

Annex 2

GENERAL TERMS

1 Scope & Definitions

- 1.1 This Agreement shall apply to the provision by Us to You of the Services and Deliverables in consideration of the payment by You of the Fees.
- 1.2 Signature of this Agreement indicates acceptance of the General Terms, any applicable Supplementary Terms, any Special Conditions and the Specification. In the event of any inconsistency between these documents, they will be interpreted in the following order of priority:
- (a) any Special Conditions;
 - (b) the General Terms;
 - (c) the Supplementary Terms;
 - (d) the Specification.
- 1.3 This Agreement shall prevail over any terms and conditions in Your order, invitation to tender, request for proposal or acceptance. No conduct by Us shall be deemed to constitute acceptance of any terms put forward by You.
- 1.4 This Agreement may only be amended by express agreement in writing signed by an authorised representative of each of the Parties.
- 1.5 In this Agreement, unless the context otherwise requires, the following words have the following meanings:

Additional Services	the following additional services which may be provided by Us on request: • training delivered remotely to Your Premises; • configuration delivered at Our premises on a quarter-of-a-day basis; • client meetings;
Agreement	together the cover page, the Specification, these General Terms and any Special Conditions or Supplementary Terms indicated in these General Terms;
Applicable Laws	All applicable laws, statutes, regulations and codes from time to time in force;
Confidential Information	all identifiable methodology, know-how, experience, data, databases, flow charts, reports, tables or other material produced in relation to this Agreement (including the negotiations leading to it) and any other information of whatever kind (whether commercial, technical, financial, operational or otherwise, whether communicated verbally, in writing or in any other form, and whether or not expressly stated to be confidential) relating to a Party including but not limited to its business, products, suppliers and customers;
Control	shall be as defined in section 1124 of the Corporation Tax Act 2010, and the expression " Change of Control " shall be construed accordingly;
CPI	the General Index of Consumer Prices published by the Office for National Statistics;
Customer Data	means any data (including any personal data relating to Your staff, customers or suppliers), documents, text, drawings, diagrams, images or sounds (together with any database made up of any of those), embodied in any medium, that are supplied

	to Us by or on Your behalf, or which We are required to generate, process, store, transmit or manage specifically for You under this Agreement;
Data Protection Legislation	the GDPR (and any legislation implemented in connection with the GDPR), the Data Protection Act 2018, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and any replacement legislation coming into effect from time to time and any other Applicable Laws relating to the processing of personal data;
Deliverables	the items set out in the Specification as being delivered by Us, including but not limited to any Software, Documentation and Services;
Disclosing Party	the Party disclosing Confidential Information and/or to whom Confidential Information relates;
Documentation	any user or other documentation or other materials (other than Software) We may provide to You from time to time as part of the Deliverables;
Fees	all fees, expenses and other charges due to be paid by You referred to in the Specification, or such other Fees as may be otherwise due under this Agreement;
GDPR	means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data;
General Terms	these terms and conditions at Annex 2;
Hosting Services	any hosting services referred to in the Specification and the Hosting Terms as being provided by Us;
Hosting Terms	the terms relating to the provision by Us of Hosting Services, as set out at Annex 3 to this Agreement;
Initial Period	the initial period of three (3) years from the Start Date;
Intellectual Property	all patents, trademarks, service marks, designs, designs, copyright, database rights, semi-conductor topography rights, inventions, trade secrets and other confidential information, know-how, business names and all other intellectual property rights of a similar nature in any part of the world, whether registered, registerable or not and including all applications and the right to apply for any of the foregoing rights and the right to sue for past infringements of any of the foregoing rights;
Our Implementation Officer	the implementation officer appointed by Us pursuant to clause 3.2 of these General Terms, or such other replacement project manager as We may notify to You from time to time;
Party	A Party to this Agreement;
Permitted Recipient	shall have the meaning ascribed to it in clause 8.1.3;
Receiving Party	the Party receiving Confidential Information from or relating to the Disclosing Party;
Services	the services referred to in the Specification as being provided by Us including but not limited to any Hosting Services and Support Services;
Software	any software referred to in the Specification as being provided by Us;

Special Conditions	any special conditions that apply to this Agreement set out at Annex 1;
Specification	any document, documents or project plan forming the specification, fee proposals and project plan agreed between You and Us and set out at Annex 1 to this Agreement, or subsequently agreed in writing between the Parties, setting out the nature of the Deliverables and the Fees;
Start Date	the start date specified on the cover page to this Agreement;
Supplementary Terms	any one or more of the Hosting Terms or Support Terms, as set out at Annex 3 and Annex 4 to this Agreement respectively;
Support Services	any support services for the Software referred to in the Specification as being provided by Us;
Support Terms	the terms relating to the provision by Us of Support Services, as set out at Annex 4 to this Agreement;
We, Us, Our	Quality Education Solutions Limited, t/a QES, a company registered in England with no.04700102 of Unit 3 Damery Works, Damery Lane, Woodford, Berkeley, Gloucestershire GL13 9JR;
You, Yours	the customer specified on the cover page to this Agreement;
Your Equipment	the PCs, servers or other equipment and software meeting the technical and performance requirements specified by Us from time to time to be acquired by You and on which the Software will be installed and operate;
Your Premises	the customer address specified on the cover page to this Agreement;
Your Project Manager	the project manager appointed by You pursuant to clause 4.1.5 of these General Terms, or such other replacement project manager as You may notify to Us from time to time.

- 1.6 any reference to any legislation or legislative provision shall be construed as a reference to that legislation or provision as amended, re-enacted or extended at the relevant time;
- 1.7 any reference to a person shall be construed as a reference to any person, corporate entity, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) or one or more of the foregoing;
- 1.8 clause, schedule and paragraph headings are inserted for ease of reference only and shall not affect the construction of this Agreement;
- 1.9 any obligation on a Party not to do something includes an obligation on that Party not allow that thing to be done;
- 1.10 any reference to writing or written communications includes email; and
- 1.11 any reference to a clause shall mean a clause of these General Terms unless specifically stated otherwise;

2 Start and duration of this Agreement

- 2.1 This Agreement shall start on the Start Date and shall continue for the Initial Period. At the end of the Initial Period the Agreement will automatically continue for further periods of twelve (12) months (**Extension Period**) unless and until terminated by either Party under clauses 2.2, , 6.4.3, 14.2 or 15.
- 2.2 Either Party may give to the other not less than six (6) months' notice in writing to terminate this Agreement, or any one of the Supplementary Terms, such notice to expire no earlier than the end of the Initial Period or the relevant Extension Period. If either Party chooses to terminate any of the Supplementary Terms under this clause independently of the others, the other Supplementary Terms and the remainder of the Agreement shall continue in full force and effect. If the notice of termination is not specific, then the Agreement as a whole shall terminate, including all Supplementary Terms. Termination notices under this clause may not be served to expire prior to the end of the Initial Period or the relevant Extension Period and must be served to expire on an anniversary of the Start Date.

3 Services

- 3.1 We will use Our reasonable endeavours to:
 - 3.1.1 provide the Deliverables to You, in accordance with the Specification; and
 - 3.1.2 meet the performance dates set out in the Specification, but any dates shall be estimates only and time shall not be of the essence of this Agreement.
- 3.2 We will appoint Our Implementation Officer who shall have authority to contractually bind Us on all matters relating to the provision of the Deliverables. We will use reasonable endeavours to ensure that the same person acts as Our Implementation Officer throughout the duration of this Agreement, but may replace them from time to time where reasonably necessary in the interests of Our business.
- 3.3 From time to time, You may request Us to provide any one or more of the Additional Services. We shall be free to accept or reject requests for Additional Services at Our absolute discretion. If we accept a request for Additional Services, We will be required to provide and You will be required to receive and pay for the Additional Services in accordance with the terms of this Agreement. The fees payable by You to Us in relation to the provision of the Additional Services shall be in accordance with Our then standard rates.

4 Your obligations

- 4.1 You agree to:
 - 4.1.1 comply with Your obligations referred to in the Specification in a timely manner;
 - 4.1.2 co-operate with Us in good faith in all matters relating to the delivery of the Deliverables;
 - 4.1.3 provide in a timely manner such access to Your Premises and Customer Data, and such other facilities or resources, as may be reasonably requested by Us;
 - 4.1.4 provide Us in a timely manner with such information as We may request, and ensure that this information is accurate and complete in all material respects; and
 - 4.1.5 appoint Your Project Manager who shall have authority to contractually bind You on all matters relating to the provision of the Deliverables. You will use reasonable endeavours to ensure that the same person acts as Your Project Manager throughout the duration of this Agreement, but may replace them from time to time where reasonably necessary in the interests of Your business.
- 4.2 If Our performance of Our obligations under this Agreement is prevented or delayed by any act or omission of Yours or Your agents, sub-contractors or employees, You may be requested to pay to Us all additional time and expenses incurred by Us as a result of that act or omission at Our then standard rates.
- 4.3 You will indemnify Us and will keep Us indemnified against all costs, claims, losses, liability and expenses that arise out of any breach of this Agreement by You.

5 Materials Supplied by You

- 5.1 You warrant and undertake that any information or materials provided by You to Us for the purposes of this Agreement will be complete, accurate and up to date and free from any defamatory or unlawful content and that they will not infringe any rights (including Intellectual Property rights) of any third party.
- 5.2 We shall have a general and particular lien over all materials in our possession that have been supplied by You for the purposes of this Agreement until such time as all Fees (together with any interest due) have been paid in full.

6 Fees and payment

- 6.1 In consideration of the Services provided by Us, You will pay the Fees to Us in the amounts and on the dates set out in the Specification. Time for payment shall be of the essence of this Agreement.
- 6.2 Unless expressly stated to the contrary in the Specification or these General Terms, the Fees shall be payable annually in advance. You must pay Our invoices within thirty (30) days of the date of receipt of invoice.
- 6.3 The Fees shall be fixed for the Initial Period. Thereafter, on each anniversary of the Start Date, We will increase the Fees to reflect the proportion by which the CPI has increased during the preceding year or 1.7% whichever is greater and in addition, any increase in the costs of providing the Deliverables which is due to:
 - 6.3.1 any change in law, regulation, tax or duty;
 - 6.3.2 any change in market conditions (including, without limitation, increase in prices of third party suppliers); or

- 6.3.3 any variation to the Deliverables which are requested by You.
- 6.4 Without prejudice to any other remedy which We may have, if any sums due under this Agreement are not received by Us by the due dates referred to We may:
- 6.4.1 charge interest on the overdue amount at the rate of 3% above the base rate of NatWest Bank for the time being from the due date until the overdue sums have been received by Us in cleared funds;
 - 6.4.2 suspend the provision of any Deliverables or any other obligations required to be performed by Us under this Agreement until such time as payment of the overdue sums (together with any interest) have been received by Us; and/or
 - 6.4.3 terminate the Agreement by thirty (30) days' notice in writing to You in the event of a persistent failure to make such payments on the due date. "Persistent failure" shall be construed as meaning a failure to make any three payments due under this Agreement by or on the due dates in any period of six (6) calendar months.
- 6.5 All payments made by You under this Agreement shall be made without set-off or counterclaim of any description. If You are required at any time by any Applicable Law to make any deduction from any payment due that payment shall be increased by such amount that will result in receipt by Us of a net sum equal to the sum that We would have received had no such deduction been required.
- 6.6 All sums due under this Agreement are exclusive of Value Added Tax which (where applicable) will be paid to Us by You in addition to the sums due.

7 Compliance with Laws and Policies

- 7.1 In performing its obligations under this Agreement, each Party shall:
- 7.1.1 comply with all Applicable Laws;
 - 7.1.2 comply with all laws, statutes, regulations and codes relating to anti-bribery and anti-corruption ("**Relevant Requirements**"), including but not limited to the Bribery Act 2010;
 - 7.1.3 have and maintain throughout the term of this Agreement its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure its compliance with the Relevant Requirements;
 - 7.1.4 not do, or omit to do, any act that will cause or lead the other Party to be in breach of the Relevant Requirements;
 - 7.1.5 report to the other Party as soon as reasonably practicable, any request or demand for any undue financial or other advantage of any kind received in connection with the performance of this Agreement; and
 - 7.1.6 if requested, provide the other Party with any reasonable assistance, at the other Party's reasonable cost, to enable the other Party to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with any of the Relevant Requirements.
- 7.2 In performing Our obligations under this Agreement, We shall comply with the policies and codes of conduct communicated to Us by You from time to time, provided that You shall give Us not less than 2 months' written notice of any changes to such policies.

8 Confidential Information

- 8.1 The Receiving Party undertakes to the Disclosing Party that:
- 8.1.1 it shall treat and safeguard as private and confidential all Confidential Information;
 - 8.1.2 it shall only use the Confidential Information to the extent that such use is necessary for the purposes of performing its obligations or exercising its rights under this Agreement;
 - 8.1.3 it shall not at any time disclose or reveal any part of the Confidential Information to any person other than those directors, employees or professional advisors of the Receiving Party who it is necessary should receive and consider the same for the purposes of this Agreement ("**Permitted Recipient**");
 - 8.1.4 it shall ensure that each Permitted Recipient to whom Confidential Information is to be disclosed is made aware of and observes the terms of this clause 8 as if that person had given the undertakings contained in this clause 8 directly;

- 8.1.5 it shall immediately upon written request by the Disclosing Party deliver to the Disclosing Party a list of all individuals to whom the Confidential Information has been disclosed;
- 8.1.6 it shall indemnify the Disclosing Party (and keep it indemnified) from and against all costs, claims, losses, damages, expenses and other liabilities which arise out of or in connection with the unauthorised disclosure or use of the Confidential Information or any part of it by the Receiving Party or any person to whom the Confidential Information has been disclosed by the Receiving Party.
- 8.2 The provisions of clause 8.1 above shall not apply to any Confidential Information to the extent that such Confidential Information:
 - 8.2.1 is publicly available or becomes publicly available through no act or omission of the Receiving Party;
 - 8.2.2 was created independently by the Receiving Party prior to the date of this Agreement as demonstrated by documentary evidence; or
 - 8.2.3 is required to be disclosed by law or by order of a court of competent jurisdiction or other competent authority provided that (to the extent it is permitted to do so) the Receiving Party gives all reasonable notice of that disclosure to the Disclosing Party.
- 8.3 Whenever requested by the Disclosing Party:-
 - 8.3.1 the Receiving Party shall immediately return, and ensure that all Permitted Recipients immediately return, to the Disclosing Party all matter provided by the Disclosing Party in tangible form which constitutes the Confidential Information, or any part of it, together with all copies; and
 - 8.3.2 the Receiving Party shall immediately destroy (or if kept electronically, expunge), and ensure that all Permitted Recipients immediately destroy or expunge, any notes, memoranda or other records or working materials (in whatever medium) which contain any Confidential Information.
- 8.4 The Receiving Party acknowledges that damages alone would not be an adequate remedy for breach of any of the provision of this Agreement. Accordingly, without prejudice to any other rights or remedies it may have, the Disclosing Party shall be entitled to the granting of equitable relief (including without limitation injunctive relief) concerning any threatened or actual breach of any of the provisions of this Agreement.

9 Data Protection

- 9.1 If We process any personal data supplied by You or on Your behalf for the purposes of this Agreement, the provisions of clauses 9.2 and 9.3 shall apply in relation to that personal data. For the purposes of the Agreement, "**personal data**", "**data controller**", "**data processor**" and "**data subject**" shall have the respective meanings given to those terms in the Data Protection Legislation.
- 9.2 **Your data processing obligations:** where You expect Us to process personal data, you shall:
 - 9.2.1 ensure that the personal data is accurate and up-to-date, and remains so during the period of the processing;
 - 9.2.2 ensure that all necessary consents under the Data Protection Legislation have been obtained for the supply of the personal data and its processing by Us, and if requested, You shall promptly provide written confirmation of the same; and
 - 9.2.3 not do anything in connection with the personal data that would or might cause Us to be in breach of any Data Protection Legislation or other law and/or to incur liability to any data subject.
- 9.3 **Our data processing obligations:** to the extent that We process personal data on Your behalf in connection with this Agreement, We shall:
 - 9.3.1 solely process the personal data for the purposes of fulfilling Our obligations in the Agreement and in compliance with Your written instructions as set out in these General Terms;
 - 9.3.2 ensure that any persons used by Us to process personal data are required to treat the personal data confidentially;
 - 9.3.3 take appropriate technical and organisational measures against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data taking into account the nature of the processing and harm that might result from such unauthorised or unlawful processing, loss, destruction or damage and the nature of the personal data to be protected including, without limitation, all such measures that may be required to ensure compliance with Article 32 of the GDPR;

- 9.3.4 taking into account the nature of the data processing activities undertaken by Us and the information available to Us:
- (a) provide all reasonable possible assistance and cooperation to enable You to respond to requests from individuals exercising their rights under the Data Protection Legislation;
 - (b) notify You as soon as reasonably practicable if We (or any sub-contractor engaged by Us) suffer a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal data that is processed in connection with the Agreement; and
 - (c) following a notification under clause 9.3.4(b), provide You with reasonable cooperation, information and assistance as may be necessary to enable You to notify relevant supervisory authorities and data subjects of the data security breach to the extent such notification is required under the Data Protection Legislation
- 9.3.5 assist You with carrying out data protection impact assessments and consulting with relevant supervisory authorities where such assessments and/or consultation are required pursuant to the Data Protection Legislation, provided that the scope of such assistance shall be agreed by the Parties in advance and You shall pay Our reasonable costs incurred in providing such assistance;
- 9.3.6 upon termination of the Agreement, at Your discretion delete or return all personal data to You and delete existing copies, except that We shall be permitted to retain back-up copies of data in accordance with Our normal back-up procedures;
- 9.3.7 upon reasonable request with not less than 4 weeks' notice, and provided that You shall not make more than one request in any 12 month rolling period, make available to You all information necessary to demonstrate compliance with the obligations set out in this clause 9 and allow for and contribute to audits, to including inspections, conducted by Your or on Your behalf.
- 9.4 In performing Our obligations under this Agreement, We may appoint one or more third party as sub-processors. As the data processor, We shall remain responsible to You for the actions of Our sub-processors and shall remain bound by our obligations at clause 9.3 above.

10 Intellectual Property

- 10.1 All Intellectual Property rights and all other rights in the Deliverables shall be owned by Us or Our licensors. Except as set out in clauses 10.2 to 10.8, You will have no rights in, or to, the Deliverables.
- 10.2 We hereby grant to You a non-exclusive, non-transferable, world-wide, royalty free (subject to payment of the Fees) licence to use the Deliverables for the duration of the Agreement to such extent as is necessary to enable You to make reasonable use of the Deliverables for Your own internal business purposes as envisaged by the Specification. On termination of this Agreement for any reason this licence and Your rights to use the Deliverables will immediately cease.
- 10.3 Save as stated in clause 10.2, You shall have no right to copy, adapt, reverse engineer, decompile, disassemble or modify the Deliverables in whole or in part for any purpose nor arrange to create derivative works based on the Deliverables.
- 10.4 You shall not transfer or distribute (whether by licence, loan, rental, sale or otherwise) all or part of the Deliverables to any other person.
- 10.5 You shall not make for any purpose (including, without limitation, for error correction) any alterations, modifications, additions or enhancements to the Deliverables nor permit the whole or any part of the Deliverables to be combined with or become incorporated in any other program.
- 10.6 You shall not make or permit others to make any copies of any Documentation and shall use the Documentation solely for the purposes of assisting You with its operation of the Deliverables.
- 10.7 You shall effect and maintain adequate security measures to safeguard the Deliverables and Documentation from unauthorised access, use or copying.
- 10.8 The Customer Data and any other documentation or materials provided by You to Us shall be owned by You. We may use the Customer Data and any other documentation or materials provided by You to Us in order to perform Our obligations and exercise Our rights under this Agreement. On termination of this Agreement for any reason this right will immediately cease.

11 Indemnity

- 11.1 Subject to Clauses 11.2 to 11.4 below, We shall indemnify and keep indemnified You from and against all costs, expenses (including, but not limited to, legal and other professional fees and expenses on a full indemnity basis) losses, damages and other liabilities (of whatever nature, whether contractual, tortious or otherwise) suffered or incurred by You and arising out of or in connection with any claim, action or demand alleging that the use by You of the Deliverables in accordance with this Agreement infringes the Intellectual Property rights of any third party (the **IP Claim**).
- 11.2 The indemnity given by Us in Clause 11.1 above is subject to the following conditions: -
- 11.2.1 You shall immediately give Us notice and details of the IP Claim, giving Us sufficient time to contest any proceedings;
 - 11.2.2 You shall at Our cost take such action and give such information and assistance as We may reasonably request, to allow Us to conduct and/or settle any and all proceedings and negotiations in respect of the IP Claim, and
 - 11.2.3 You shall make no statement or take any other action prejudicial to Us in Our conduct of any proceedings or negotiations in relation to the IP Claim and shall not admit liability or settle the matter without Our prior written consent.
- 11.3 As soon as reasonably practicable after We have become aware of an IP Claim, We may, at Our discretion, do one or more of the following:-
- 11.3.1 obtain for You the right to use the alleged infringing item;
 - 11.3.2 modify the alleged infringing item so that it becomes non-infringing whilst still ensuring that it is substantially in compliance with the Specification in all materials respects; or
 - 11.3.3 replace the alleged infringing item with a non-infringing item that is substantially in compliance with the Specification in all material respects;
- and in each case You shall provide at Our cost such co-operation and assistance as We may reasonably require.
- 11.4 This clause 11 constitutes Your sole and exclusive remedy and Our only liability in respect of any IP Claim and, for the avoidance of doubt, is subject to clause 13.7.
- 11.5 We shall not have any liability to You in respect of any IP Claim to the extent that such IP Claim arises out of, or any costs, expenses, losses, damages or other liabilities of Yours in connection with such IP Claim were caused or contributed to by, one or more of the following:-
- 11.5.1 the use by You or any of Your employees or sub-contractors of the alleged infringing item in combination with other items not supplied by Us under this Agreement;
 - 11.5.2 the incorporation by Us into the Deliverables of a specific design or modification produced by You;
 - 11.5.3 the failure by You to implement or install changes, replacements or new releases recommended by Us, where the infringement would have been avoided by such changes, replacements or new releases; or
 - 11.5.4 any breach of this Agreement by You and/or any negligence or wilful misconduct by You or any of Your employees, agents or sub-contractors.

12 General warranties

- 12.1 We warrant and undertake to You that:
- 12.1.1 We have the power and authority to enter into this Agreement and to perform Our obligations under this Agreement;
 - 12.1.2 We will comply with Our obligations under this Agreement using reasonable skill and care in accordance with good industry practice; and
 - 12.1.3 We will comply with all Applicable Laws which apply to Us when performing Our obligations under this Agreement.
- 12.2 You warrant and undertake to Us that:
- 12.2.1 You have the power and authority to enter into this Agreement and to perform Your obligations under this Agreement;

- 12.2.2 You will comply with Your obligations under this Agreement using reasonable skill and care in accordance with good industry practice; and
- 12.2.3 You will comply with all Applicable Laws which apply to You when performing Your obligations under this Agreement.

13 Liability

- 13.1 Whilst We will use Our reasonable endeavours to provide the Deliverables and perform Our other obligations in the manner envisaged by this Agreement, there are a number of external influences and risks which may mean that You are unable to benefit from the Deliverables and You agree that We will not have any liability for these which include (but are not limited to):
 - 13.1.1 other software or equipment not supplied by Us operating in conjunction with the Software used by any of Your users;
 - 13.1.2 the assumptions or conditions set out in the Specification do not prevail;
 - 13.1.3 the failure of or interruption in any third party communication link;
 - 13.1.4 any inherent defect in Your Equipment; and
 - 13.1.5 the user settings applied by and the skill of Your users.
- 13.2 We will use Our reasonable endeavours to back-up the Customer Data to a server within the same hosting facilities from which We provide the Services. If for any reason the Customer Data You provide to Us is lost or corrupted, We will use Our reasonable endeavours to restore the Customer Data from that back-up. However We cannot guarantee that a restoration will be possible in every case. You accept that Our obligations set out in this clause to use Our reasonable efforts to back-up the Customer Data and attempt a restoration are Our only liability to You in the event of any loss of or corruption to the Customer Data.
- 13.3 We will not be liable for any failure to perform any part of the Deliverables to the extent that failure was caused or contributed to by a breach of Your obligations under this Agreement.
- 13.4 Except as set out in clause 12 and in any applicable Support Terms that form part of this Agreement the Deliverables are provided "as is" without any warranty as to functionality or performance and We will have no other liability for any defect in any of the Deliverables. You acknowledge that You are responsible for ensuring that the Deliverables meet Your requirements and are suitable for any intended purposes.
- 13.5 Except as expressly set out in this Agreement and to the maximum extent permitted by law, We disclaim all warranties, including, but not limited to, the implied warranties of non-infringement, title, merchantability, satisfactory quality, quiet enjoyment, quality of information, and fitness for a particular purpose. Except as expressly set out in this Agreement We do not warrant that the Deliverables will meet Your requirements, or that the operation of the Software or Hosting Services will be uninterrupted or error-free, or that defects in the Software or Hosting Services will be corrected. Except as expressly confirmed in this Agreement, no oral or written information or advice given by Us shall create any additional warranties or in any way increase the scope of Our obligations under this Agreement.
- 13.6 We shall not be liable to You (whether by reason of any negligence by Us or any of Our employees or sub-contractors, any breach of contract or any express or implied warranty, condition or other term, or otherwise) for any: loss of profits, damage to reputation, loss of anticipated savings, loss of anticipated revenues, loss of business opportunities, loss of contracts, loss of goodwill, loss or corruption of any data, or claim, action or demand made against You by any third party, or any indirect, special or consequential loss, damage, cost, expense, claim or other liability whatsoever; which arises out of or in connection with this Agreement.
- 13.7 The aggregate liability (inclusive of interest and legal and other costs) of Us to You in respect of all claims arising under or in connection with this Agreement (whether for breach of this Agreement, for negligence or under any indemnity) shall not in any event exceed fifty percent of the total Fees payable by You to Us under this Agreement in the twelve (12) month period preceding first notification of the circumstances giving rise to the claim and Your intention to bring a claim sent by You to Us.
- 13.8 Nothing in this Agreement shall operate to limit or exclude Our liability to You for any death or personal injury caused by Our negligence or any of Our employees or agents, fraud or fraudulent misrepresentation or for any other matter in respect of which liability cannot lawfully be limited or excluded.

14 Events outside Our control

- 14.1 We will not be liable for, or be deemed to be in breach of this Agreement as a result of, any delay in performing or failure to perform any of Our obligations under this Agreement where that delay or failure is caused by any circumstances beyond Our reasonable control. However any delay or failure caused by any subcontractor or supplier of Ours shall not relieve Us from liability for that delay or failure except where that delay or failure was in turn caused by circumstances beyond the reasonable control of the relevant subcontractor or supplier.
- 14.2 Where any delay or failure which arises as a result of the circumstances described in clause 14.1 continues for a period of one (1) month or more, either Party may terminate this Agreement immediately on notice in writing to the other Party, in which event neither Party shall be liable to the other by reason of such termination.

15 Termination

- 15.1 Either Party may terminate this Agreement as a whole or any one of the Supplementary Terms immediately by serving written notice to that effect on the other Party if at any time any one or more of the following events occurs:
- 15.1.1 the other Party makes any voluntary arrangement with its creditors or becomes bankrupt or enters administration or goes into liquidation (otherwise than for the purposes of solvent amalgamation or reconstruction); or
 - 15.1.2 a security holder takes possession, or a receiver or administrative receiver is appointed, over all or any material part of the property or assets of the other Party; or
 - 15.1.3 anything analogous to any of the foregoing occurs to the other Party under the law of any jurisdiction; or
 - 15.1.4 the other Party commits a material breach of any of the provisions of this Agreement (or in the case of a termination of any Supplementary Terms, commits a material breach of the provisions of those Supplementary Terms) and in the case of a breach capable of remedy, fails to remedy that breach within sixty (60) days after being served with a written notice specifying the breach and requiring it to be remedied.
- 15.2 We may terminate this Agreement as a whole or any one of the Supplementary Terms immediately, by serving You with written notice to that effect, in the event that:
- 15.2.1 You cease or threaten to cease to carry on business; or
 - 15.2.2 there is a Change of Control in respect of Your business.

16 Consequences of Termination

- 16.1 Any termination of this Agreement shall be without prejudice to any other rights or remedies a Party may be entitled to under this Agreement or at law and shall not affect any accrued rights or liabilities of either Party nor the coming into or continuance in force of any provision of this Agreement which is expressly or by implication intended to come into or continue in force on or after such termination including (but not limited to) clauses: 4.3, 6, 7, 9, 10.1, 10.8, 13, 15, 16, 17-25.
- 16.2 On termination of this Agreement (for any reason whatsoever):
- 16.2.1 You shall at Our request immediately cease using the Software and Documentation and delete or return all copies of the Software and Documentation in Your possession or control;
 - 16.2.2 We will use Our reasonable endeavours to assist with the transfer of any Customer Data held by Us to You or a third party supplier nominated by You to Us, provided that You first agree in writing to pay Our then standard charges for doing so;
 - 16.2.3 You shall immediately pay any outstanding invoices raised under this Agreement; and
 - 16.2.4 We shall not be required to refund or rebate to You any part of the Fees in respect of any unexpired period of this Agreement.
- 16.3 Termination of one of the Supplementary Terms shall not automatically terminate any of the other Supplementary Terms which shall continue in full force and effect subject to their terms.

17 Exclusion of Third Party Rights

Unless expressly stated in this Agreement, nothing in this Agreement shall confer any rights on any person under the Contracts (Rights of Third Parties) Act 1999.

18 Assignment/Novation/Sub-contracting

- 18.1 You shall not be entitled to assign, sub-contract or otherwise dispose of any of Your rights or obligations under this Agreement without Our prior written consent.
- 18.2 We may sub-contract Our rights and obligations under this Agreement at any time without Your consent provided that We shall remain directly liable to You for any failure of Our sub-contractors to comply with Our obligations under this Agreement when performing those duties.
- 18.3 We may at any time assign Our rights and obligations under this Agreement to a third party (the "Transferee"). On condition that the Transferee undertakes for Your benefit to perform with effect from the date of assignment all of Our obligations under this Agreement in Our place, You shall accept such performance and shall release Us from any and all obligations and liability under this Agreement arising on or after the date of assignment.

19 Waiver

- 19.1 No delay or failure on the part of either Party in enforcing any provision in this Agreement shall be deemed to operate as a waiver or create a precedent or in any way prejudice that Party's rights under this Agreement, nor shall any single or partial exercise of any right or remedy in any circumstances preclude any other or further exercise of it or the exercise of any other right of remedy.
- 19.2 The rights and remedies provided in this Agreement are cumulative and are additional to any rights or remedies provided by law.

20 Severability

If any provision in this Agreement is declared void or unenforceable by any court or other body of competent jurisdiction, or is otherwise rendered so by any Applicable Laws, that provision shall to the extent of such invalidity or unenforceability be deemed severable and all other provisions of this Agreement not affected by such invalidity or unenforceability shall remain in full force and effect.

21 Notices

- 21.1 Any notice given under or in connection with this Agreement shall be in writing and shall be sent by pre-paid, first class recorded delivery post or hand delivery to the relevant Party's registered address, or by email to the relevant Party's email address, as stated on the cover page to this Agreement, or any such other address or email address notified to the other Party for this purpose. Any such notice shall be deemed to have been duly received (provided it was sent to the proper address/number):
- 21.1.1 if despatched by first class, recorded delivery post - 48 hours from the time of posting (subject only to any delays caused by industrial action affecting the postal service);
 - 21.1.2 if delivered by hand - at the time of actual delivery; or
 - 21.1.3 if sent by email - at the time of transmission if sent before 5pm, and where the time of email is after 5pm - at 9am the following day.
- 21.2 Clause 21.1 does not apply to the service of any proceedings or any documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

22 Entire Agreement

- 22.1 This Agreement shall constitute the entire agreement and understanding, and shall supersede any previous agreement(s), between the Parties in connection with the subject matter of this Agreement.
- 22.2 You acknowledge and agree that You have not been induced to enter into this Agreement in reliance upon, and in connection with this Agreement do not have any remedy in respect of, any representation or other statement or promise of any nature whatsoever other than as expressly set out in this Agreement.

23 Conflict

- 23.1 If there is any inconsistency between the various provisions of this Agreement, they shall be interpreted in the following order of priority:
- (a) any Special Conditions;
 - (b) the General Terms;
 - (c) the Supplementary Terms;
 - (d) the Specification.

24 Dispute Resolution

- 24.1 All and any disputes or differences arising out of or in connection with this Agreement, including any dispute or difference in respect of the breach, termination or invalidity of this Agreement ("**Dispute**") shall be resolved and finally settled in a manner provided for in this clause 24.
- 24.2 The Parties will seek in good faith to resolve any Dispute by negotiation without recourse to proceedings. In the event of a Dispute either Party may serve written notice ("**Dispute Notice**") on the other proposing that the Parties resolve the Dispute by negotiation. Within ten (10) days after service of the Dispute Notice, one or more representatives of each Party at senior director level shall meet in good faith to attempt to resolve the Dispute by agreement.
- 24.3 If the Dispute is not resolved within twenty-one (21) days of the Dispute Notice, either Party may upon written notice to the other refer the Dispute to mediation in accordance with clause 24.4.
- 24.4 If any Dispute arises and is not resolved under the procedure set out in clauses 24.2 and 24.3, the Parties will attempt to settle it by mediation under the auspices of the ADR Group. To initiate the mediation a Party shall give written notice ("**Mediation Notice**") to the other Party requesting a mediation. The mediator shall be agreed upon within sixty (60) days of the date of the Mediation Notice, failing which the mediator shall be appointed by the President of the Law Society of England and Wales.
- 24.5 If the Parties cannot agree on any issue as to the conduct of the mediation (other than as to the appointment of the mediator), then at the request of either Party the ADR Group will decide the issue.
- 24.6 If the Dispute is not resolved within seven (7) days of starting the mediation or within such further period as the Parties may agree in writing, either Party may then give written notice to the other to refer the Dispute to the English Courts for final determination in accordance with clause 25 below.
- 24.7 Nothing in this clause shall prevent any Party seeking injunctive or interim relief.

25 Governing Law & Jurisdiction

- 25.1 This Agreement and any dispute or claim arising out of or in connection with its subject matter or formation, shall be governed by and construed in accordance with the law of England and Wales.
- 25.2 Any dispute arising under or in connection with this Agreement shall be subject to the exclusive jurisdiction of the courts of England and Wales, to which each of the Parties irrevocably submits.

Schedule 1

Data Processing Activities

Categories of data

Please specify the personal data that will be processed by Us

Person identifiable data, including but not limited to: name, address, date of birth, gender, NHS number

Special category data, including but not limited to: race, ethnic origin, religion, health, educational setting

Categories of Data Subjects

Please specify the categories of data subjects whose personal data will be processed by Us

Children who have died, family and significant others of the child who has died, Local Safeguarding Children Board of the area the child resided and/or died in, professional representation from social care, police, coroners, paediatricians, and other health care

Processing Operations

Please specify all processing activities to be conducted by Us

Collection, recording, organisation, structuring, storage, use, adaption or alteration, dissemination or otherwise making available, and restriction of data regarding children who have died, and the professionals involved in the relevant panel

Purposes

Please specify all purposes for which the personal data will be processed by Us

Collecting, organising and sharing the data with professionals from the relevant panel, to review cases of child death with the aim of preventing further child deaths

Duration

Please specify the length of time for which data processing activities will be carried out

Data processing activities will be carried out for the duration of the contract. Following the end of, or cancellation of, the contract, the processing will be continued for an amount of time agreed between both parties

Annex 3

HOSTING TERMS

1. Scope & Definitions

- 1.1 These are the Hosting Terms referred to in the General Terms which form part of the Agreement between Us and You.
- 1.2 In these Hosting Terms, defined terms in uppercase shall have the meanings set out in the General Terms. In addition, unless the context otherwise requires, the following words have the following meanings in these Hosting Terms:

Authorised Users	those employees, partners and independent contractors of Yours who are entitled to access and use the Hosting Service, as further described in clause 3 of these Hosting Terms;
Hosting Service	the remote hosting environment operated on Our behalf which We use to provide the Hosting Services;

2. Provision of Hosting Services

- 2.1 We will use our reasonable endeavours to provide access to the Hosting Service 24 hours per day, 7 days per week, 365 days per year and in accordance with the Specification and the Agreement.
- 2.2 We may suspend user name and password access to the Hosting Service if at any time We consider that there is or is likely to be a breach of security.
- 2.3 We may suspend the Hosting Service to enable Us to carry out preventative or remedial maintenance. We will use our reasonable endeavours to keep this time to a minimum necessary to complete those tasks.

3. Authorised Users

Your access to the Hosting Service shall be limited to the maximum number of individual Authorised Users set out in the Specification, being employees or independent contractors of Yours.

4. Your obligations

- 4.1 During this Agreement You will:
 - 4.1.1 acquire at Your own cost Your Equipment and carry out any necessary configuration and connection of Your Equipment in sufficient time to enable Us to provide the Hosting Service in accordance with the Agreement;
 - 4.1.2 maintain the functionality of and necessary connections for Your Equipment to enable it to function with the Hosting Service;
 - 4.1.3 provide all necessary internet connectivity to access the Hosting Service;
 - 4.1.4 comply with any reasonable directions given by Us in connection with the use of the Hosting Service and will ensure that the Authorised Users also comply;
 - 4.1.5 use the Hosting Service only for Your internal business purposes envisaged by the Specification, not use the Hosting Service to provide services to any third party and ensure that the Authorised Users comply with the restrictions in this clause 4.1.5;
 - 4.1.6 take such steps and implement such procedures as are necessary to prevent unauthorised use of the Hosting Service;

- 4.1.7 be responsible for the security and proper use of user names and passwords used in connection with access to the Hosting Service by Authorised Users and must take all necessary steps to ensure that these are kept confidential, used properly and not disclosed to unauthorised people; and
 - 4.1.8 immediately notify Us in writing if there is any reason to believe that a user name or password has or is likely to become known to someone not authorised to use it or is being or is likely to be used in an unauthorised way and We may disable such passwords and access to the Hosting Service if You or We believe that there is or may be any unauthorised use.
- 4.2 You must not use the Hosting Service (and You will ensure that Authorised Users do not use the Hosting Service):
 - 4.2.1 fraudulently or in connection with a criminal offence;
 - 4.2.2 to send, receive, upload, download, use or re-use any data or information which is offensive, abusive, defamatory, obscene or menacing, or in breach of confidence, copyright, privacy or any other rights;
 - 4.2.3 in any way that infringes the Intellectual Property or other rights of any third party;
 - 4.2.4 in a way which may adversely affect Our reputation or goodwill or Our business;
 - 4.2.5 to cause annoyance, inconvenience or needless anxiety; or
 - 4.2.6 to send or provide unsolicited advertising or promotional material.
- 4.3 If You or any Authorised User breaches any of the provisions of clause 4.2 of these Hosting Terms, or any other term of the Agreement, or if We reasonably suspect such a breach, We may immediately:
 - 4.3.1 remove any offensive, unlawful or infringing material from the Hosting Service;
 - 4.3.2 suspend access to the Hosting Service until We are reasonably satisfied (on the production of any necessary evidence) that any breach has been sufficiently remedied; and/or
 - 4.3.3 terminate these Hosting Terms.
- 4.4 You will indemnify Us and will keep Us indemnified against all costs, claims, losses, liability and expenses that arise out of any breach of these Hosting Terms by You.

5. Termination

- 5.1 These Hosting Terms shall terminate automatically upon termination of the Agreement.
- 5.2 We may terminate these Hosting Terms at any time, with immediate effect, by serving You with written notice if You breach any of Your obligations in clause 4 of these Hosting Terms, or where We suspect a breach of the same, and if remediable, You fail to remedy that breach within 14 days of receiving written notice from Us to do so.
- 5.3 Termination of these Hosting Terms shall not affect the validity or enforceability of the remainder of the Agreement including the General Terms, any Special Conditions and any other Supplementary Terms.

Annex 4

SUPPORT TERMS

1 Scope & Definitions

- 1.1 These are the Support Terms referred to in the General Terms forming part of the Agreement between Us and You.
- 1.2 In these Support Terms, defined terms in uppercase shall have the meanings set out in the General Terms. In addition, unless the context otherwise requires, the following words have the following meanings in these Support Terms:

Authorised Users	those employees, partners and independent contractors of Yours who are entitled to access and use the Hosting Service, as further described in the Hosting Terms;
Incidents	a failure of the Software and/or the Hosting Service to comply with the Specification in a material respect reported by your PPoC;
Maintenance Events	planned maintenance of the Software and/or the Hosting Service that may require interruption to Your access to the Software and/or Hosting Service;
Normal Business Hours	9.00am to 5.00pm Monday to Friday in each week, excluding Public and Bank Holidays, in England;
Power Users	Three of Your employees nominated by the PPoC in accordance with clause 5.3 of these Support Terms, who are users of the Deliverables and notified to Us;
PPoC	Principal point of contact nominated by You in accordance with Condition 5.1 who is authorised by You to give Us instructions and submit requests for Support Services;
Support Hours	the hours set out in the Support Schedule;
Support Schedule	the schedule annexed to and forming part of these Support Terms;
Support Services	together the support services as set out in the Support Schedule;

2 Maintenance Events

- 2.1 From time to time We may undertake Maintenance Events although We shall use our reasonable endeavours to avoid Normal Business Hours. Subject to clause 2.2 of these Support Terms, We will give You not less than three (3) days' notice of any proposed interruption to the Software and/or Hosting Service for a Maintenance Event.
- 2.2 We may interrupt Your access to the Software and/or Hosting Service to perform emergency maintenance of the Software and/or the Hosting Service. We will use reasonable endeavours to keep any such interruptions to a minimum.

3 Support Services

- 3.1 We will use our reasonable endeavours to provide You with Support Services in accordance with these Support Terms.
- 3.2 We will support our systems on the version(s) of Internet Explorer that are supported by Microsoft and Microsoft PC platforms only.
- 3.3 Support Services will include maintaining your database storage up to 25GB.

4 Our obligations

- 4.1 We will make the Support Services available during the Support Hours.

5 Your obligations

- 5.1 You must nominate one individual who will act as PPoC.
- 5.2 Requests for Support Services must be made in the manner stated below:

During Normal Business Hours

By Telephone on: 01454 269576

Or

Directly through the online service desk:

<https://www.ges-online.com/ServiceDesk>

- 5.3 The PPoC must nominate no more than 3 Power Users who will provide front-line support to Authorised Users. However, Your PPoC may contact Us in order to report Incidents from Authorised Users that Your PPoC cannot resolve themselves after they have performed a reasonable level of diagnosis.

- 5.4 You will:

5.4.1 co-operate with Us in the diagnosis of any Incident; and

5.4.2 other than the Hosting Services which You have purchased from Us and for which We are responsible, be responsible for the maintenance and support of processors, operating systems, third party software, database platform integrity, availability and integrity of externally sourced data and network and email availability.

6 Severity category and Resolution times

- 6.1 On submission of a request for Support Services, We will allocate an initial severity category as set out in the Support Schedule.
- 6.2 We will use reasonable endeavours to acknowledge and resolve Incidents in accordance with the times set out in the Support Schedule. Unless otherwise specifically agreed, time periods will relate to Normal Business Hours for a resolution.

7 Problem escalation

- 7.1 If an Incident is not resolved within the time periods specified in the Support Schedule, You are entitled to follow the escalation procedure set out in the Support Schedule.

8 Exclusions from Support

- 8.1 The Support Services do not include, and We are not required to provide:

8.1.1 support for software, hardware, accessories, attachments, machines, systems, database platform integrity, availability and integrity of externally sourced data and network and email availability or other devices which are not part of the Deliverables or the Hosted Facilities which You have purchased from Us;

8.1.2 rectification of lost or corrupted data caused by You or any third party, other than Our sub-contractors, unless such data is lost or corrupted due to a fault of Ours or Our sub-contractors;

8.1.3 diagnosis and/or rectification of any Incident resulting from failure by You to implement a resolution or solution previously supplied by Us;

8.1.4 diagnosis and/or rectification of any Incident resulting from any modifications of the Deliverables not made by Us;

8.1.5 diagnosis and/or rectification of any Incident resulting from where the assumptions or conditions set out in the Specification and the Support Schedule do not prevail;

8.1.6 diagnosis and/or rectification of any Incident that is caused or contributed to by the failure of Your Equipment to comply with the configuration and specification referred to in the Specification or otherwise reasonably anticipated by Us; or

- 8.1.7 diagnosis or rectification where the Incident is caused or contributed to by the failure of the Deliverable to be used properly and in accordance with instructions for use.

9 Termination

- 9.1 These Support Terms shall terminate automatically upon termination of the Agreement.
- 9.2 We may terminate these Support Terms at any time, with immediate effect, by serving You with written notice if You breach any of Your obligations in clause 5 of these Support Terms, or where We suspect a breach of the same, and if remediable, You fail to remedy that breach within 14 days of receiving written notice from Us to do so.
- 9.3 Termination of these Support Terms shall not affect the validity or enforceability of the remainder of the Agreement, including the General Terms, any Special conditions and any other Supplementary Terms.

Support Schedule

1. Support Hours

Subject to the conditions in the Agreement, the Support Services will be available and measured during Normal Business Hours.

2. Support Services

Support on general and technical matters can be directed to the QES Service Desk.

Support and service desk services	First line support will be available during Normal Business Hours on 01454 269 576 (or via email or the online Service Desk System) for your PPoC and up to three additional authorised users.
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3. Severity Category

Severity	Definition
1	System remains unavailable to all users, once You have established that unavailability is not as a result of hardware, software and infrastructure that is not Our responsibility.
2	System behaviour contradicts or is inconsistent with normal operation and is assessed by QES to be of a business-critical nature.
3	System behaviour contradicts or is inconsistent with normal operation and is assessed by QES to not be of a business-critical nature.
4	There are no problems with the behaviour of the system, but You have identified a potential improvement in functionality. These requests will be reviewed and considered for future inclusion.

4. Resolution Times

Severity	Acknowledge Within	Updates Thereafter	Resolved Within (UAT or Sandbox)
1	1 hour	3 hours	One business day
2	1 hour	1 business day	5 business days
3	1 business day	5 business days	To be agreed per item
4	1 calendar week	1 calendar month	To be agreed per item

During periods of system development/UAT, it may be advisable to freeze the code base to allow quality assurance processes to be followed. During any such periods, the terms of the SLA may not be met. However, this excludes Severity Level 1 issues.

You may be required to sign off any change before promoting to your live environment.

5. Escalation Procedure

All escalation of concerns must be made during Normal Business Hours as follows:

PPoC to contact Our office;

PPoC's line manager to contact Our Director;

Your Director to contact Our Managing Director.