEEN THE PARTIES**

- 4.1 Each Party shall assist the other in complying with all applicable requirements of the Data Protection Legislation. In particular, in connection with the Shared Personal Data, each Party shall:
- (a) ensure that any notices given to Data Subjects in relation to the Shared Personal Data are provided in a manner and according to timing that is compliant with Data Protection Legislation;
  - (b) inform the other Party if any Personal Data has been transferred to the other Party in error or otherwise in breach of the Data Protection Legislation, requesting the immediate deletion of such inappropriately transferred Personal Data;
  - (c) if legally required, inform the other Party about the receipt of a complaint or Data Subject Request from any Data Subject regarding the Shared Personal Data;
  - (d) deal at its discretion with all Data Subject Requests and complaints that it receives directly from a Data Subject or the person making the complaint. For the avoidance of doubt, a Data Subject Request made to one Party in its capacity as Data Controller shall not oblige the other Party to disclose any Personal Data it holds independently in its capacity as a Data Controller;
  - (e) if legally required, inform the other Party without delay if a Data Subject requests the erasure of any Shared Personal Data. For the avoidance of doubt, where one Party is obliged to erase any Shared Personal Data, the other Party shall not be obliged to erase the same Shared Personal Data if that other Party may lawfully continue to hold and process such Shared Personal Data;
  - (f) provide reasonable and prompt assistance to the other Party as is necessary to enable it to comply with a Data Subject Request and/or to respond to any other queries or complaints received from Data Subjects or supervisory authorities or regulators and, in each case related to the Shared Personal Data;
  - (g) provide the other Party with such information as the other Party reasonably requires for maintaining the records it is required to maintain by the Data Protection Legislation; and
  - (h) provide the other Party with contact details of at least one employee as point of contact and responsible manager for all issues arising out of the Data Protection Legislation, including the procedures to be followed in the event of a Shared Data Breach.

#### **5. DATA BREACHES**

- 5.1 In respect of each Shared Data Breach, each Party shall:
- (a) promptly notify the other Party of the Shared Data Breach;
  - (b) provide the other Party without undue delay (wherever possible, no later than 48 hours after becoming aware of the Shared Data Breach) with such details as the other Party reasonably requires regarding the Shared Personal Data.
- 5.2 To the extent permitted by applicable laws, neither Party shall:
- (a) notify a supervisory or regulatory authority of any Shared Data Breach;
  - (b) issue a public statement or otherwise notify any Data Subject of such Shared Data Breach, without first consulting with, and obtaining the consent (not to be unreasonably withheld or delayed) of, the other Party.

#### **6. DELETION OR RETURN OF SHARED DATA**

- 6.1 Neither Party shall retain or process the Shared Personal Data for longer than is necessary in connection with carrying out the Agreed Purposes.
- 6.2 Notwithstanding clause 6.1, the Parties shall continue to retain Shared Personal Data in accordance with any statutory or professional retention periods applicable in their respective countries and/or industry.

#### **7. INTERNATIONAL TRANSFERS**

- 7.1 In the event that CEM transfers Shared Personal Data to the Client where located outside the UK, the EEA or an Adequate Country, both Parties shall comply with Schedule 3 of this Agreement. If Schedule 3 contradicts any other part of this Agreement, Schedule 3 shall prevail.

# Annex to Schedule 2

## DESCRIPTION OF THE TRANSFER

### 1. DATA SUBJECTS

*The personal data transferred concern the following categories of data subjects:*

Students (including under 13 years old) and data subjects acting on behalf of the data exporter such as employees or contractors.

### 2. CATEGORIES OF DATA

*The personal data transferred concern the following categories of data:*

Full names, sex, identification numbers (such as candidate number), centre/school details, test details, candidate answers, contact details, [native language,] year group, date of birth, class name, place of birth, free school meals status, previous school, test scores, test venue, test session, subject choices for A Level or other exam, application to other grammar school, special arrangements and any other information that may be required in connection with the Agreed Purposes.

### 3. AGREED PURPOSES

For the purposes of this agreement, Agreed Purposes refer to the following purposes:

- (a) CEM to provide the services under this Agreement to the Client;
- (b) CEM to develop assessments and other CEM services and improve on their quality and integrity, including the collection of statistics and other information relating to such assessments and other services for CEM's future use;
- (c) CEM to carry out marketing and market research, and provide training in order to improve on the delivery of assessments and other services;
- (d) the Client to benefit from the services provided to it under this Agreement;
- (e) the Client to offer and enable pupils to take CEM's assessments; and
- (a) the Parties to comply with their legal and regulatory obligations and to assist each other in relation to any exercise by a pupil of their rights as a data subject.

### 4. RECIPIENTS

*The personal data transferred may be disclosed only to the following recipients or categories of recipients:*

As per the agreement/s between the parties or otherwise as the parties see fit in accordance with their own privacy policies and applicable legislation.

### 5. SPECIAL CATEGORY PERSONAL DATA (IF APPROPRIATE)

*The personal data transferred concern the following categories of special category personal data:*

Some special category data such as disabilities may be inferred by special arrangements. Ethnic background may be processed as well.

### 6. DATA PROTECTION REGISTRATION INFORMATION OF DATA EXPORTER (WHERE APPLICABLE)

UK ICO registration number: Z6641083

### 7. ADDITIONAL USEFUL INFORMATION (STORAGE LIMITS AND OTHER RELEVANT INFORMATION)

As set out in the agreements that govern the relationship between the parties.

### 8. CONTACT POINTS FOR DATA PROTECTION ENQUIRIES

Data importer: As provided by the data importer to the data exporter as soon as this Agreement is accepted by it.

Data exporter: [privacy@cambridge.org](mailto:privacy@cambridge.org)

## Schedule 3 – International Data Transfers

1. Where the Client is located outside the UK, the EEA or an Adequate Country and receives personal data:
  - a. it will act as the data importer;
  - b. CEM is the data exporter; and
  - c. the Transfer Mechanism will apply.
2. If the Transfer Mechanism is insufficient to safeguard the transfer, the data importer will promptly implement additional or replacement measures as necessary to ensure personal data is protected to the same standard as under Data Protection Legislation.
3. If the data importer receives a request from a public authority to access personal data, it will (if legally possible):
  - a. challenge the request and promptly notify the data exporter about receiving it; and
  - b. if it is necessary to disclose personal data, only disclose the minimum amount required to the public authority and keep a record of the disclosure.
4. To the extent that the EU GDPR standard contractual clauses apply to this Agreement pursuant to the Transfer Mechanism, including the election of specific terms and/or optional clauses, this paragraph 4 applies, and any optional clauses not expressly selected are not included:
  - a. Clause 7 (Docking Clause):
    - i. All Modules: the optional Clause 7 in Section I of the EU SCCs is not incorporated;
  - b. Clause 9 (Subprocessors):
    - i. Modules 2 & 3: Option 2 ('General written authorisation') is selected and the process and time period for the addition or replacement of sub-processors shall be the Notification Period;
  - c. Clause 11 (Redress):
    - i. All Modules: The optional wording is not included;
  - d. Clause 17 (Governing Law):
    - i. Modules 1, 2 & 3: Option 1 is selected. The parties agree that this shall be the laws of Ireland;
    - ii. Module 4: The parties agree that this shall be the laws of England;
  - e. Clause 18 (Choice of forum and jurisdiction):
    - i. Modules 1, 2 & 3: The parties agree that any dispute shall be resolved by the courts of Ireland;
    - ii. Modules 4: Any dispute arising from these clauses shall be resolved by the courts of England;
5. To the extent that the UK GDPR mandatory clauses apply pursuant to the Transfer Mechanism, this Agreement incorporates:
  - a. Part 2: Mandatory Clauses of the Approved Addendum, being the template Addendum B.1.0 issued by the ICO and laid before Parliament in accordance with section 119A of the Data Protection Act 2018 on 2 February 2022, as it is revised under Section 18 of those Mandatory Clauses.
  - b. The following party may end this Addendum as set out in Section 19 of the Transfer Mechanism: data exporter.