

# LEXPLORE ANALYTICS CUSTOMER AGREEMENT

## 1 SUPPLIER

Name/reg. no: **LEXPLORE ANALYTICS LIMITED**  
11121766 ("Supplier")

Address: Suite 8 & 9 Bowden Hall  
Marple, Stockport,  
England SK6 6ND

Email: **hello@lexplore.com**

## 2 BACKGROUND

- (A) The Supplier provides the Assessment and Analysis Services and Operation and Support in order to analyse students' eye movements for assessment of reading attainment.
- (B) The Customer is an educational establishment with pupils who require assessment.
- (C) The parties wish to enter into this Customer Agreement on the terms set out below for the provision of the Assessment and Analysis Services and the Operation and Support by the Supplier to the Customer.

## 3 SECTIONS OF THIS AGREEMENT

This agreement is made up of:

- (A) The Order Form; (attached separately)
- (B) The General Terms and conditions; and
- (C) The Appendices.

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By signing this Customer Agreement, the Supplier and the Customer approve the terms and conditions of the Customer Agreement, (i.e. this Customer Agreement and the General Terms and Conditions, including appendices).

**School Name**

**Signatory:**

**Signature:**

**Date:**

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**Agreed Term (Years):**

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## APPENDIX A – General Terms and Conditions

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### 1 GENERAL

- 1.1 These General Terms apply between the Supplier and the Customer specified in the customer agreement signed by the Supplier and the Customer (the “**Customer Agreement**”) regarding the assessment and analysis services and the Results Portal..
- 1.2 The Customer Agreement and these General Terms with Appendices are referred to as the “**Agreement**” and the Customer and the Supplier are individually referred to as a “**Party**” and jointly as the “**Parties**”.

### 2 DEFINITIONS

- 2.1 In the Agreement, the terms defined below shall have the meanings given to them:

“ <b>Accounts</b> ”	has the meaning indicated under Section 5.3;
“ <b>Business Day</b> ”	Monday to Friday, excluding public and bank holidays in England;
“ <b>Commencement Date</b> ”	the date that training is delivered;
“ <b>Connection Point</b> ”	the point or points where the Results Portal is connected to a public communications network;
“ <b>Contract Term</b> ”	the full period of the Agreement, commencing on the date that training is delivered.
“ <b>Customer Data</b> ”	the data or other information made available to the Supplier by the Customer or another on the Customer’s behalf, as well as results of the Supplier’s processing of this data;
“ <b>Data Protection Legislation</b> ”	the Data Protection Act 1998 (referred to as the <b>DPA</b> ) and the General Data Protection Regulation ( <b>GDPR</b> ), together with any other law applicable to the protection of personal data in effect from time to time;
“ <b>Fees</b> ”	the fees payable by the Customer for the Services which are detailed in the Customer Agreement;
“ <b>Intellectual Property Rights</b> ”	all intellectual property rights, howsoever arising and in whatever media, whether or not registered, including copyright, patents, trademarks, website marks, trade names, registered designs and any applications for the protection or registration of these rights;
“ <b>Lexplore AB</b> ”	the Supplier’s parent company Lexplore AB, Reg. No. 559069-1811.
“ <b>Lexplore Group</b> ”	Lexplore AB and its Swedish subsidiary Lexplore Nordic AB Reg. No. 559091-9212.
“ <b>Operation and Support</b> ”	the operations and support services set out in Appendix C;
“ <b>Order Form</b> ”	the order form to be filled in by the Customer when ordering services and detailed in the Customer Agreement;
“ <b>Results Portal</b> ”	the results portal specified in Appendix B;
“ <b>Assessment and Analysis Services</b> ”	the assessment and analysis services specified in Appendix B;

“Services”

together, the Assessment and Analysis Services and the Operation and Support; and

### 3 APPENDICES

**Appendix A** Supplier General Terms and Conditions

**Appendix B** Assessment and Analysis Services and Results Portal

**Appendix C** Operation and Support

### 4 ASSESSMENT AND ANALYSIS SERVICE

- 4.1 The Parties shall enter into the Customer Agreement which shall contain details of the Services in the Order Form and the Supplier's provision of such Services.
- 4.2 The Assessment and Analysis Service is made available to the Customer by engaging the Supplier to train Customer and granted the right to carry out the screening on its own
- 4.3 The Assessment and Analysis Service will be performed by the Supplier in accordance with the Work Procedure detailed in the Customer Agreement.
- 4.4 After having carried out the assessment, the Supplier shall analyse the students' eye movements and enter the results of the screening in the Results Portal.
- 4.5 The analysis of the assessment is performed using artificial intelligence. A detailed description of the requirements for the Assessment and Analysis Service is set forth in Appendix B.

### 5 RESULTS PORTAL

- 5.1 The Supplier provides a web portal that grants access to the Customer's Data (“**Results Portal**”). A more detailed description of the conditions for the Results Portal is set forth in Appendix B.
- 5.2 From the time Customer orders and is granted access to the Results Portal, the Supplier grants the Customer non-exclusive rights to access the Results Portal to enter and access the Customer's Data and use the Customer's Data in the manner further specified in the Agreement.
- 5.3 The Customer is allocated a number of user accounts (the “**Accounts**”). The Customer is responsible for all actions undertaken in the use of its Accounts. An Account may only be used by the individual user to whom the Account has been registered and may not be transferred or disclosed to anyone else. The Customer is responsible for ensuring that third parties do not gain access to user names and passwords. The Supplier is not responsible for abuses of Accounts by third parties or for the consequences and possible damages caused by such abuses.
- 5.4 The Supplier provides Operation and Support of the Results Portal in accordance with Appendix C.
- 5.5 The Supplier may, at any given time, develop additional functionality that may be provided in the Results Portal. The Supplier will inform the Customer of such new functionality, and of the terms and pricing for using such functionality.

### 6 UNDERTAKINGS IN CONNECTION WITH THE USE OF WEBSITE

- 6.1 The Supplier's undertakings
  - (a) Effective from the agreed start date, the Supplier shall provide the Results Portal at the Connection Point under the terms of the Agreement.
  - (b) The Results Portal shall, unless otherwise stated in the Customer Agreement or Appendix B, be provided with reasonable skill and care.
  - (c) The Supplier may engage subcontractors for the provision of the Results Portals and other undertakings under the Agreement. The Supplier is responsible for the subcontractors' work as if the work was performed by the Supplier itself.
- 6.2 The Customer's undertakings.

For the Supplier to be able to fulfill its undertakings under the Agreement, the Customer shall be responsible for the following:

- (a) The Customer shall review and communicate decisions regarding whether data provided by the Supplier has been approved and provide, on an ongoing basis, the information necessary for the Supplier to be able to meet its undertakings under the Agreement;
- (b) The Customer is responsible for the communication between the Customer and the Connection Point, and to maintain the equipment and software that the Supplier has indicated on its website or by other written means as required for the use of the Results Portal or that is otherwise obviously required for such use;
- (c) The Customer shall ensure that: (a) the Customer's Data is free from viruses, Trojans, worms or other malicious software or code; (b) the Customer's Data is in the agreed format; and (c) the Customer's Data may in no way harm or negatively affect the Results Portal;
- (d) The Customer warrants that all information and documentation provided by it in relation to the Services is true, accurate and complete;
- (e) The Customer is responsible for log-in details, security methods and other information provided by the Supplier for access to the Results Portal, being handled with confidentiality in accordance with Section 16 below. The Customer shall immediately notify the Supplier if any data referred to under this section is disclosed to or otherwise accessed by any unauthorised person/s; and
- (f) The Customer shall immediately inform the Supplier in the event of any suspected infringement or attempted infringement of the Results Portal.

6.3 The Supplier reserves the right to suspend or disable access to the Results Portal if it believes that the Results Portal has been compromised as a result of a breach of the Customer undertakings in clause 6.2.

## **7 ORDERS**

- 7.1 The Customer shall initially order the Assessment and Analysis Services as well as the Results Portal through the execution of the Customer Agreement and in the Customer Agreement agree on the scope and the time schedule for the initial order.
- 7.2 The Customer shall make new orders, which are additional to the order made in the Customer Agreement, by submitting a completed Order Form or providing written confirmation to the Supplier's email address detailed in the Customer Agreement.
- 7.3 New orders must include the following information: the number of students to be assessed, approximate schedule, location of screening, number of accounts and, if applicable, other specific conditions. Based on the Customer's Order Form, the Supplier and Customer shall discuss a plan for performing the assessment. The final completed Order Form is an integral part of this Agreement. If the Customer does not object within a reasonable time and no later than one week before the services are to be provided, then the Order Form is deemed to be finalised and mutually agreed upon.
- 7.4 Unless otherwise specified in the Customer Agreement or in the final Order Form, the start date for access to the Results Portal shall be from the date training is delivered.
- 7.5 Supplementary orders for additional Accounts shall include the name and e-mail address of the persons who are to have Accounts.
- 7.6 The Customer is liable to ensure that only individuals which have authority to bind the Customers submit orders for additional Accounts. Such authorised individuals can be specified in the Customer Agreement.

## **8 PRICES AND PAYMENT**

- 8.1 All Fees are stated excluding VAT and any applicable taxes and fees.
- 8.2 Unless otherwise stated in the Agreement, the Customer shall be responsible for travel, lodging and other overheads incurred by the Supplier and the Customer in connection with the performance of the Service.

- 8.3 Payment shall be made within 30 days of the invoice date.
- 8.4 The Supplier may suspend access to the Results Portal and/or the provision of any of the Services without liability if any amount due to it from the Customer is not paid by the due date and may maintain such suspension until all outstanding sums due to Supplier from the Customer have been paid. This does not affect the liability of the Customer to pay for the Services during any period of suspension.
- 8.5 In case of late or missing payment by the Customer, Supplier shall be entitled to charge interest at the rate of 4% above the base rate of Barclays Bank plc.

## **9 PERSONAL DATA**

- 9.1 Where used in this clause 9, the expressions process, personal data, processor, controller and data subject shall bear their respective meanings given in Data Protection Legislation.
- 9.2 Each party agrees that, in the performance of its respective obligations under the Agreement, it shall comply with the Data Protection Legislation, in each case to the extent it applies to each of them.
- 9.3 Customer shall ensure that a processing notice compliant with the Data Protection Legislation is provided to those who may use the Results Portal and those using the Assessment and Analysis Services (or their parents/guardians) and that they have (where relevant) consented to their data being collected and used as envisaged by the Agreement. In addition, as Supplier and Lexplore AB may anonymise the personal data processed through the Screening and Analysis Service, the processing notice shall contain the following text (references to "Organisation" being references to Customer:

*"The Organisation transfers the pupil's personal data to Lexplore AB, org. nr 559069-1811, Tegelbacken 4A, 111 52, Stockholm, 0702487646; Lexplore Limited (a company registered in England and Wales, company number 11121766 of Suite 8 & 9 Bowden Hall Marple, Stockport, England SK6 6ND; and Lexplore Nordic AB Reg. No. 559091-9212, Tegelbacken 4A, 111 52, Stockholm, (together "Lexplore Companies"). Lexplore Companies process the Pupil's personal data on behalf of the Organisation in connection with performance of a service for the Organisation. All personal data about the Pupil is encrypted when stored and processed by Lexplore Companies.*

*"In addition, Lexplore Companies may anonymise the data collected and use the anonymised data in order to improve their services. Lexplore Group's privacy notice is available at <https://www.lexplore-analytics.co.uk/privacy-policy/>"*

- 9.4 Supplier can assist with the drafting of the processing notice referred to in clause 9.2 by providing a sample processing notice but this is not a substitute for Customer seeking its own legal advice on the drafting of the processing notice and Supplier disclaims all responsibility should the processing notice sample it provides not meet the requirements of the Data Protection Legislation.
- 9.5 The Customer is aware that in the provision of the Services and making the Results Portal available to Customer the Supplier will process personal data as Customer's processor. Such processing shall:
- (a) be solely for the purposes of Supplier performing the Services and making the Results Portal available and otherwise undertaking its obligations under this Agreement
  - (b) be undertaken only by persons authorised to process the personal data who are subject to a duty of confidence in respect of any such personal data to which they may have access;
  - (c) be undertaken strictly in accordance with the terms of the Agreement and Customer's instructions from time to time unless otherwise required by law or any regulatory body (in which case Supplier shall, where permitted, inform Customer of that legal requirement before processing); and
  - (d) take place only during the term of this Agreement (or, where and to the extent strictly necessary to perform any post termination obligations, for as long as the processing remains necessary for these purposes).

9.6 Where the Supplier processes personal data on Customer's behalf, it shall:

- (a) implement and at all times maintain an information security management system that includes all appropriate technical and organisational measures necessary or desirable to ensure a level of security appropriate to the risk, protect the rights of the data subject and enable the personal data to be processed in compliance with obligations equivalent to those imposed by article 32 of the GDPR;
- (b) notify Customer without undue delay if it has reason to consider that there has been a personal data breach;
- (c) at the Customer's cost, provide such assistance as Customer may require to allow it to comply with its own obligations to keep the personal data secure, inform a regulatory authority or data subject of a personal data breach, conduct a data protection impact assessment and consult with a regulatory authority regarding the processing of personal data (articles 32 to 36 of the GDPR);
- (d) not appoint any sub-processors in respect of the personal data other than a member of the Lexplore Group save where and strictly to the extent that such sub-processor has been expressly and specifically approved in writing by Customer, and then only for such purposes as Customer has expressly authorised;
- (e) impose upon each sub-processor (and procure each such sub-processor's compliance with) the terms of this Agreement as if the processing being carried out by the sub-processor was being carried out by Supplier (and to be liable for the acts and omissions of such sub-processors as if they were acts and omissions of Supplier);
- (f) not under any circumstances transfer or allow the transfer of the personal data outside the United Kingdom or European Economic Area other than as permitted by the Data Protection Legislation (and Customer shall enter into the Standard Contractual Clauses for the transfer of personal data to third countries under Directive 95/46/EC contained in the Annex to Commission Decision 2010/87/EU or any replacement thereto at Supplier's request in order to legitimise any such transfer);
- (g) at Customer's cost, provide such assistance as Customer may require to enable it to respond to requests made by data subjects pursuant to Data Protection Legislation;
- (h) from time to time on request provide full details in writing of Supplier's data processing activities in respect of the personal data, including the address of all locations where such processing takes place, and allow its data processing facilities, procedures and documentation which relate to the processing of the personal data to be inspected (on reasonable written notice) by Customer, a representative of Customer or a regulatory body in order to ascertain compliance with Data Protection Legislation and the terms of this Agreement; and
- (i) on termination of this Agreement return (or, at Customer's discretion, delete) all personal data processed by Lexplore on behalf of Customer pursuant to this Agreement (and delete any copies, save to the extent retention is required by law).

## **10 DATA SECURITY**

- 10.1 The Supplier shall only create accounts and provide access to personal data on the Customer's behalf.
- 10.2 The Supplier is responsible for protecting data registered in the Results Portal from unauthorised access, use, publishing, change or deletion.
- 10.3 The Results Portal is accessible via the Internet with encrypted communications.
- 10.4 Personal data shall be stored during the term of the Agreement. The Supplier shall periodically make backup copies to be able to recover personal data. Backups shall be protected to mitigate risk of accidental loss, destruction or other damage, such as fire or theft.
- 10.5 The Supplier makes regular updates to the Results Portal. The Customer is to receive information about planned downtime and changes at least one week in advance.

## **11 INTELLECTUAL PROPERTY RIGHTS**

- 11.1 Customer acknowledges that the Supplier is the exclusive owner of all Intellectual Property Rights in the Services and Results Portal and Customer will acquire no rights in or to the Services and Results Portal solely by entering into this Agreement or receiving the Services, other than as expressly set out in this Agreement.
- 11.2 Customer will not copy, transfer, sell, distribute, assign, display or otherwise make available the Services or Results Portal to any third party without Supplier's prior written approval.
- 11.3 Supplier will indemnify Customer against all liabilities, costs, expenses, damages and losses (including any reasonable legal costs) suffered or incurred by Customer arising out of any suit or cause of action alleging that the Services and/or Results Portal as provided by Supplier under the Agreement infringes any Intellectual Property Rights of any third party provided that:
- (a) Supplier is promptly notified in writing of any alleged infringement as soon as Customer becomes aware of it;
  - (b) Customer does not make any admission of liability, agreement or compromise in relation to the alleged infringement;
  - (c) Supplier shall control any negotiation, defence, dispute resolution or proceedings and Customer shall provide, at Customer's cost, such reasonable assistance, information and evidence as Supplier requires in relation to the same; and
  - (d) Customer takes all reasonable steps to mitigate any potential losses that may result.
- 11.4 If any part of the Services and Results Portal is held or believed to infringe any third party's Intellectual Property Rights, Supplier may, in its sole discretion:
- (a) modify the Services and Results Portal to be non-infringing;
  - (b) obtain for Client the rights to continue using such Services and Results Portal; or
  - (c) if neither (a) nor (b) can occur return to Customer the related Fees for such part(s) paid by Customer to Supplier.
- 11.5 Other than as provided for in this clause 11, Customer shall have no other remedy against Supplier arising from a claim of actual or alleged infringement of Intellectual Property Rights in respect of the Services and Results Portal.
- 11.6 All copying, modification, transfer and/or other use of the Supplier's (and, if the Supplier is not Lexplore AB), Lexplore AB's tangible and intangible property, not expressly permitted under these Terms and Conditions, is prohibited.
- 11.7 The Supplier and Lexplore AB are entitled to use the Customer's name and trademark as a reference for marketing purposes. However, this is always to be agreed prior to such use with the Customer.

## **12 LIABILITY**

- 12.1 The Supplier shall provide the Customer with information setting out the minimum technical requirements for the Services. The Customer acknowledges that the Supplier shall have no liability for any failure, error or delay in Services which arises from Customer's failure to comply with such technical requirements. Unless otherwise provided in this Agreement, Customer will be responsible for its own communication lines, including the Internet, which connect to the Results Portal.
- 12.2 The Customer is aware that the Assessment and Analysis Services and Results Portal do not include professional diagnosis, nor does the Supplier provide treatment recommendations or other assessments considered to be healthcare measures. Under no circumstances shall the Supplier be deemed to provide medical care or mental health care.
- 12.3 Beyond what is stated in clause 9, the Supplier is not responsible for archiving or storing personal data and other materials that are registered or stored in the Results Portal. Accordingly, the Customer is itself responsible for the handling, storage and filing, in accordance with applicable legislation, of all original documents and other information that it makes available, receives from or registers in the Results Portal.
- 12.4 The Supplier is not responsible for the content of websites that have been linked to or from the Results Portal.
- 12.5 In respect of any claim by a Party against the other which arises under or in connection with this agreement (and whether arising in contract, tort (including negligence) or otherwise) (a "**Claim**") neither Party shall be liable for:
- (a) any indirect or consequential loss; or
  - (b) any loss of revenue (but this shall not affect Customer's responsibility to pay the Fees).



- 12.6 Save for a cause of action to which clause 12.7 applies, the Supplier's total aggregate liability in respect of all Claims during the Contract Term shall not exceed the total Fees paid or payable under the Agreement during the Contract Term preceding the Claim in question (save that in respect of any causes of action arising in the Contract Term, the limit shall be the total Fees paid or payable during the Contract Term); and
- 12.7 Each party's total aggregate liability in respect of any and all causes of action arising out of or in connection with the Agreement for a breach of clause 9 shall not in any Contract Term exceed £500,000 (five hundred thousand pounds).
- 12.8 The Supplier shall not be liable for any delay in or failure to comply with its obligations to the extent that it results from the actions or omissions of the Customer.
- 12.9 Nothing in this Agreement shall exclude or limit a Party's liability:
- (a) for death or personal injury caused by its negligence;
  - (b) for fraud or fraudulent misrepresentation;
  - (c) in relation to Supplier's liability under clause 11 (IP indemnity);
  - (d) breach of liability under clause 15 (confidentiality); or
  - (e) for any other type of liability which cannot, under English Law, be limited or excluded.

### **13 AGREEMENT PERIOD AND TERMINATION**

- 13.1 Unless terminated in accordance with its terms, the Agreement shall commence on the Commencement Date stated in the Customer Agreement and be effective for the duration of the Contact Term.
- 13.2 The Agreement shall automatically extend for further Contract Terms unless terminated in accordance with its terms.
- 13.3 The Supplier may terminate this Agreement for convenience at any time on no less than 3 months written notice to the Customer.
- 13.4 Either Party is entitled to terminate the Agreement in writing, including confirmed orders and ongoing subscription to the Results Portal with immediate effect, if the other Party:
- (a) commits an irremediable breach of this Agreement, persistently breaches this agreement, or commits any remediable breach and fails to remedy it within 30 days of receipt of a notice which identifies the breach in question and requires its remedy;
  - (b) is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 or suffers any event (including, insolvent liquidation, a declaration of bankruptcy, the presentation of a bankruptcy or a winding up petition which is not withdrawn, dismissed or discharged within 30 days of its presentation or the appointment of an administrator, receiver or similar over any of its assets or undertaking) which could be reasonably considered to indicate that it is insolvent or at serious risk of becoming so in the relatively near future; or
  - (c) ceases or threatens to cease to carry on business.
- 13.5 In the event of termination of the Agreement, the Supplier shall, at Customer's written request, export the Customer's Data to the medium requested by the Customer for the compensation stated in the Customer Agreement. The Customer shall, no later than 14 days before the termination of the Agreement, notify the Supplier if it desires said export of information to be performed and to what medium. The Supplier is entitled to erase the Customer's Data following the expiration of the Agreement. The Supplier will delete data within 90 days of receiving written confirmation of termination from the Customer.

### **14 FORCE MAJEURE**

Neither of the Parties is liable to the other to fulfill undertakings prevented by circumstances beyond the control of that Party or its suppliers, including, but not limited to, for example, war, natural disasters, lockouts or other labor disputes, fire, equipment damage, changed government regulations, public service interruptions, including, energy supply, as well as import and export bans and other prohibitions outside of the Party's control.

### **15 CONFIDENTIALITY**

- 15.1 Each Party undertakes to observe confidentiality regarding all information regarding the other Party and its services, obtained by the Party in connection with this Agreement. The information shall only be shared and used, including internally, to the extent that this is necessary for the Customer to be able to use the Supplier's services. For the Customer, this confidentiality includes, but is not limited to, login details and information about the technology provided by the Supplier. Furthermore, the Parties shall treat this Agreement and

its contents as confidential; provided, however, the foregoing shall not apply if, and to the extent that:

- (a) a Party is required to provide information pursuant to laws, other legislation, stock exchange rules or as a result of a ruling by a court or public authority;
- (b) such information is prior to disclosure under this Agreement in the possession of the recipient free of any obligation of confidentiality;
- (c) such information is at the date of this Agreement generally known to the public or later becomes generally known to the public otherwise than by reason of breach of the recipient's obligations under this agreement or
- (d) such information has become generally known other than by breach of this Agreement.

15.2 If an obligation arises for a Party to disclose confidential information in accordance with the provisions of clause 15.1 above, that Party, shall, to the extent permitted by law, consult with the other Party in advance.

15.3 Notwithstanding any provision to the contrary herein, the Supplier shall be entitled to publish conclusions and statistics in relation to information that has been rendered anonymous.

## **16 MODERN SLAVERY**

16.1 Each Party represents and warrants that:

- (a) it has not been and is not engaged in any practices involving any activity or practice that would constitute an offence under s1, s2 and s4 of the Modern Slavery Act 2015, if carried out in the UK ("**Modern Slavery**");
- (b) its employees and agency workers are paid in compliance with all applicable employment laws and minimum wage requirements;
- (c) it will take reasonable steps to prevent Modern Slavery in connection with its business; and
- (d) it will include in its agreements with its subcontractors in connection with this Agreement to include Modern Slavery provisions that are at least as onerous as those set out in this Agreement.

## **17 ANTI-BRIBERY AND CRIMINAL FINANCES ACT**

17.1 Each Party shall:

- (a) comply with all laws relating to anti-bribery, anti-facilitation of tax evasion and anti-corruption including but not limited to the Bribery Act 2010 and Criminal Finances Act 2017, and shall ensure that its employees, representatives, subcontractors and agents comply with such laws;
- (b) have and shall maintain in place during the continuance of this agreement, their own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, reasonable prevention procedures under the Criminal Finances Act 2017 and will enforce them where appropriate;
- (c) promptly report to the other Party any request or demand for any undue financial or other advantage of any kind, or to facilitate the evasion of tax, received in connection with this Agreement;
- (d) upon request, certify to the other Party, in writing, that it has complied with this clause 18 and each Party shall provide such supporting evidence of compliance as the other shall reasonably require; and
- (e) ensure that all persons associated with them in relation to this Agreement comply with this clause 17.

17.2 Each Party may disclose this Agreement and any information that it obtains in connection with it to any government agency or regulatory authority, or other persons that it reasonably determines, have a need for such information in connection with the Bribery Act 2010 and Criminal Finances Act 2017.

## **18 FREEDOM OF INFORMATION [ONLY RELEVANT TO STATE SCHOOLS, NOT PRIVATE SCHOOL]**

18.1 The Supplier acknowledges that the Customer is subject to the requirements of the Freedom of Information Act 2000 (the "**FOIA**") and shall use reasonable endeavours to facilitate the Customer's compliance with its information disclosure requirements pursuant to the FOIA in the manner provided for in this clause 18.

18.2 Where the Customer receives a request for information under the FOIA (a "**Request for Information**") in relation to information that the Supplier is holding on its behalf, Customer shall transfer to the Supplier such Request for Information that it receives as soon as

practicable and in any event within three (3) Business Days of receiving a Request for Information and the Supplier shall provide Customer with a copy of all such information as soon as practicable.

- 18.3 Following notification under this clause 18 and up until such time as the Supplier has provided Customer with all the information specified in clause 18.2, the Supplier may make representations to Customer as to whether or not or on what basis information requested should be disclosed, and whether further information should reasonably be provided in order to identify and locate the information requested, provided always that the Supplier shall be responsible for determining at its absolute discretion whether the information is exempt from disclosure under the FOIA.
- 18.4 The Supplier shall ensure that all information held on behalf of Customer is retained for disclosure for at least three (3) years from the date it is acquired and shall permit Customer to inspect such information as requested at a reasonable time during the Supplier's normal business hours and with reasonable notice.
- 18.5 In the event of a request from Customer pursuant to clause 18.2 above, the Supplier shall as soon as practicable, and in any event within three (3) Business Days of receipt of such request, inform Customer of the Supplier's estimated costs of complying with the Request for Information and the Customer shall pay such reasonable costs to the Supplier before the supply of the information.
- 18.6 The Supplier acknowledges that (notwithstanding the provisions of this clause 18) the Customer may, acting in accordance with guidance issued by the Secretary of State for Constitutional Affairs pursuant to section 45 of FOIA (the "**FOIA Guidance**"), be obliged under the FOIA, to disclose information :-

- (a) in certain circumstances without consulting with the Supplier; or
  - (b) following consultation with the Supplier and having taken their views into account,
- provided always that where clause 18.6(a) applies, the Customer shall, in accordance with the recommendations of the FOIA Guidance, draw this to the attention of the Supplier prior to any disclosure.

## **19 GENERAL**

### **19.1 Notices**

All communications in accordance with this Agreement shall be in writing, addressed to the contact person and transmitted to the e-mail address specified in the Customer Agreement. Changes in contact information must be communicated in writing.

### **19.2 Assignment**

Neither party shall be permitted to assign, transfer, sub-license or sub-contract any rights or obligations under this Agreement without the prior written consent of the other Party.

### **19.3 Headings**

The headings in this Agreement are inserted for editorial purposes only and shall not affect the interpretation of the Agreement's provisions.

### **19.4 Entire Agreement**

The Agreement, these Terms and all attachments and appendices hereto as may be attached from time-to-time constitute the complete and exclusive understanding of the Parties with reference to the subject matter hereof, and supersede all prior proposals, negotiations, agreements and other representations or communications, whether oral or written.

### **19.5 Severability**

In the event any one or more of the provision of the Agreement shall for any reason be held to be invalid, illegal or unenforceable, this shall not in any way affect the remaining terms or rights of this Agreement which shall be construed as if such invalid or unenforceable term or right did not exist.

**19.6** Amendments

To be binding, any amendments or variation to this Agreement shall be put in writing and signed by both Parties.

**20** **THIRD PARTY RIGHTS**

Nothing in this Agreement is intended to confer on any person that is not a party to this Agreement any right to enforce any term of this Agreement including, for the avoidance of doubt, any claim made pursuant to the Contracts (Rights of Third Parties) Act 1999 or otherwise.

**21** **DISPUTES**

21.1 This Agreement shall be governed and construed by the laws of England and, subject to clause 21.2 and 21.3 below, the Parties agree that the English Courts shall have the exclusive jurisdiction over any dispute (contractual or non-contractual) arising out of or in connection with this agreement (a "**Dispute**").

21.2 The Parties shall each use all reasonable endeavours to negotiate in good faith and settle amicably any Dispute. If, within 14 days of it arising, the Dispute cannot be settled amicably through ordinary negotiations of their respective representatives, each Party shall refer the Dispute to one of its respective senior officers who shall meet in order to attempt to resolve the Dispute.

21.3 If the Dispute cannot be resolved by such senior officers within 14 days of it being referred to them then the Dispute in question shall be decided by the courts in accordance with clause 21.1.

### 1 HOW IT WORKS

Lexplore Analytics' method for assessing reading skills is based on artificial intelligence and many years of research. The method is based on the fact that eye movements reflect the underlying cognitive processes taking place in the brain when we read. Lexplore Analytics use technology for measuring eye movement in order to be able to measure with precision a student's eye movements when they read text on a computer screen. The test is carried out in the Assessment Service. By measuring how the eye moves when the student reads, Lexplore Analytics obtain data which immediately reflects the cognitive processes taking place simultaneously in the brain while reading. An assessment is then carried out with the aid of an algorithm which is trained to recognise eye movement patterns in a large number of students. Following this, the results are quality-assured and then published on the Results Portal.

### 2 EARLY AND ACCURATE DISCOVERIES

With Lexplore Analytics' method, it is possible to make comparisons over time as well as between groups. The results are presented in an overview on several different levels: individual, class, year group, school and local authority/multi academy trust. Using Lexplore Analytics' method, it is possible to quickly identify the reading skills of all students. Lexplore Analytics work with five levels which describe the reading skills of the students: (1) Low; (2) Below Average; (3) Average; (4) Above Average; and (5) High. The reading levels indicate how well the students read and provide the teachers with valuable knowledge of which students need extra support and which students require more/extra stimulation.

The service does not include making a diagnosis, providing treatment recommendations, or other assessments which are considered to be wellness care and healthcare.

The Customer acknowledges that the accuracy of the Services will depend on the accuracy of the responses made by the students.

### 3 SIMPLE TO IMPLEMENT

It takes a few minutes to assess a student and does not require any correction work or any manual follow-up work. The screening is conducted individually with each student. All the student needs to do is read two short texts on a computer screen and answer a few questions. The assessment is carried out on the school's premises by trained and certified school personnel, or by Lexplore's own personnel.

### 4 AVAILABLE – THE RESULTS PORTAL

The results of the assessment are made available via Lexplore Analytics' Results Portal via a web browser. Teachers and school management can make comparisons here and obtain an overview. Access to the information requires strong authentication. All information is encrypted and handled in accordance with Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 ("GDPR").

In order for the customer's personnel to be able to use the Results Portal, the customer must have provided them with user accounts and they must be able to authenticate themselves with a password and text message verification via a mobile telephone.

### 5 SCOPE

The service comprises two parts:

- (i) Assessment with AI analysis (carried out either by trained and certified personnel at the customer or by Lexplore Analytics personnel)

(ii) publication and access to the results in the Results Portal

The service includes all updates, development of the “the Assessment Service and the Results Portal” service during the entire contract period. As support for the customer in its use of the service, there is a support function according to Appendix C.

The assessment will be carried out in English and covers students in years 2 – 5 according to the project plan and is performed individually with each student.

Functionality which is outside the scope of the existing service may be developed during the contract period, for example “Assessment for other ages”, but is not limited to this.

### 1 SCOPE

- 1.1 This appendix describes the Supplier's support undertaking (Help Desk and troubleshooting) for the Service and the operation of the Service (the "**Service**"). This Appendix forms an integral part of the Agreement.
- 1.2 The Supplier's undertaking under this Appendix applies only to the latest version of the Service at any given time during the agreement term, unless otherwise agreed in writing between the parties.

### 2 DEFINITIONS

In addition to the terms defined elsewhere in the Agreement, the terms used in this Appendix shall have the following meanings:

- 2.1 "**Time of registration**" means the time at which the Supplier received notification of a fault from the Customer and this is registered in the Supplier's fault management system.
- 2.2 Faults regarding the Service are classified according to the following fault levels:
  - (b) **Critical faults**, entailing serious faults rendering the Service or a significant portion of it unusable.
  - (c) **Significant errors**, entailing faults that do not impede use of the Service but that do inhibit its effectiveness and use.
  - (d) **Minor Faults**, entailing faults with little or no influence on the use of the Service, e.g. minor errors in text or structure.
- 2.3 "**Response Time**", entails the time elapsing between the Time of Registration and the time at which the Supplier responds with a message about the type of action needed to be taken in connection with the fault and how long this is expected to take.
- 2.4 "**Rectification Time**", entails the time elapsing between the Time of Registration and the time at which the Supplier has rectified the fault.

### 3 CUSTOMER SUPPORT – HELP DESK

- 3.1 The Supplier shall provide a support service (Help Desk) to which the Customer may address questions regarding the Service and to which the Customer may report faults. Matters are submitted to the Help Desk by e-mail or telephone. Users can be contacted by e-mail or by phone.
- 3.2 The support service is open on weekdays that are not public holidays, between 8:30 a.m. – 4:30 p.m. ("**Contracted Service Time**"). All questions and fault reports are to be submitted by e-mail to support@lexplore.com or telephone number 0161 697 4166 or another e-mail address/telephone number as notified by the Supplier at any given time.

### 4 FAULT REPORTS AND RECTIFICATION

- 4.1 All faults are to be reported directly to the Supplier via the Supplier's Help Desk. "Faults" mean that the Service is not available. The Supplier shall subsequently classify the fault in accordance with the levels specified under Section 2 above. In the event that the parties disagree regarding the classification of the fault level, the Supplier's view shall take precedence.
- 4.2 The Customer's fault report shall always contain a detailed description of the fault, contact details for the affected users, a description of how the fault affects the Service and other information requested by the Provider. A fault is considered to have been reported to the Supplier only after it has been registered in the Supplier's fault management system.

- 4.3 The Supplier shall remedy faults reported to the Supplier free of charge, as described above. Faults may be rectified, as the Supplier deems fit, by remote service, on-site service at the Customer’s facility or by means of instructions on how to circumvent the fault.
- 4.4 The Supplier’s commitment to rectify faults free of charge does not include faults caused by any of the reasons listed below:
  - (a) faults caused by the Customer using the Service with equipment, accessories or software other than those approved by the Supplier in a manner that affects the functioning of the Service;
  - (b) faults caused by the Customer making changes or interventions in the Service without the Supplier’s approval, or through the Customer’s negligence;
  - (c) faults caused by the Customer’s use or disposal of the Service not following the instructions from the Supplier; and
  - (d) faults caused by viruses or other external attacks, unless introduced by the Supplier through its negligence, or faults otherwise caused by third parties or through other circumstances beyond the Supplier’s control, such as faulty equipment, accessories or software not belonging to the Service.
  - (e) other circumstances for which the Customer is responsible for under the Agreement.

4.5 The Supplier charges the Customer in accordance with the hourly fees shown in the Customer Agreement for rectification of faults caused by circumstances listed under items 4.4. (a) – (e).

4.6 The Service is based on several different software packages and other components, including “open source” software and other software products belonging to companies other than the Supplier (“**Third-Party Products**”). The Supplier’s commitment to troubleshooting third-party products includes, unless otherwise agreed, remote support via the Suppliers Help Desk. If the Supplier is unable to rectify the fault because, for example, it lacks access to the source code or a required tool or if it is not entitled to rectify errors in the Third-Party Product, the Supplier shall report the fault immediately to the relevant product provider and forward any solution received by the product provider to the Customer. The Supplier is not responsible for the maintenance of any Third-Party Product.

4.7 During the Contracted Service Time, the following target rectification times apply:

Type of fault	Target Rectification time
Critical faults	12 hours
Serious faults	48 hours
Minor faults	7 working days

4.8 If a fault is classified as a Critical fault, the Supplier will continue to try and resolve the issue, even beyond the Contracted Service Time.

**5 OPERATION AND ACCESSIBILITY**

5.1 The Service and the Results Portal shall be available to the Customer and operational as agreed at least 95 percent of all time during a calendar month, that is, based on 24 hours a day, seven days a week, but excluding Permitted Downtime (“**Contracted Accessibility**”).

5.2 Permitted Downtime denotes time during which the Service (or part of the Service) is inaccessible or does not work in accordance with the Agreement due to: (i) planned maintenance or other planned interruptions, and (ii) force majeure events or other events reasonably beyond the control of the Supplier.

5.3 The Supplier is entitled to carry out scheduled maintenance and other planned operational disruptions that may result in the Results Portal being inaccessible or not functioning satisfactorily. The Supplier shall notify the Customer in advance of planned interruptions. The



Supplier is entitled to schedule scheduled interruptions of up to three hours per month. The Supplier shall endeavor to reduce the number of operational interruptions and for such planned interruptions to be scheduled outside the Customer's normal working hours.

## **6 REMUNERATION**

- 6.1 As compensation for the Supplier's provision of operation and support of the Service, the Customer shall pay a fee in accordance with the Customer Agreement.

## **7 GENERAL COMMITMENTS**

- 7.1 The Supplier shall maintain suitable, qualified and competent employees to perform the agreed support and operation. The Supplier is to meet its obligations in a professional manner.
- 7.2 The Customer undertakes to cooperate with the Supplier and to provide the Supplier with the assistance necessary for the Supplier to meet its obligations under this Appendix, including, without limitation, providing the Supplier with access to the necessary information, assistance, tools and premises. In the event that the Supplier is prevented from or delayed in fulfilling its commitments due to circumstances attributable to the Customer, the Supplier shall not be deemed to have committed a breach of contract and no damages may be directed against the Supplier.

## **8 SUBCONTRACTORS**

The Supplier is entitled to engage subcontractors to fulfill its commitments under this appendix.