End User Licence Agreement (EULA)

Please read this EULA carefully, as it sets out the basis upon which we license the Software for use.

By registering for an account within the Software from our site, you are giving your express agreement to the provisions of this EULA.

By agreeing to be bound by this EULA, you further agree that your employees and any person you authorise to use the Software will comply with the provision of this EULA.

AGREEMENT

1. Definitions

1.1. Except to the extent expressly provided otherwise, in this EULA:

"**Charges**" means those amounts that the parties have agreed shall be payable by the User to the Licensor in respect of the Software;

"**Documentation**" means the documentation for the Software produced by the Licensor and delivered or made available by the Licensor to the User (written User Guides and video training programmes);

"**Effective Date**" means the date upon which the User gives the User's express consent to this EULA, following the issue of this EULA by the Licensor, which is the date the User registers for an account;

"**EULA**" means this End User Licence Agreement, including any amendments to this End User Licence Agreement from time to time;

"**Force Majeure Event**" means an event, or a series of related events, that is outside the reasonable control of the party affected (including failures of the internet or any public telecommunications network, hacker attacks, denial of service attacks, virus or other malicious software attacks or infections, power failures, industrial disputes affecting any third party, changes to the law, natural disasters, explosions, fires, floods, riots, terrorist attacks, pandemics and wars);

"**Intellectual Property Rights**" means all intellectual property rights wherever in the world, whether registrable or unregistrable, registered or unregistered, including any application or right of application for such rights (and these "intellectual property rights" include copyright and related rights, database rights, confidential information, trade secrets, know-how, business names, trade names, trademarks, service marks, passing off rights, unfair competition rights, patents, petty patents, utility models, semi-conductor topography rights and rights in designs);

"**Licensor**" means Mark Wickersham Training Limited, a company incorporated in England and Wales (registration number 10665464) having its registered office at 71-75 Shelton Street, Covent Garden, London, WC2H 9JQ;

"**Maintenance Services**" means the application to the Software of Updates and Upgrades;

"Month" means a 30 day period from and including the Effective Date;

"**Services**" means any services that the Licensor provides to the User, or has an obligation to provide to the User, under this EULA;

"**Software**" means any software downloaded by the User;

"**Software Defect**" means a defect, error or bug in the Software having an adverse effect on the appearance, operation, functionality or performance of the Software, but excluding any defect, error or bug caused by or arising as a result of:

    a) any act or omission of the User or any person authorised by the User to use the Software;

    b) any use of the Software contrary to the Documentation by the User or any person authorised by the User to use the Software;

    c) a failure of the User to perform or observe any of its obligations in this EULA; and/or

    d) an incompatibility between the Software and any other system, network, application, program, hardware or software not specified as compatible in the Software Specification;

"**Software Specification**" means the specification for the Software set out in the Documentation;

"**Source Code**" means the Software code in human-readable form or any part of the Software code in human-readable form, including code compiled to create the Software or decompiled from the Software, but excluding interpreted code comprised in the Software;

"**Support Services**" means support in relation to the use of the Software and the identification and resolution of errors in the Software, but shall not include the provision of training services whether in relation to the Software or otherwise;

"**Term**" means the term of this EULA, commencing and terminating in accordance with Clause 2;

"**Update**" means a hotfix, patch or minor version update to the Software;

"**Upgrade**" means a major version upgrade of the Software;

"**User**" means the person to whom the Licensor grants a right to use the Software under this EULA; and

2. Term

2.1. The EULA shall come into force on the Effective Date.

2.2. This EULA shall continue in force until cancellation of the account by the User, or termination of the account by the Licensor, upon which this EULA shall terminate

automatically, subject to termination in accordance with Clause 13 or any other provision of this EULA.

2.3. Some software is provided for free when a User subscribes to other products and services provided by the Licensor. In such cases the EULA to use that software will terminate when the subscription to those other products and services terminates.

3. Licence

3.1. The Licensor hereby grants to the User from the date of supply of the Software to the User until the user cancels their account, or the account is terminated by the Licensor, a worldwide, non-exclusive licence to:

    a) install the Software;

    b) use the Software in accordance with the Documentation; and

    c) add additional Users.

subject to the limitations and prohibitions set out and referred to in this Clause.

3.2. The User may not sub-license and must not purport to sub-license any rights granted under Clause 3.1.

3.3. Save to the extent expressly permitted by this EULA or required by applicable law on a non-excludable basis, any licence granted under this Clause 3 shall be subject to the following prohibitions:

    a) the User must not sell, resell, rent, lease, loan, supply, publish, distribute or redistribute the Software;

    b) the User must not decompile, de-obfuscate or reverse engineer, or attempt to decompile, de-obfuscate or reverse engineer, the Software.

4. Source Code

4.1. Nothing in this EULA shall give to the User or any other person any right to access or use the Source Code or constitute any licence of the Source Code.

5. Maintenance Services

5.1. The Licensor shall provide the Maintenance Services to the User whilst the User has an active subscription and as long as the User has paid the agreed Charges.

5.2. The Licensor shall provide the Maintenance Services in accordance with the standards of skill and care reasonably expected from a leading service provider in the Licensor's industry.

5.3. The Licensor may suspend the provision of the Maintenance Services if any amount due to be paid by the User to the Licensor under this EULA is overdue.

5.4. If the User's payment fails to go through on any date that a payment is due, then the User will be notified by an automated email. A second attempt to take payment will be made 3 days after the initial attempt – if this attempt fails, the User will be notified by an automated email. A third attempt to take payment will be made 5 days after

the second attempt – if this attempt fails, the User will be notified by an automated email. And a final fourth attempt to take payment will be made 7 days after the third attempt – if this fourth attempt fails, the User's account will automatically be cancelled and an automated email sent.

6. Support Services

6.1. The Licensor shall provide the Support Services to the User whilst the User has an active subscription.

6.2. The Licensor shall provide the Support Services in accordance with the standards of skill and care reasonably expected from a leading service provider in the Licensor's industry.

6.3. The Licensor may suspend the provision of the Support Services if any amount due to be paid by the User to the Licensor under this EULA is overdue (refer to clause 5.4).

7. No assignment of Intellectual Property Rights

7.1. Nothing in this EULA shall operate to assign or transfer any Intellectual Property Rights from the Licensor to the User, or from the User to the Licensor.

8. Charges

8.1. The User shall pay the Charges, which are calculated per Month.

8.2. All amounts stated in or in relation to this EULA are, unless the context requires otherwise, stated exclusive of any applicable value added taxes, which will be added to those amounts and payable by the User to the Licensor.

9. Payments

9.1. The Licensor shall issue a receipt for any Charges to the User.

9.2. The User must pay any Charges to the Licensor in advance.

9.3. The User must pay any Charges by debit card or credit card (using such payment details as are notified by the Licensor to the User).

10. Warranties

10.1. The Licensor warrants to the User that it has the legal right and authority to enter into this EULA and to perform its obligations under this EULA.

10.2. The Licensor warrants to the User that:

a) the Software as provided will conform in all material respects with the Software Specification; and

b) the Software shall incorporate security features reflecting the requirements of good industry practice.

10.3. The Licensor warrants to the User that the Software, when used by the User in accordance with this EULA, will not breach any laws, statutes or regulations applicable under English law.

10.4. The Licensor warrants to the User that the Software, when used by the User in accordance with this EULA, will not infringe the Intellectual Property Rights of any person in any jurisdiction and under any applicable law.

10.5. If the Licensor reasonably determines, or any third party alleges, that the use of the Software by the User in accordance with this EULA infringes any person's Intellectual Property Rights, the Licensor may, acting reasonably at its own cost and expense, procure for the User the right to use the Software in accordance with this EULA.

10.6. The User warrants to the Licensor that it has the legal right and authority to enter into this EULA and to perform its obligations under this EULA.

10.7. The Licensor's warranties and representations in respect of the subject matter of this EULA are expressly set out in this EULA. To the maximum extent permitted by applicable law, no other warranties or representations concerning the subject matter of this EULA will be implied into this EULA or any related contract.

10.8. The Licensor shall not be liable under the warranty above if the Software fails to operate as a result of any modification, variation or addition to the Software not performed by the Licensor of caused by any abuse, corruption or incorrect use of the Software, including use of the Software with equipment or other Software which is incompatible.

11. Acknowledgements and warranty limitations

11.1. The User acknowledges that complex software is never wholly free from defects, errors and bugs; and subject to the other provisions of this EULA, the Licensor gives no warranty or representation that the Software will be wholly free from defects, errors and bugs.

11.2. The User acknowledges that complex software is never entirely free from security vulnerabilities; and subject to the other provisions of this EULA, the Licensor gives no warranty or representation that the Software will be entirely secure.

11.3. The User acknowledges that the Software is only designed to be compatible with that software specified as compatible in the Software Specification; and the Licensor does not warrant or represent that the Software will be compatible with any other software.

11.4. The User acknowledges that the Licensor will not provide any legal, financial, accountancy or taxation advice under this EULA or in relation to the Software; and, except to the extent expressly provided otherwise in this EULA, the Licensor does not warrant or represent that the Software or the use of the Software by the User will not give rise to any legal liability on the part of the User or any other person.

12. Limitations and exclusions of liability

12.1. Nothing in this EULA will:

   a) limit or exclude any liability for death or personal injury resulting from negligence;

   b) limit or exclude any liability for fraud or fraudulent misrepresentation;

c) limit any liabilities in any way that is not permitted under applicable law; or

d) exclude any liabilities that may not be excluded under applicable law,

and, if a party is a consumer, that party's statutory rights will not be excluded or limited by this EULA, except to the extent permitted by law.

12.2. The limitations and exclusions of liability set out in this Clause 12 and elsewhere in this EULA:

a) are subject to Clause 12.1; and

b) govern all liabilities arising under this EULA or relating to the subject matter of this EULA, including liabilities arising in contract, in tort (including negligence) and for breach of statutory duty, except to the extent expressly provided otherwise in this EULA.

12.3. The Licensor will not be liable to the User in respect of any losses arising out of a Force Majeure Event.

12.4. The Licensor will not be liable to the User in respect of any loss of profits or anticipated savings.

12.5. The Licensor will not be liable to the User in respect of any loss of revenue or income.

12.6. The Licensor will not be liable to the User in respect of any loss of business, contracts or opportunities.

12.7. The Licensor will not be liable to the User in respect of any loss or corruption of any data, database or software.

12.8. The Licensor will not be liable to the User in respect of any special, indirect or consequential loss or damage.

12.9. The total liability of the Licensor to the User under this EULA in respect of any event or series of related events shall not exceed the total amount paid and payable by the User to the Licensor under this EULA in the 30-day period preceding the commencement of the event or events.

13. Termination

13.1. The Licensor may terminate this EULA for any reason immediately upon giving to the User written notice of termination.

13.2. The User may terminate this EULA immediately upon giving to the Licensor written notice of termination

13.3. Alternatively, the User can cancel their subscription from within their own account at any time without written notice.

13.4. If the EULA is terminated by a User part way through a Month's subscription, the User can request a refund of that Month's subscription, which the Licensor may or may not agree, wholly at their discretion. If a refund is not requested or agreed, the

User will be able to use the Software until the end of the Month for which they have already paid the Charges.

13.5. Either party may terminate this EULA immediately by giving written notice of termination to the other party if:

    a) the other party commits any breach of this EULA, and the breach is not remediable;

    b) the other party commits a breach of this EULA, and the breach is remediable but the other party fails to remedy the breach within a period of 30 days following the giving of a written notice to the other party requiring the breach to be remedied; or

    c) the other party persistently breaches this EULA (irrespective of whether such breaches collectively constitute a material breach).

13.6. Either party may terminate this EULA immediately by giving written notice of termination to the other party if:

    a) the other party:

        i) is dissolved;

        ii) ceases to conduct all (or substantially all) of its business;

        iii) is or becomes unable to pay its debts as they fall due;

        iv) is or becomes insolvent or is declared insolvent; or

        v) convenes a meeting or makes or proposes to make any arrangement or composition with its creditors;

    b) an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the other party;

    c) an order is made for the winding up of the other party, or the other party passes a resolution for its winding up (other than for the purpose of a solvent company reorganisation where the resulting entity will assume all the obligations of the other party under this EULA); or

    d) if that other party is an individual:

        i) that other party dies;

        ii) as a result of illness or incapacity, that other party becomes incapable of managing his or her own affairs; or

        iii) that other party is the subject of a bankruptcy petition or order.

13.7. The Licensor may terminate this EULA immediately by giving written notice to the User if:

a) any amount due to be paid by the User to the Licensor under this EULA is unpaid by the due date and remains unpaid upon the date that that written notice of termination is given; and

b) the Licensor has given to the User at least 30 days' written notice, following the failure to pay, of its intention to terminate this EULA in accordance with this Clause 13.5.

14. Effects of termination

14.1. Upon the termination of this EULA, all of the provisions of this EULA shall cease to have effect, save that the following provisions of this EULA shall survive and continue to have effect (in accordance with their express terms or otherwise indefinitely): Clauses 1, 3.2, 3.3, 4.1, 7.1, 10, 11, 12, 14, 15.1, 15.2, 15.5, 15.7, 15.8 and 16

14.2. Except to the extent that this EULA expressly provides otherwise, the termination of this EULA shall not affect the accrued rights of either party.

14.3. For the avoidance of doubt, the licences of the Software in this EULA shall terminate upon the termination of this EULA; and, accordingly, the User must immediately cease to use the Software upon the termination of this EULA.

14.4. Immediately following the termination of this EULA, the User must:

a) return to the Licensor or dispose of as the Licensor may instruct all media in its possession or control containing the Software; and

b) irrevocably delete from all computer systems in its possession or control all copies of the Software.

15. Data Protection

15.1. The Licensor will comply with UK data protection laws as set out in its privacy notice, available on its website or on request.

15.2. The User agrees that the data it shares with the Licensor, will be shared in accordance with the data sharing arrangements, set out in the Appendix.

16. General

16.1. No breach of any provision of this EULA shall be waived except with the express written consent of the party not in breach.

16.2. If any provision of this EULA is determined by any court or other competent authority to be unlawful and/or unenforceable, the other provisions of this EULA will continue in effect. If any unlawful and/or unenforceable provision would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the provision will continue in effect (unless that would contradict the clear intention of the parties, in which case the entirety of the relevant provision will be deemed to be deleted).

16.3. This EULA may not be varied except by a written document signed by or on behalf of each of the parties.

16.4. The User hereby agrees that the Licensor may assign the Licensor's contractual rights and obligations under this EULA to any successor to all or a substantial part of the business of the Licensor from time to time. The User must not without the prior written consent of the Licensor assign, transfer or otherwise deal with any of the User's contractual rights or obligations under this EULA.

16.5. This EULA is made for the benefit of the parties and is not intended to benefit any third party or be enforceable by any third party. The rights of the parties to terminate, rescind, or agree any amendment, waiver, variation or settlement under or relating to this EULA are not subject to the consent of any third party.

16.6. This EULA shall constitute the entire agreement between the parties in relation to the subject matter of this EULA, and shall supersede all previous agreements, arrangements and understandings between the parties in respect of that subject matter.

16.7. This EULA shall be governed by and construed in accordance with English law.

16.8. The courts of England shall have exclusive jurisdiction to adjudicate any dispute arising under or in connection with this EULA.

17. Interpretation

17.1. In this EULA, a reference to a statute or statutory provision includes a reference to:

   a) that statute or statutory provision as modified, consolidated and/or re-enacted from time to time; and

   b) any subordinate legislation made under that statute or statutory provision.

17.2. The Clause headings do not affect the interpretation of this EULA.

17.3. In this EULA, general words shall not be given a restrictive interpretation by reason of being preceded or followed by words indicating a particular class of acts, matters or things.

Appendix

Data sharing arrangements

In this Appendix the following expressions have the following meanings:

"Data Protection Legislation"	means any data protection legislation from time to time in force in the United Kingdom including, but not limited to, the Data Protection Act 2018, any legislation which succeeds that Act, the retained EU law version of the General Data Protection Regulation ((EU) 2016/679) (the "UK GDPR"), as it forms part of the law of England and Wales, Scotland, and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018, and, where applicable, guidance and codes of practice issued by the Information Commissioner;
"controller"	shall have the meanings ascribed thereto in the Data Protection Legislation;
"data controller"	
"data processor"	
"data subject"	
"personal data"	
"processing"	
"processor"	
"personal data breach"	
"special category personal data" and	
"appropriate technical and organisational measures"	
"Representatives"	means, in relation to either Party, its officers and employees, professional advisers or consultants engaged to advise that Party, contractors or sub-contractors engaged by that Party;
"Shared Personal Data"	means the personal data to be shared between the Parties under this Appendix;

"Stated Purposes"	means the purposes for which the Shared Personal Data is to be shared, which in most cases, is to fulfil the contractual duties between the parties set out in the EULA;
"Term"	means the term of the EULA.

1. **Stated Purposes**

   1.1 This Appendix establishes the framework for the sharing of the Shared Personal Data between the parties as data controllers.

   1.2 The parties have determined that the sharing of the Shared Personal Data is necessary to meet the contractual obligations of both parties and to protect the data of the individuals concerned.

   1.3 The parties shall not process the Shared Personal Data for any purpose or in any way that is incompatible with the Stated Purposes.

   1.4 The Shared Personal Data shall be disclosed by the relevant party, disclosing the Shared Personal Data (Disclosing Party) to the relevant party, receiving the Shared Personal Data (Receiving Party) only to the extent reasonably necessary for the Stated Purposes.

2. **Data Protection Compliance**

   2.1 Each party shall appoint a data protection officer and/or at least one other of its Representatives as a point of contact for all issues relating to the sharing of the Shared Personal Data and the Data Protection Legislation (including, but not limited to, compliance, training, and the handling of personal data breaches).

   2.2 Both parties shall at all times during the Term of this Appendix comply with their obligations as data controllers, the rights of data subjects, and all other applicable requirements under the Data Protection Legislation. This Appendix is in addition to, and does not relieve, remove, or replace either party's obligations under the Data Protection Legislation. Any material breach of the Data Protection Legislation by either Party shall, if not remedied within 14 days' of written notice from the other party, give the other party grounds to terminate the EULA with immediate effect.

3. **The Shared Personal Data**

   3.1 The Shared Personal Data, includes any data shared under the EULA between the parties.

   3.2 No special category personal data is to be shared between the parties.

   3.3 The Disclosing Party shall ensure that the Shared Personal Data is accurate and up-to-date prior to its disclosure to the Receiving Party.

   3.4 The parties shall use compatible technology for the processing of the Shared Personal Data in order to preserve accuracy.

4. **Shared Personal Data - Fair and Lawful Processing**

4.1 Both parties shall at all times during the Term process the Shared Personal Data fairly and lawfully.

4.2 Both Parties shall ensure that they have legitimate grounds for processing the Shared Personal Data under the Data Protection Legislation.

4.3 The Disclosing Party shall ensure that it has in place all required notices and consents in order to enable the sharing of the Shared Personal Data under this Appendix. In particular, the Disclosing Party shall ensure that data subjects are provided with clear and sufficient information about the following:

4.3.1 the purposes for which their personal data is to be processed;

4.3.2 the legal basis upon which it is relying for such purposes;

4.3.3 the fact that their personal data is to be transferred to a third party and sufficient detail about the transfer to enable the data subject to understand the purpose of the transfer and any risks associated therewith; and

4.3.4 all other information required under Article 13 of the UK GDPR.

4.4 The Receiving Party shall ensure that it has in place all required notices and consents in order to enable the sharing of the Shared Personal Data under this Appendix. In particular, the Receiving Party shall ensure that data subjects are provided with clear and sufficient information about the following:

4.4.1 the purposes for which their personal data is to be processed;

4.4.2 the legal basis upon which it is relying for such purposes; and

4.4.3 in the event that their personal data is to be transferred to a third party, the fact that such a transfer is to take place and sufficient detail about the transfer to enable the data subject to understand the purpose of the transfer and any risks associated therewith; and

4.4.4 all other information required under Article 14 of the UK GDPR.

5. **The Rights of Data Subjects**

5.1 The parties shall assist one another in complying with their respective obligations and the rights of data subjects under the Data Protection Legislation. Such assistance shall include, but not be limited to:

5.1.1 consulting with the other party with respect to information and notices provided to data subjects relating to the Shared Personal Data;

5.1.2 informing the other party about the receipt of data subject access requests and providing reasonable assistance in complying with the same;

5.1.3 not disclosing or otherwise releasing any Shared Personal Data in response to a data subject access request without prior consultation with the other party, whenever reasonably possible;

5.1.4 assisting the other party in responding to any other data subject request.

5.2 Each party shall maintain records of all data subject requests received, the decisions made in response, and any information provided to the data subject(s) concerned. Such records shall include copies of the request, details of any data accessed and

shared, and, if applicable, details of any further correspondence, telephone conversations, or meetings relating to the request.

6. **Data Retention and Deletion and/or Disposal**

6.1   Subject to sub-Clause 6.2, the Receiving Party shall hold and process the Shared Personal Data only for so long as is necessary for the fulfilment of the Stated Purposes.

6.2   In the event that any statutory or similar retention periods apply to any of the Shared Personal Data, the relevant personal data shall be retained by the Receiving Party in accordance therewith.

6.3   The Receiving Party shall delete (or otherwise dispose of) the Shared Personal Data (or the relevant part thereof) and any and all copies thereof or, on the written request of the Disclosing Party, return it to the Disclosing Party, subject to any legal requirement to retain any applicable personal data, in the following circumstances:

6.3.1   upon the termination or expiry of the EULA; or

6.3.2   once the Stated Purposes have been fulfilled and it is no longer necessary to retain the Shared Personal Data (or the relevant part thereof) in light of the Stated Purposes;

whichever is earlier.

6.4   All Shared Personal Data to be deleted or disposed of under this Appendix shall be deleted or disposed of securely and the parties will confirm to each other how the Shared Personal Data will be destroyed.

6.5   Following the deletion and/or disposal of the Shared Personal Data (as applicable), the Receiving Party shall notify the Disclosing Party of the same in writing, confirming that the Shared Personal Data has been deleted or disposed and stating the method used.

7. **Shared Personal Data Transfers**

7.1   For the purposes of this Clause 7, the transfer of Shared Personal Data shall refer to any sharing of the Shared Personal Data by the Receiving Party with a third party. Such sharing shall include, but not be limited to, the appointment of a third-party data processor and sharing the Shared Personal Data with a third-party data controller.

7.2   In the event that the Receiving Party wishes to appoint a third-party data processor, it shall remain liable to the Disclosing Party for any acts and/or omissions of the third-party processor and it shall comply with Articles 28 and 30 of the UK GDPR.

7.3   The Receiving Party shall not transfer any of the Shared Personal Data outside of the UK, unless there is an adequacy regulation in place and/or some other appropriate safeguards, such as Standard Contractual Clauses.

8. **Shared Personal Data Security**

8.1   The Disclosing Party shall transfer the Shared Personal Data to the Receiving Party using a secure transfer method.

8.2   Both parties shall ensure that they have in place appropriate technical and organisational measures to protect against the unauthorised or unlawful processing

of, and against the accidental loss or destruction of, or damage to, the Shared Personal Data, having regard to the state of technological development and the cost of implementing any such measures.

8.3 When putting appropriate technical and organisational measures in place, both parties shall ensure a level of security appropriate to the nature of the Shared Personal Data which is to be protected, and to the potential harm resulting from the unauthorised or unlawful processing of, the accidental loss or destruction of, or damage to, the Shared Personal Data.

8.4 All technical and organisational measures put in place by both parties shall be reviewed regularly by the respective party, updating such measures as appropriate throughout the Term of this Appendix.

8.5 Please refer to Schedule 1 for further details of appropriate technical and organisational measures.

9. **Training**

9.1 Both Parties shall ensure that any and all of their Representatives by whom the Shared Personal Data is to be handled and processed are appropriately trained to do so in accordance with the Data Protection Legislation.

9.2 The Receiving Party shall further ensure that any of its Representatives to whom the Shared Personal Data is to be disclosed are subject to contractual obligations in relation to confidentiality and data protection that bind those Representatives and that are same as the obligations imposed upon the Receiving Party by this Appendix.

10. **Personal Data Breaches**

10.1 In the event of a personal data breach, each party shall comply with its obligations to report such a breach to the Information Commissioner's Office and, if applicable, to the affected data subjects in accordance with Article 33 of the UK GDPR. Furthermore, each party shall inform the other party of any such breach without undue delay, irrespective of whether it is required to be reported to the Information Commissioner or to data subjects.

10.2 Each party shall provide reasonable assistance to the other party in the handling of personal data breaches.

11. **Term, Review, and Termination**

11.1 This Appendix shall come into force when the parties enter into the EULA. The parties shall review the sharing of the Shared Personal Data under this Appendix on a regular basis.

11.2 These reviews shall address the following:

11.2.1 evaluating the purposes for which the Shared Personal Data is being processed in order to determine whether those purposes are still limited to the Stated Purposes;

11.2.2 evaluating whether the parties are complying with the Data Protection Legislation and with the provisions of this Appendix governing fair and lawful processing, the rights of data subjects, data retention, and data security; and

11.2.3 evaluating whether any personal data breaches affecting the Shared Personal Data have been handled in accordance with this Appendix and the Data Protection Legislation.

11.3 Each party shall have the right to inspect the other party's arrangements for holding and processing the Shared Personal Data and to terminate this Appendix if it reasonably considers that the other party is not processing that Shared Personal Data in accordance with the Data Protection Legislation or this Appendix.

12. Resolution of Disputes with Data Subjects or the Information Commissioner

12.1 In the event of a dispute or claim brought by a data subject or the Information Commissioner's Office concerning the processing of Shared Personal Data against either or both parties, the parties will inform each other about any such disputes or claims, and will cooperate with a view to settling them amicably in a timely fashion.

12.2 The parties agree to respond to any generally available non-binding mediation procedure initiated by a data subject or by the Information Commissioner. If they do participate in the proceedings, the parties may elect to do so remotely (such as by telephone or other electronic means). The parties also agree to consider participating in any other arbitration, mediation, or other dispute resolution proceedings developed for data protection disputes.

12.3 Each party shall abide by a decision of a competent court of the Disclosing Party's jurisdiction of establishment or of the Information Commissioner.

13. Warranties

13.1 Each party hereby warrants and undertakes that it shall:

13.1.1 hold and process the Shared Personal Data in compliance with the Data Protection Legislation and all other applicable laws, enactments, regulations, orders, standards, and similar applicable instruments;

13.1.2 respond without undue delay and as far as reasonably possible to any enquiries from Information Commissioner's Office relating to the Shared Personal Data;

13.1.3 respond to data subject requests in accordance with the Data Protection Legislation;

13.1.4 if applicable, pay the appropriate fees to the Information Commissioner's Office; and

13.1.5 take all appropriate steps to ensure compliance with the security measures set out in this Appendix.

13.2 The Disclosing Party hereby warrants and undertakes that it is authorised to share the Shared Personal Data with the Receiving Party and that the Shared Personal Data will be accurate and up-to-date.

13.3 The Receiving Party hereby warrants and undertakes that it shall not transfer any of

the Shared Personal Data outside of the UK, unless there is an adequacy regulation in place and/or some other appropriate safeguards, such as Standard Contractual Clauses.

13.4 Except as expressly stated in this Appendix, all other warranties, conditions, and terms, whether express or implied by statute, common law, or otherwise, are hereby excluded to the fullest extent permissible by law.

14. **Indemnity**

Each party shall indemnify the other against any cost, charge, damages, expense, or loss, suffered or incurred by the indemnified party arising out of or in connection with the indemnifying party's (or its Representatives') breach of the Data Protection Legislation or this Appendix, provided that the indemnified party provides the indemnifying party with prompt notice of any such claim, full information about the circumstances giving rise to the claim, reasonable assistance in dealing with the claim, and the sole authority to manage, defend, and/or settle the claim.

15. **Limitation of Liability**

15.1 Neither party shall be liable, whether in contract, tort (including negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution, or otherwise, for any direct or indirect loss of profits, business, business opportunity, revenue, turnover, reputation, or goodwill; any direct or indirect loss of anticipated savings or wasted expenditure; or any direct or indirect loss or liability under or in relation to any other contract.

15.2 Neither party shall exclude its liability to the other Party for fraud or fraudulent misrepresentation, death or personal injury resulting from negligence, a breach of any obligations implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982, or any other matter for which it would be unlawful for either Party to exclude liability.

15.3 Nothing in this clause shall prevent claims for direct financial loss that are not excluded under any of the categories set out therein or for tangible property or physical damage.

16. **No Partnership or Agency**

16.1 Nothing in this Appendix shall establish any partnership or joint venture between the parties, constitute either party the agent of the other party, or authorise either party to make or enter into any commitments for or on behalf of the other party.

16.2 Each party hereby confirms that it is acting on its own behalf and not for the benefit of any other person.

17. **Non-Assignment of Appendix**

Neither party may assign, transfer, sub-contract, or in any other manner make available to any third party the benefit and/or burden of this Appendix without the prior written consent of the other party, such consent not to be unreasonably withheld.

18. **Entire Appendix**

This Appendix contains the entire Appendix between the parties with respect to its subject matter and may not be modified except by an instrument in writing signed by the duly authorised representatives of the parties.

19. **Variation**

No variation of or addition to this Appendix shall be effective unless in writing signed by each of the parties or by a duly authorised person on its behalf.

20. **No Waiver**

No failure or delay by either party in exercising any of its rights under this Appendix shall be deemed to be a waiver of that right, and no waiver by either party of a breach of any provision of this Appendix shall be deemed to be a waiver of any subsequent breach of the same or any other provision.

21. **Severance**

The parties agree that, in the event that one or more of the provisions of this Appendix is found to be unlawful, invalid, or otherwise unenforceable, that or those provisions shall be deemed severed from the remainder of this Appendix. The remainder of this Appendix shall be valid and enforceable.

22. **Communication**

22.1 All notices under this Appendix shall be in writing and be deemed duly given if signed by the party giving the notice or by a duly authorised officer thereof, as appropriate.

22.2 Notices shall be deemed to have been duly given:

22.2.1 when delivered, if delivered by courier or other messenger (including registered mail) during the normal business hours of the recipient; or

22.2.2 when sent, if transmitted by email and a successful transmission report or return receipt is generated; or

22.2.3 on the fifth business day following mailing, if mailed by national ordinary mail, postage prepaid; or

22.2.4 on the tenth business day following mailing, if mailed by airmail, postage prepaid.

22.3 All notices under this Appendix shall be addressed to the most recent address, facsimile number, or email address notified to the other party.

23. **Third Party Rights**

Unless expressly stated otherwise, this Appendix does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Appendix.

24. **Law and Jurisdiction**

24.1   This Appendix (including any non-contractual matters and obligations arising therefrom or associated therewith) shall be governed by, and construed in accordance with, the laws of England and Wales.

24.2   Any dispute, controversy, proceedings or claim between the Parties relating to this Appendix (including any non-contractual matters and obligations arising therefrom or associated therewith) shall fall within the jurisdiction of the courts of England and Wales.

Schedule 1

Technical and Organisational Data Protection Measures

1.   Each party shall ensure that, in respect of all Shared Personal Data, it maintains security measures to a standard appropriate to:

1.1   the nature of the Shared Personal Data which is to be protected; and

1.2   the potential harm resulting from the unauthorised or unlawful processing of, the accidental loss or destruction of, or damage to, the Shared Personal Data.

2.   In particular, each party shall:

2.1   have in place, and comply with, a security policy which:

2.1.1   defines security needs based on a risk assessment;

2.1.2   allocates responsibility for implementing the policy to a specific individual;

2.1.3   is provided to the other Party on or before the commencement of this Appendix;

2.1.4   is disseminated to all relevant Representatives (and other staff, if applicable); and

2.1.5   provides a mechanism for feedback and review.

2.2   ensure that appropriate security safeguards and virus protection are in place to protect the hardware and software which is used in processing the Shared Personal Data in accordance with best industry practice;

2.3   prevent unauthorised access to the Shared Personal Data;

2.4   protect the Shared Personal Data using pseudonymisation, where it is practical to do so;

2.5   ensure that its storage of Shared Personal Data conforms with best industry practice such that the media on which Shared Personal Data is recorded (including paper records and records stored electronically) are stored in secure locations and access by personnel to Shared Personal Data is strictly monitored and controlled;

2.6   have secure methods in place for the transfer of Shared Personal Data whether in physical form (for example, by using couriers rather than post) or electronic form (for example, by using encryption);

2.7   password protect all computers and other devices on which Shared Personal Data is stored, ensuring that all passwords are secure and that passwords are not shared under any circumstances;

2.8   not allow the storage of the Shared Personal Data on any mobile devices such as laptops or tablets unless such devices are kept on its premises at all times;

2.9   take reasonable steps to ensure the reliability of personnel who have access to the Shared Personal Data;

2.10   have in place methods for detecting and dealing with breaches of security (including loss, damage, or destruction of Shared Personal Data) including:

2.10.1 the ability to identify which individuals have worked with specific Shared Personal Data;

2.10.2 having a proper procedure in place for investigating and remedying breaches of the Data Protection Legislation; and

2.10.3 notifying the other Party as soon as any such security breach occurs.

2.11 have a secure procedure for backing up all electronic Shared Personal Data and storing back-ups separately from originals;

2.12 have a secure method of disposal of unwanted Shared Personal Data including for back-ups, disks, print-outs, and redundant equipment; and

2.13 adopt such organisational, operational, and technological processes and procedures as are required to comply with the requirements of ISO/IEC 27001:2013, as appropriate to the Stated Purposes and the nature of the Shared Personal Data.