HSE Assessment Tools
Service Terms and Conditions

Please read these terms and conditions carefully, as they set out our and your legal rights and obligations in relation to the Health and Safety Executive (HSE) Assessment Tools Platform and any associated services. You will be asked to agree to these terms and conditions before becoming a customer.

You should print a copy of these terms and conditions for future reference. We will not file a copy specifically in relation to you. If you have any questions or complaints about our services, please contact us by writing to: Sales Contracts, Health and Safety Executive, Harpur Hill, Buxton, Derbyshire, SK17 9JN, United Kingdom or by email to: salescontracts@hse.gov.uk.

1. Definitions and interpretation

1.1 In the Agreement:

"Agreement" means the agreement between the Provider and the Customer for the provision of the Platform as a service, incorporating these terms and conditions (including the Schedules), and any amendments to the Agreement from time to time;

"Application" means the software application supplied by the Provider to the Customer (called HSE Assessment Tools) for the purpose of enabling the Customer to use the Platform and undertake surveys;

"Business Day" means any week day, other than a bank or public holiday in England;

"Business Hours" means between 09:00 and 17:00 (London UK time) on a Business Day;

"Change" means any change to the terms of the Agreement;

"Charges" means the amounts payable by the Customer to the Provider under or in relation to the Agreement (as set out in Schedule 2);

"Confidential Information" means the Customer Confidential Information and the Provider Confidential Information;

"Crown Copyright" has the meaning as defined in the Copyright Designs and Patents Act 1988, the Copyright Act 1956 and the Copyright Act 1911

"Customer" means the customer specified during the online ordering process and registration on the Provider's website or those of its Suppliers (as appropriate);

"Customer Confidential Information" means any information disclosed (whether disclosed in writing, orally or otherwise) by the Customer to the Provider or its Suppliers that is marked as "confidential", described as "confidential" or should have been understood by the Provider or its Suppliers at the time of disclosure to be confidential;

"Customer Indemnity Event" has the meaning given to it in Clause 10.1;

"Customer Materials" all works and materials:

(a) uploaded to, stored on, processed using or transmitted via the Platform or Application by or on behalf of the Customer or by any person or application or automated system using the Customer's account; and

(b) otherwise provided by the Customer to the Provider or its Suppliers in connection with the Agreement;

"Customer Representatives" means the person or persons identified as such during the online ordering process and registration on the Provider's website or those of its Suppliers;

"Customisations" means customisations to the Application that the Provider and Customer agree the Provider or its Suppliers will produce on behalf of the Customer;

"Documentation" means the documentation produced by the Provider or its Suppliers and made available on the Platform to the Customer specifying how the Platform and Application should be used;

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

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

"Permitted Purpose" means utilisation of the Platform and Application for internal business purposes only, to undertake assessments of manual handling, repetitive tasks and moving loads (pushing and pulling), performed by your employees, agents and sub-contractors, according to the Acceptable Use Policy (as set out in Schedule 3).

"Personal Data" has the meaning given to it in the Data Protection Act 2018;

"Platform" means the software platform known as the Health and Safety Executive Survey Delivery System (HSE SDS) that is owned and operated by the Provider, and that will be made available to the Customer as a service via the internet under the Agreement;

"Provider" means the Health and Safety Executive of the United Kingdom, acting through its Science Division having its main office at Harpur Hill, Buxton, Derbyshire, SK17 9JN, United Kingdom;

"Provider Confidential Information" means any information disclosed (whether disclosed in writing, orally or otherwise) by the Provider or its Suppliers to the Customer that is marked as "confidential", described as "confidential" or should have been understood by the Customer at the time of disclosure to be confidential;

"Provider Indemnity Event" has the meaning given to it in Clause 10.3;

"Schedule" means a schedule attached to the Agreement;

"Services" means all the services provided or to be provided by the Provider or its Suppliers to the Customer under the Agreement, including the Support Services;

"Suppliers" means the official suppliers, resellers and partners of the Provider who assist, or have assisted, in the development or update of the Platform or Application, delivery of Services, or perform such other functions at the request of the Provider to enable it to perform its obligations under this Agreement;

"Support Services" means support and maintenance services provided or to be provided by the Provider or its Suppliers to the Customer in accordance with Schedule 1;

"Term" means the term of the Agreement; and

"Upgrades" means new versions of, and updates to, the Platform, whether for the purpose of fixing an error, bug or other issue in the Platform or enhancing the functionality of the Platform.

1.2 In the Agreement, a reference to a statute or statutory provision includes a reference to:

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

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

1.3 The Clause headings do not affect the interpretation of the Agreement.

2. Agreement and Term

2.1 The advertising of the Platform and the Services on the Provider's website or those of its Suppliers constitutes an "invitation to treat"; and the Customer's order for the Platform and the Services constitutes a contractual offer. No contract will come into force between the Provider and the Customer unless and until the Provider or its Suppliers accepts the Customer's order in accordance with the procedure detailed in this Clause 2.

2.2 In order to enter into the Agreement, the Customer must take the following steps:

(i) the Customer must order the HSE Assessment Tools by contacting HSEorders@tso.co.uk, +44(0)333 202 5070 at the tiered licence level appropriate for their organisation;

(ii) after payment has been received, the Provider or its Suppliers will send to the Customer an initial acknowledgement of the order. This does not necessarily guarantee acceptance of the order;

(iii) Acceptance of the order, at which point the Agreement will come into force, shall occur when the Provider or its Suppliers supplies to the Customer suitable account login details for use of the Platform (see Clause 3). These are distinct from the purchaser's account details for the Provider's website or those of its Suppliers.

2.3 Before the Customer has placed its order, the Customer will have the opportunity to review its online entries and may correct any input errors before confirming the order by returning to input screens and re-entering correct text, etc..

2.4 Once in force, the Agreement will continue in force for a period of one (1) year, after which time it shall automatically renew on a 12-month rolling basis upon payment of the annual renewal fee (Schedule 2). If such payment is not made, the Agreement will terminate automatically, unless terminated earlier in accordance with Clause 14.

3. The Platform

3.1 The Provider or its Suppliers will make available the Platform to the Customer by setting up an account for the Customer on the Platform, and providing to the Customer login details for that account. If payment is made online at the time of placing the order, account login details will be provided within 24hours of the acknowledgement of the order. If payment is made following issue of an invoice, account login details will be forwarded by the Provider or its Suppliers as soon as practicable upon clearance of the payment.

3.2 The Platform, the Application, all material incorporated within them, and any accompanying Documentation, are Crown Copyright and are licensed by the Provider under a Delegation of Authority from the Controller of Her Majesty's Stationery Office (HMSO). Subject to the limitations set out in Clause 3.3 and the prohibitions set out in Clause 3.4, the Provider hereby grants to the Customer a non-exclusive licence to use the Platform for the Permitted Purpose via any standard web browser in accordance with the Documentation during the Term.

3.3 The licence granted by the Provider to the Customer under Clause 3.2 is subject to the following limitations:

(a) the Platform may only be used by the employees, agents and sub-contractors of the Customer and:

(i) where the Customer is a company, the Customer's officers;

(ii) where the Customer is a partnership, the Customer's partners; and

(iii) where the Customer is a limited liability partnership, the Customer's members;

(b) the Customer must comply at all times with the terms of the acceptable use policy supplied with the Platform and set out in Schedule 3 of this Agreement, and must ensure that all users of the Platform agree to and comply with the terms of that acceptable use policy.

3.4 Except to the extent mandated by applicable law or expressly permitted in the Agreement, the licence granted by the Provider to the Customer under this Clause 3 is subject to the following prohibitions:

(a) the Customer must not sub-license its right to access and use of the Platform or allow any unauthorised person to access or use the Platform;

(b) the Customer must not frame or otherwise re-publish or re-distribute the Platform;

(c) the Customer must not alter or adapt or edit the Platform.

3.5 For the avoidance of doubt, the Customer has no right to access the object code or source code of the Platform, either during or after the Term.

3.6 All Intellectual Property Rights in the Platform shall, as between the parties, be the exclusive property of the Provider and/or its Suppliers.

3.7 The Customer shall use all reasonable endeavours to ensure that no unauthorised person will or could access the Platform using the Customer's account.

3.8 The Customer must not use the Platform in any way that causes, or may cause, damage to the Platform or impairment of the availability or accessibility of the Platform, or any of the areas of, or services on, the Platform.

3.9 The Customer must not use the Platform:

(a) in any way that is unlawful, illegal, fraudulent or harmful; or

(b) in connection with any unlawful, illegal, fraudulent or harmful purpose or activity.

4. The Application

4.1 The Provider or its Suppliers will make available to the Customer a copy or copies of the Application as part of its account.

4.2 The use of the Application shall be subject to the following licensing terms:

(a) the Customer may only use the Application for the Customer's internal business purposes;

(b) the Customer may use up to the designated number of accounts and copies of the Application on any computer owned and operated by the Customer anywhere in the world strictly in accordance with the tier level of licence purchased and the Documentation;

(c) Additional accounts or copies of the Application may be purchased either individually or by moving to the next tiered licence level. Further details are provided in Schedule 2 of this Agreement and on the Provider’s website or those of its Suppliers.

(d) the Customer must not:

(i) copy or reproduce Application or any part of the Application other than in accordance with the licence granted in this Clause 4;

(ii) sell, resell, rent, lease, loan, supply, distribute, redistribute, publish or republish the Application or any part of the Application, or provide any commercial service derived from the use of the Application;

(iii) without the prior written consent of the Provider modify, alter, adapt, translate or edit, or create derivative works of, the Application or any part of the Application;

(iv) reverse engineer, decompile, disassemble the Application or any part of the Application (except as mandated by applicable law);

(v) remove, change or obscure any product identification or notices of Crown Copyright or other proprietary rights and restrictions that are present in the Application or Documentation;

(vi) use the Application other than in accordance with the Documentation; or

(vii) circumvent or remove or attempt to circumvent or remove the technological measures applied to the Application for the purposes of preventing unauthorised use.

4.3 All Intellectual Property Rights in the Application shall, as between the parties, be the exclusive property of the Provider and/or its Suppliers.

4.4 The Customer shall be responsible for the security of the Customer's copies of the Application, and will use all reasonable endeavours to ensure that access to the Application is restricted to persons authorised to use it.

5. Support Services and Upgrades

5.1 During the Term the Provider or its Suppliers will provide the Support Services to the Customer, and may apply Upgrades to the Platform, in accordance with the service level agreement set out in Schedule 1.

5.2 The Provider may sub-contract the provision of any of the Support Services without obtaining the consent of the Customer.

6. Customisations

6.1 From time to time the Provider and the Customer may agree that the Provider will customise the Application in accordance with a specification agreed in writing between the parties and subject to any additional consultancy fees and contractual terms and conditions that may apply to the Customisation work.

6.2 From the date when a Customisation is first made available to the Customer, the Customisation shall form part of the Application under the Agreement, and accordingly from that date the Customer's rights to use the Customisation shall be governed by Clause 4.

6.3 The Customer acknowledges that the Provider may make any Customisation available to its other Customers at any time.

6.4 All Intellectual Property Rights in the Customisations shall, as between the parties, be the exclusive property of the Provider and/or its Suppliers.

7. Customer Materials

7.1 The Customer grants to the Provider a non-exclusive licence to store, copy and otherwise use the Customer Materials for the purposes of operating the Platform, providing the Services, fulfilling its other obligations under the Agreement and exercising its rights under the Agreement.

7.2 Subject to Clause 7.1, all Intellectual Property Rights in the Customer Materials will remain, as between the parties, the property of the Customer.

7.3 The Customer warrants and represents to the Provider that the Customer Materials, and their use by the Provider in accordance with the terms of the Agreement, will not:

(a) breach any laws, statutes, regulations or legally-binding codes;

(b) infringe any person's Intellectual Property Rights or other legal rights; or

(c) give rise to any cause of action against the Provider or the Customer or any third party,

in each case in England and Wales and under English law.

7.4 The Provider shall ensure that the Customer Materials stored and processed by the Platform are stored separately from, and are not co-mingled with, the materials of other customers of the Provider.

8. Charges

8.1 Where any applicable Charges are invoiced by a credit account, the Provider or its Suppliers will issue invoices for the Charges to the Customer in accordance with the provisions of Schedule 2.

8.2 The Customer will pay the Charges to the Provider or any Supplier which has issued an invoice, within twenty-eight (28) days of the date of issue of such invoice issued in accordance with Clause 8.1.

8.3 All Charges stated in or in relation to the Agreement are stated exclusive of VAT, unless the context requires otherwise. VAT will be payable by the Customer to the Provider or its Suppliers in addition to the principal amounts.

8.4 If the Customer does not pay any amount properly due to the Provider or its Suppliers under or in connection with the Agreement, the Provider or its Suppliers may charge the Customer interest on the overdue amount at the rate of 8% per day above the prevailing Bank of England base rate pursuant to the Late Payment of Commercial Debts (Interest) Act 1998.

8.5 In addition, the Provider may suspend access to the Platform, and the provision of the Services, if any amounts due to be paid by the Customer to the Provider or its Suppliers under the Agreement are overdue.

9. Warranties

9.1 The Customer warrants and represents to the Provider that it has the legal right and authority to enter into and perform its obligations under the Agreement.

9.2 The Provider warrants and represents to the Customer:

(a) that it has the legal right and authority to enter into and perform its obligations under the Agreement;

(b) that it will perform its obligations under the Agreement with reasonable care and skill;

(c) that the Platform will perform in accordance with the Documentation (subject to any Upgrades and Customisations);

(d) that the Platform (excluding for the avoidance of doubt the Customer Materials) will not:

(i) breach any laws, statutes, regulations or legally-binding codes;

(ii) infringe any person's Intellectual Property Rights or other legal rights; or

(iii) give rise to any cause of action against the Provider or the Customer or any third party,

in each case in England and Wales and under English law

9.3 The Customer acknowledges that:

(a) The Provider has undertaken a thorough testing program to ensure that the likelihood of defects, errors and bugs within the Platform and Application is minimal. However, complex software is never wholly free from defects, errors and bugs, and the Provider gives no warranty or representation that the Platform will be wholly free from such defects, errors and bugs;

(b) the Provider does not warrant or represent that the Platform will be compatible with any application, program or software (other than the Application) not specifically identified as compatible; and

(c) the Provider will not and does not purport to provide any legal, taxation or accountancy advice under the Agreement or in relation to the Platform and (except to the extent expressly provided otherwise) the Provider does not warrant or represent that the Platform will not give rise to any civil or criminal legal liability on the part of the Customer or any other person.

9.4 All of the parties' warranties and representations in respect of the subject matter of the Agreement are expressly set out in the terms of the Agreement. To the maximum extent permitted by applicable law, no other warranties or representations concerning the subject matter of the Agreement will be implied into the Agreement.

10. Indemnities

10.1 The Customer will indemnify and will keep indemnified the Provider against all liabilities, damages, losses, costs and expenses (including legal expenses and amounts paid in settlement of any disputes) suffered or incurred by the Provider and arising as a result of any breach by the Customer of Clause 7.3 (a "Customer Indemnity Event").

10.2 The Provider will:

(a) upon becoming aware of an actual or potential Customer Indemnity Event, notify the Customer;

(b) provide to the Customer reasonable assistance in relation to the Customer Indemnity Event;

(c) allow the Customer the exclusive conduct of all disputes, proceedings, negotiations and settlements relating to the Customer Indemnity Event; and

(d) not admit liability in connection with the Customer Indemnity Event or settle the Customer Indemnity Event without the prior written consent of the Customer.

10.3 Subject to the Customer's compliance with Clause 10.4, the Provider will indemnify and will keep indemnified the Customer against all liabilities, damages, losses, costs and expenses (including legal expenses and amounts paid upon legal advice in settlement of any disputes) suffered or incurred by the Customer and arising as a result of any breach by the Provider of Clause 9.2(d) (a "Provider Indemnity Event").

10.4 The Customer will:

(a) upon becoming aware of an actual or potential Provider Indemnity Event, notify the Provider;

(b) provide to the Provider all reasonable assistance in relation to the Provider Indemnity Event;

(c) allow the Provider the exclusive conduct of all disputes, proceedings, negotiations and settlements relating to the Provider Indemnity Event; and

(d) not admit liability in connection with the Provider Indemnity Event or settle the Provider Indemnity Event without the prior written consent of the Provider.

11. Limitations and exclusions of liability

11.1 Nothing in the Agreement will:

(a) limit or exclude the liability of a party for death or personal injury resulting from negligence;

(b) limit or exclude the liability of a party for fraud or fraudulent misrepresentation by that party;

(c) limit any liability of a party in any way that is not permitted under applicable law; or

(d) exclude any liability of a party that may not be excluded under applicable law.

11.2 The limitations and exclusions of liability set out in this Clause

(a) are subject to Clause 11.1;

(b) govern all liabilities arising under the Agreement or in relation to the subject matter of the Agreement, including liabilities arising in contract, in tort (including negligence) and for breach of statutory duty; and

11.3 The Provider will not be liable in respect of any loss of profits, income, revenue, use, production or anticipated savings.

11.4 The Provider will not be liable for any loss of business, contracts or commercial opportunities.

11.5 The Provider will not be liable for any loss of or damage to goodwill or reputation.

11.6 The Provider will not be liable in respect of any loss or corruption of any data, database or software.

11.7 The Provider will not be liable in respect of any special, indirect or consequential loss or damage.

11.8 The Provider will not be liable for any losses arising out of a Force Majeure Event.

11.9 The Provider's liability in relation to any event or series of related events will not exceed the total amount paid and payable by the Customer to the Provider under the Agreement.

11.10 The Provider's aggregate liability under the Agreement will not exceed the total amount paid and payable by the Customer to the Provider under the Agreement.

12. Data protection

12.1 The Customer warrants that it has the legal right to disclose all Personal Data that it does in fact disclose to the Provider and/or its Suppliers under or in connection with the Agreement.

12.2 The Provider warrants that:

(a) it will act in accordance with its published privacy policy (https://www.hse.gov.uk/privacy.htm) in relation to the use of Customer Information and shall ensure that its Suppliers maintain and act in accordance with their own similar privacy policies (e.g. https://books.hse.gov.uk/privacy-notice

(b) it will act only on instructions from the Customer in relation to the processing of any Personal Data performed by the Provider on behalf of the Customer; and

(c) it has in place appropriate security measures (both technical and organisational) against unlawful or unauthorised processing of Personal Data and against loss or corruption of Personal Data processed by the Provider on behalf of the Customer.

13. Confidentiality and publicity

13.1 The Provider will:

(a) keep confidential and not disclose the Customer Confidential Information to any person save as expressly permitted by this Clause 13;

(b) protect the Customer Confidential Information against unauthorised disclosure by using the same degree of care as it takes to preserve and safeguard its own confidential information of a similar nature, being at least a reasonable degree of care.

13.2 The Customer will:

(a) keep confidential and not disclose the Provider Confidential Information to any person save as expressly permitted by this Clause 13;

(b) protect the Provider Confidential Information against unauthorised disclosure by using the same degree of care as it takes to preserve and safeguard its own confidential information of a similar nature, being at least a reasonable degree of care.

13.3 Confidential Information of a party may be disclosed by the other party to that other party's officers, employees, agents, insurers and professional advisers, provided that the recipient is bound in writing to maintain the confidentiality of the Confidential Information disclosed.

13.4 The obligations set out in this Clause 13 shall not apply to:

(a) Confidential Information that is publicly known (other than through a breach of an obligation of confidence);

(b) Customer Confidential Information that is in possession of the Provider prior to disclosure by the Customer prior to disclosure by the Provider;

(c) Customer Confidential Information that is received by the Provider from an independent third party who has a right to disclose the relevant Confidential Information; or

(d) Confidential Information that is required to be disclosed by law, or by a governmental authority, stock exchange or regulatory body.

13.5 The Customer will not make any public disclosure relating to the Agreement (including press releases, public announcements and marketing materials) without the prior written consent of the Provider.

14. Termination

14.1 Either party may terminate the Agreement immediately by giving written notice to the other party if the other party:

(a) commits any material breach of any term of the Agreement, and:

(i) the breach is not remediable; or

(ii) the breach is remediable, but the other party fails to remedy the breach within thirty (30) days of receipt of a written notice requiring it to do so; or

(b) persistently breaches the terms of the Agreement (irrespective of whether such breaches collectively constitute a material breach).

14.2 Either party may terminate the Agreement immediately by giving written notice to the other party if:

(a) the other party:

(i) is dissolved;

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

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

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

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

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

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

(d) (where that other party is an individual) that other party dies, or as a result of illness or incapacity becomes incapable of managing his or her own affairs, or is the subject of a bankruptcy petition or order.

14.3 If the Provider stops or makes a good faith decision to stop operating the Platform generally, then the Provider may terminate the Agreement by giving at least thirty 30 days' written notice of termination to the Customer.

14.4 The Provider may terminate the Agreement immediately by giving written notice of termination to the Customer where the Customer fails to pay to the Provider any amount due to be paid under the Agreement by the due date.

15. Effects of termination

15.1 Upon termination of the Agreement, all the provisions of the Agreement will cease to have effect, save that the following provisions of the Agreement will survive and continue to have effect (in accordance with their terms or otherwise indefinitely): Clauses 1, 4.4, 7.1, 8.4, 10, 11, 13.1 to 13.4, 15 and 18.

15.2 Termination of the Agreement will not affect either party's accrued liabilities and rights as at the date of termination.

15.3 Within thirty (30) days following the termination of the Agreement, the Customer will:

(a) return to the Provider or dispose of as the Provider may instruct all documents and materials containing Provider Confidential Information; and

(b) irrevocably delete from its computer systems all Provider Confidential Information.

16. Notices

16.1 Any notice given under the Agreement must be in writing (whether or not described as "written notice" in the Agreement) and must be delivered personally, sent by post or email, for the attention of the relevant person, and to the relevant address or email address given below (or as notified by one party to the other in accordance with this Clause).

The Provider:
Sales Contracts, Health and Safety Executive, Harpur Hill, Buxton, Derbyshire, SK17 9JN, United Kingdom. Email: salescontracts@hse.gov.uk

The Customer:
The addressee, address, and email address as notified during the online order process or as updated by the Customer to the Provider from time to time.

16.2 A notice will be deemed to have been received at the relevant time set out below (or where such time is not within Business Hours, when Business Hours next begin after the relevant time set out below:

(a) where the notice is delivered personally, at the time of delivery;

(b) where the notice is sent by post, 72 hours after posting; and

(c) where the notice is sent by email, at the time of the transmission (providing the sending party retains written evidence of the transmission).

17. Force Majeure Event

17.1 Where a Force Majeure Event gives rise to a failure or delay in either party performing its obligations under the Agreement (other than obligations to make payment), those obligations will be suspended for the duration of the Force Majeure Event.

17.2 A party who becomes aware of a Force Majeure Event which gives rise to, or which is likely to give rise to, any failure or delay in performing its obligations under the Agreement, will:

(a) notify the other forthwith; and

(b) will inform the other of the period for which it is estimated that such failure or delay will continue.

17.3 The affected party will take reasonable steps to mitigate the effects of the Force Majeure Event.

18. General

18.1 No breach of any provision of the Agreement will be waived except with the express written consent of the party not in breach.

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

18.3 Nothing in the Agreement will constitute a partnership, agency relationship or contract of employment between the parties.

18.4 The Agreement may not be varied except by a written document signed by or on behalf of each of the parties.

18.5 Save as expressly provided in this Clause or elsewhere in the Agreement, neither party may without the prior written consent of the other party assign, transfer, charge, license or otherwise dispose of or deal in the Agreement or any contractual rights or obligations under the Agreement.

18.6 Neither party will, without the other party's prior written consent, either during the term of the Agreement or within six (6) months after the date of effective termination of the Agreement, engage, employ or otherwise solicit for employment any employee, agent or contractor of the other party who has been involved in the performance of the Agreement.

18.7 Each party agrees to execute (and arrange for the execution of) any documents and do (and arrange for the doing of) any things reasonably within that party's power, which are necessary to enable the parties to exercise their rights and fulfil their obligations under the Agreement.

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

18.9 Subject to Clause 11.1:

(a) the Agreement constitutes the entire agreement between the parties in relation to the subject matter of the Agreement, and supersedes all previous agreements, arrangements and understandings between the parties in respect of that subject matter; and

(b) neither party will have any remedy in respect of any misrepresentation (whether written or oral) made to it upon which it relied in entering into the Agreement.

18.10 The Agreement will be governed by and construed in accordance with the laws of England and Wales; and the courts of England will have exclusive jurisdiction to adjudicate any dispute arising under or in connection with the Agreement.

Schedule 1
Service Level Agreement

1. Introduction

1.1 In this Schedule:

"New Functionality" means new functionality that is introduced to the Platform by an Upgrade.

1.2 References in this Schedule to Paragraphs are to the paragraphs of this Schedule, unless otherwise stated.

2. Helpdesk

2.1 The Provider or its Suppliers will make available, during Business Hours, an email helpdesk facility for the purposes of:

(a) assisting the Customer with the configuration of the Platform;

(b) assisting the Customer with the proper use of the Platform; and/or

(c) determining the causes of errors and fixing errors in the Platform.

2.2 The Customer must make all requests for Support Services through the helpdesk.
Email: HSEorders@tso.co.uk

2.3 All Support Services will be provided remotely unless expressly agreed otherwise by the Provider or its Suppliers.

3. Limits on Support Services

3.1 Where the total person-hours spent by the Provider or its Suppliers performing the Support Services under Paragraphs 2 become excessive (in the sole opinion of the Provider), the Provider may agree to provide additional Support Services to the Customer, but the provision of such services will be subject to payment by the Customer of additional Charges at the Provider's standard hourly rates.

3.2 The Provider shall have no obligation under the Agreement to provide Support Services in respect of any fault or error caused by:

(a) the improper use of the Platform; or

(b) the use of the Platform otherwise than in accordance with the Documentation.

4. Upgrades

4.1 The Customer acknowledges that from time to time during the Term the Provider may apply Upgrades to the Platform, and that such Upgrades may result in changes to the appearance and/or functionality of the Platform.

4.2 The Provider may give to the Customer reasonable prior written notice of the application of any Upgrade to the Platform.

4.3 The Customer shall not be subject to any additional Charges arising out of the application of the Upgrade, save where:

(a) the Upgrade introduces New Functionality to the Platform;

(b) that New Functionality does not serve the same purpose as legacy functionality that ceases or has ceased to be available as a result of any Upgrade;

(c) access to or use of the New Functionality is chargeable to the customers of the Provider using the Platform generally; and

(d) any decision by the Customer not to pay the Charges for the New Functionality will not prejudice the Customer's access to and use of the rest of the Platform.

5. Back-up and restoration

5.1 The Provider will:

(a) make back-ups of the Customer Materials stored on the Platform on a daily basis, and will retain such back-ups for at least one year; and

(b) at least once every week, the Provider will arrange for the off-site storage of a current back-up of the Customer Materials stored on the Platform (which will be over-written on the following off-site back-up date).

5.2 In the event of the loss of, or corruption of, Customer Materials stored on the Platform being notified by the Customer to the Provider under Paragraph 2, the Provider shall if so directed by the Customer use reasonable endeavours to restore the Customer Materials from the most recent available back-up copy.

6. Scheduled maintenance

6.1 The Provider may suspend access to the Platform in order to carry out scheduled maintenance, wherever possible such maintenance to be carried out outside Business Hours.

6.2 The Provider shall make available to the Customer written notice of scheduled maintenance, including full details of the expected Platform downtime.

Schedule 2
Charges

1. Introduction

1.1 References in this Schedule to Paragraphs are to the paragraphs of this Schedule, unless otherwise stated.

1.2 The Charges under the Agreement will consist of the following elements:

(a) Access Charges, including an initial licence fee, in respect of access to and use of the Platform;

(b) annual renewal Charges; and

(c) other Charges.

2. Access Charges

2.1 The Charges in respect of access to and use of the Platform shall be made up of an initial fixed licence fee dependent upon the following tiered licence structure. All Charges are exclusive of VAT and are for purchase of a one (1) year licence.

2.2 Tiered Licence Fee Structure

Licence Tier (Number of assessments per year)	**Max. number of assessments**	**License Fee**	**Max. number of accounts***
Up to 50	50	£400 + VAT	1
51 to 100	100	£775 +VAT	1
101 to 200	200	£1,500 + VAT	2
201 to 300	300	£2,175 + VAT	3
301 to 400	400	£2,800 + VAT	5
401 to 500	500	£3,250 + VAT	5
501 to 1,000	1,000	£4,875 + VAT	5
Above 1,000	Ask for quote	£POA	TBD

*Max number of accounts refers to the number of distinct customer logins created at each licence tier. Additional account logins can be purchased at any licence tier level by contacting the Helpdesk and are charged at £100 + VAT for each additional login (see Paragraph 4.1 (e))

3. Annual Renewal Charges

3.1 In addition to the initial Access Charge, the Provider or its Suppliers shall invoice in respect of, and the Customer shall pay to the Provider, a further Annual Renewal Charge relating to the account for each subsequent year of the licence requirement (on a rolling 12-month basis).

3.2 Annual Renewal Charges follow the same tiered structure as the initial Access Charge as indicated in the table below. Customers may renew at a different Licence Tier Level to that of the initial Access Charge [or any subsequent Annual Renewal], such that the Licence Tier reflects the number of assessments required for the period of renewal.

Licence Tier (Number of assessments per year)	**Max. number of assessments**	**Annual Renewal Fee**
Up to 50	50	£400 + VAT
51 to 100	100	£775 +VAT
101 to 200	200	£1,500 + VAT
201 to 300	300	£2,175 + VAT
301 to 400	400	£2,800 + VAT
401 to 500	500	£3,250 + VAT
501 to 1,000	1,000	£4,875 + VAT
Above 1,000	Ask for quote	£POA

4. Other Charges

4.1 In addition to the Charges detailed in Paragraphs 2 & 3 above, the Provider or its Suppliers will invoice in respect of, and the Customer shall pay to the Provider or its Suppliers, all Charges in respect of:

(a) provision of any additional Support Services (where these fall outside of the limitations provided in Schedule 1);

(b) Customisation of the Application as agreed under separate contract or agreement (see Clause 6 of the main body of this Agreement);

(c) access to Customer Materials and any associated data following expiry or termination of this Agreement – charge on application, contact Helpdesk;

(d) Licence upgrade, when moving from one tier to another within the licence structure;

(e) provision of additional account logins at any given licence tier (as above); and

(f) all other Charges that are agreed between the parties in writing from time to time.

Schedule 3
Acceptable Use Policy

(1) This Policy

This Acceptable Use Policy (the "**Policy**") sets out the rules governing the use of our web services (the "**Service**") and any content that you may submit to the Service ("**Content**").

By using the Service, you agree to the rules set out in this Policy.

(2) General restrictions

You must not use the Service in any way that causes, or may cause, damage to the Service or impairment of the availability or accessibility of the Service, or any of the areas of, or services on, the Service.

You must not use the Service:

(a) in any way that is unlawful, illegal, fraudulent or harmful; or
(b) in connection with any unlawful, illegal, fraudulent or harmful purpose or activity.

(3) Licence

You grant to us a worldwide, irrevocable, non-exclusive, royalty-free licence to use, reproduce, publish, adapt, translate and distribute your Content on and in relation to the Service. You also grant to us the right to sub-license these rights.

(4) Unlawful and illegal material

You must not use the Service to store, host, copy, distribute, display, publish, transmit or send Content that is illegal or unlawful, or that will or may infringe a third party's legal rights, or that could give rise to legal action whether against you or us or a third party (in each case in any jurisdiction and under any applicable law).

Content (and its publication on the Service) must not:

(a) be libellous or maliciously false;
(b) be obscene or indecent;
(c) infringe any copyright, moral rights, database rights, trade mark rights, design rights, rights in passing off, or other intellectual property rights;
(d) infringe any rights of confidence, rights of privacy, or rights under data protection legislation;
(e) constitute negligent advice or contain any negligent statement;
(f) constitute an incitement to commit a crime;
(g) be in contempt of any court, or in breach of any court order;
(h) be in breach of racial or religious hatred or discrimination legislation;
(i) be blasphemous;
(j) be in breach of official secrets legislation; or
(k) be in breach of any contractual obligation owed to any person.

You must not submit any Content that is or has ever been the subject of any threatened or actual legal proceedings or other similar complaint.

(5) Data mining

You must not conduct any systematic or automated data collection activities (including without limitation scraping, data mining, data extraction and data harvesting) on or in relation to the Service without our express written consent.

(6) Harmful software

You must not use the Service to promote or distribute any viruses, Trojans, worms, root kits, spyware, adware or any other harmful software, programs, routines, applications or technologies.

You must not use the Service to promote or distribute any software, programs, routines, applications or technologies that will or may negatively affect the performance of a computer or introduce significant security risks to a computer.

(7) Factual accuracy

Content must not be untrue, false, inaccurate or misleading.

Statements of fact contained in the Content must be true and statements of opinion contained on the Content must be truly held and where possible based upon facts that are true.

(8) Negligent advice

Content must not consist of or contain any instructions, advice or other information that may be acted upon and could, if acted upon, cause:

(a) illness, injury or death; or
(b) any other loss or damage.

(9) Marketing and spam

You must not use the Service for any purposes related to marketing, advertising, promotion, or the supply and/or sale of goods and/or services.

Content must not constitute spam.

You must not use the Service to transmit or send unsolicited commercial communications.

You must not use the Service to market, distribute or post chain letters, ponzi schemes, pyramid schemes, matrix programs, "get rich quick" schemes or similar schemes, programs or materials.

(10) Professional advice

You must not use the Service to provide any legal, financial, investment, taxation, accountancy, medical or other professional advice or advisory services.

(11) Hyperlinks

You must not link to any website or web page containing material that would, were it posted on the Service, breach the preceding terms of this Policy.

(12) Breaches of this Policy

We reserve the right to edit or remove any Content in our sole discretion for any reason, without notice or explanation.

Without prejudice to this general right and our other legal rights, if you breach this Policy in any way, or if we reasonably suspect that you have breached this Policy in any way, we may:

(a) delete or edit any of your Content;
(b) send you one or more formal warnings;
(c) temporarily suspend your access to a part or all of the Service; and/or
(d) permanently prohibit you from using a part or all of the Service.