

SKILLS FORWARD CUSTOMER TERMS AND CONDITIONS- updated 23.07.2019

1. Definitions and interpretation

The definitions and rules of interpretation set out in Schedule 1 apply in these terms and conditions (including any Schedules) (these “**Conditions**”).

2. Basis of the Agreement

2.1 These Conditions apply to the Agreement between the Customer and Skills Forward to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.2 Submission of an Order constitutes an offer by the Customer to receive the Services from Skills Forward in accordance with these Conditions. The Customer is responsible for ensuring that the terms of each Order are complete and accurate.

2.3 Any quotation for the Services given by Skills Forward shall not constitute an offer. Unless otherwise specified in writing in the quotation, a quotation shall only be valid for a period of 30 Business Days from its date of issue.

2.4 The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer that is inconsistent with this Agreement.

2.5 Any demos, drawings, descriptive matter or advertising produced by Skills Forward and/or its affiliates are produced for the sole purpose of giving an approximate idea of the Product(s). They shall not form part of the Agreement nor have any contractual force.

3. End User Licences

3.1 Subject to the Customer’s compliance with clause 9.1 (payment of Licence Fees), the restrictions set out in this clause 3 and the other terms and conditions of this Agreement, Skills Forward hereby grants to the Customer a non-exclusive, non-transferable right, without the right to grant sublicences, to permit the End Users during the Licence Term to use the Product(s) and the Documentation.

3.2 Subject to the provisions of clause 14 (Term and Termination) Skills Forward shall enable the End User Access for each End User for a period of 12 months from the date of activation of such End User’s account, or such other period as may be specified in writing by Skills Forward.

3.3 In relation to the End Users, the Customer undertakes that:

3.3.1 the maximum number of End Users that it authorises to access and use the Product(s) and the Documentation shall not exceed the number of End User Licences it has purchased from time to time;

- 3.3.2 it will use reasonable endeavours to ensure that (i) any End User Licence is not used by more than one individual End User and (ii) each End User shall keep a secure password for his/her use of the Product(s), Documentation and Skills Forward Content and that each End User shall keep his/her password confidential;
- 3.3.3 it shall permit Skills Forward or Skills Forward's designated auditor (in each case, subject to Skills Forward and/or Skills Forward's auditor respecting unrelated confidential information of the Customer) in order to establish the name and password of each End User to verify compliance with this Agreement. Each such audit may be conducted no more than once per quarter, at Skills Forward's expense, and this right shall be exercised with reasonable prior notice and in such a manner as not to substantially interfere with the Customer's normal conduct of business;
- 3.3.4 if any of the audits referred to in clause 3.3.3 reveal that any password has been provided to any individual who is not an End User, then without prejudice to Skills Forward's other rights, Skills Forward shall promptly disable such individual's access to the Product(s) and Skills Forward shall not issue any new passwords to any such individual; and
- 3.3.5 if any of the audits referred to in clause 3.3.3 reveal that the Customer has underpaid Licence Fees to Skills Forward, then without prejudice to Skills Forward's other rights, the Customer shall pay to Skills Forward an amount equal to such underpayment as calculated in accordance with the prices set out in the Order Confirmation within 30 Business Days from the date of Skills Forward's invoice.
- 3.4 The Customer shall not, and shall use reasonable endeavours to ensure that the End Users shall not, access, store, distribute or transmit any Viruses, or any material during the course of its use of the Services that: (i) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive; (ii) facilitates illegal activity; (iii) depicts sexually explicit images; (iv) promotes unlawful violence; (v) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or (vi) is otherwise illegal or causes damage or injury to any person or property, and Skills Forward reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's and its End Users Access to any material that breaches the provisions of this clause.
- 3.5 The Customer acknowledges and agrees that the End User Terms and Conditions shall govern the relationship between Skills Forward and the End Users and that in the event of a material breach and/or persistent breaches of the End User Terms and Conditions by any End User, Skills Forward shall have the right, at its sole discretion, to suspend the End User Access for any such End User.
- 3.6 The Customer shall not:
 - 3.6.1 except as may be allowed by this Agreement and/or any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under this Agreement: (i) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software, the Documentation and/or any Skills Forward Content made available via the Product(s) (as applicable) in any form or media or by any means;

- or (ii) attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software;
- 3.6.2 access all or any part of the Services and/or Product(s) in order to build a product or service which competes with the Services and/or the Product(s);
- 3.6.3 use the Services to provide services to third parties (other than the End Users);
- 3.6.4 subject to clause 22 (Assignment), license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make any of the Services available to any third party (other than to the End Users and only to the extent permitted under this Agreement); or
- 3.6.5 attempt to obtain, or assist third parties in obtaining, access to the Services, other than as provided under this clause 3.
- 3.7 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and, in the event of any such unauthorised access or use, promptly notify Skills Forward.
- 3.8 The rights provided under this clause 3 are granted to the Customer only, and shall not be considered granted to any subsidiary or holding company of the Customer.

4. Additional End User Licences

- 4.1 Subject to clause 4.2 and clause 4.3, the Customer may, from time to time during any Licence Term, purchase additional End User Licences in excess of the number specified on the Order Confirmation and Skills Forward shall grant access to the Product(s) and the Documentation to such additional End Users in accordance with the provisions of this Agreement.
- 4.2 If the Customer wishes to purchase additional End User Licences, the Customer shall notify Skills Forward in writing. Skills Forward shall evaluate such request for additional End User Licences and respond to the Customer with approval or rejection of the request (such approval not to be unreasonably withheld). Where Skills Forward approves the request, Skills Forward shall activate the additional End User Licences within 5 Business Days of its approval of the Customer's request.
- 4.3 If Skills Forward approves the Customer's request to purchase additional End User Licences, the Customer shall, within 30 days of the date of Skills Forward's invoice, pay to Skills Forward the relevant Licence Fees for such additional End User Licences.

5. Services

- 5.1 Skills Forward shall, during the Licence Term, provide the Services to the Customer on and subject to the terms of this Agreement.
- 5.2 The Customer acknowledges that the Products are provided via the internet and as a result Skills Forward cannot and does not guarantee that the Products, or any content of the Products, will always be available or be uninterrupted. This is because interruptions, delays and/or other problems are inherent in the provision of services via such communication facilities. Skills Forward shall use commercially reasonable endeavours

to make the Services available 24 hours a day, seven days a week, except for: (i) planned maintenance carried out during the maintenance window of 10.00 pm to 2.00 am UK time; and (ii) unscheduled maintenance performed outside Normal Business Hours, provided that Skills Forward has used reasonable endeavours to give the Customer at least 6 Normal Business Hours' notice in advance.

5.3 Unless any specific support services have been agreed by the parties in writing, Skills Forward will provide the Customer with the Skills Forward standard customer support, technical and engagement services. As part of Skills Forward standard support, the Customer and the End Users will be provided, during Normal Business Hours, with telephone and email support from the dedicated Skills Forward Customer Engagement Team members. There will also be a 'Live Chat' for times when the Customer or any End User is unable to call. During Normal Business hours the 'Live Chat' platform will be monitored and answered by the Skills Forward Customer Engagement Team. For hours outside of the Normal Business Hours and for developmental suggestions Skills Forward has a 'ticket' system on the Skills Forward platform. Skills Forward will use its reasonable endeavours to respond to all tickets by the end of the following Business Day.

6. **User Content**

6.1 As between Skills Forward and the Customer, the Customer shall own all right, title and interest in and to all of the User Content uploaded onto the Products by the End Users. The Customer hereby grants to Skills Forward a fully paid-up, worldwide, non-exclusive, royalty-free and irrevocable licence for the duration of this Agreement, to use copy and modify such User Content for the purpose of providing the Services.

6.2 In respect of any User Content uploaded by End Users who are the Customer's personnel (whether admin users, teacher users or otherwise), the Customer shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of all such User Content.

6.3 Skills Forward shall follow its standard archiving procedures for User Content. In the event of any loss or damage to any User Content, the Customer's sole and exclusive remedy against Skills Forward shall be for Skills Forward to use reasonable commercial endeavours to restore the lost or damaged User Content from the latest back-up of such User Content maintained by Skills Forward. Skills Forward shall not be responsible for any loss, destruction, alteration or disclosure of User Content caused by any third party (except those third parties sub-contracted by Skills Forward to perform services related to User Content maintenance and back-up for which Skills Forward shall remain fully liable in accordance with the relevant provisions of the Data Protection Schedule).

6.4 Each party shall comply with the applicable provisions of the Data Protection Schedule.

7. **Skills Forward's obligations**

7.1 Skills Forward:

7.1.1 undertakes that the Services will be performed with reasonable skill and care;

7.1.2 does not warrant that the End User's use of the Services will be uninterrupted or error-free, or that the Services and/or any information obtained by the Customer and/or any

End User through the Services will meet the Customer's and/or End User's requirements; and

7.1.3 is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

7.2 This Agreement shall not prevent Skills Forward from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under this Agreement.

7.3 Skills Forward warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this Agreement.

8. **Customer's obligations**

8.1 The Customer shall:

8.1.1 provide Skills Forward with: (i) all necessary co-operation in relation to this Agreement; and (ii) all necessary information as may be required by Skills Forward, in order to provide the Services;

8.1.2 without affecting its other obligations under this Agreement, comply with all applicable laws and regulations with respect to its activities under this Agreement; and

8.1.3 obtain and maintain all necessary licences, consents, and permissions necessary in connection with this Agreement.

8.2 The Customer warrants that any content, information, materials, instructions or other items provided in connection with this Agreement, shall: (i) to the best of its knowledge, be accurate and complete and suitable for the purpose for which they were provided or requested; and (ii) will not infringe any rights of any other person or any applicable law or regulation.

9. **Charges and payment**

9.1 The Customer shall pay the Licence Fees to Skills Forward for the End User Licences in accordance with this clause 9.

9.2 The Customer shall, prior to the Effective Date provide to Skills Forward valid, up-to-date and complete credit card details or approved purchase order information acceptable to Skills Forward and any other relevant valid, up-to-date and complete contact and billing details and, if the Customer provides:

9.2.1 its credit card details to Skills Forward, the Customer hereby authorises Skills Forward to bill such credit card:

(a) on the Effective Date for the Licence Fees payable in respect of the Initial Licence Term; and

- (b) subject to clause 14.1 (Term and termination), on the date of commencement of each Renewal Period, for the Licence Fees payable in respect of such Renewal Period;
- 9.2.2 its approved purchase order information to Skills Forward, Skills Forward shall invoice the Customer:
 - (a) on the Effective Date for the Licence Fees payable in respect of the Initial Licence Term; and
 - (b) subject to clause 14.1 (Term and Termination), at least 30 days prior to the commencement of each Renewal Period, for the Licence Fees payable in respect of such Renewal Period,

and the Customer shall pay each invoice within 30 days after the date of such invoice.
- 9.3 If Skills Forward has not received payment within 30 days after the due date, and without prejudice to any other rights and remedies of Skills Forward, Skills Forward may, without liability to the Customer, disable the End User Access to all or part of the Product(s) and Skills Forward shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid.
- 9.4 All amounts and fees stated or referred to in this Agreement: (i) shall be payable in pounds sterling; (ii) are non-cancellable and non-refundable; (iii) are exclusive of value added tax, which shall be added to Skills Forward's invoice(s) at the appropriate rate.
- 9.5 Skills Forward shall be entitled to increase the Licence Fees (including the fees payable in respect of the additional End User Licences purchased pursuant to clause 4.3), at the start of each Renewal Period upon 90 days' prior notice to the Customer and the Licence Fees rates set out in the Order Confirmation shall be deemed to have been amended accordingly.
- 9.6 Skills Forward reserves the right to carry out credit checks on the Customer at any time.
- 10. **Proprietary rights**
- 10.1 The Customer acknowledges and agrees that Skills Forward and/or its licensors own all intellectual property rights in the Services, the Product(s), the Software, Skills Forward Content and the Documentation ("**Skills Forward IP**"). Except as expressly stated herein, this Agreement does not grant the Customer any rights to, under or in, any patents, copyright, database right, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of any Skills Forward IP.
- 10.2 Skills Forward confirms that it has all the rights in relation to the Skills Forward IP that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this Agreement.
- 11. **Confidentiality**

- 11.1 Each party agrees, during the Licence Term and thereafter, to keep confidential, and not to use for its own purposes (other than implementation of this Agreement) nor without the prior written consent of the other to disclose to any third party (except its professional advisors under obligations of confidentiality) any information of a confidential nature (including trade secrets and information of commercial value) which may become known to such party from the other party and which relates to the other party or any of its customers, suppliers or other trading partners. Without limiting the generality of this clause: (i) the Skills Forward IP shall constitute confidential information of Skills Forward; (ii) the details of the Services constitute Skills Forward's confidential information; and (iii) the terms of this Agreement shall constitute confidential information of each party.
- 11.2 The restrictions at clause 11.1 shall not apply to the extent that: (i) such information is public knowledge or already known to such party at the time of disclosure, or subsequently becomes public knowledge, in each case other than by breach of this Agreement; or (ii) subsequently comes lawfully into the possession of such party from a third party; or (iii) such information is required to be disclosed by law or competent authority.
- 11.3 Neither party shall be responsible for any loss, destruction, alteration or disclosure of confidential information caused by any third party.
- 11.4 The above provisions of this clause 11 shall survive termination of this Agreement, however arising.

12. **Indemnity**

- 12.1 The Customer shall on demand defend, indemnify and hold harmless Skills Forward against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the End User's use of the Services and/or the Documentation, provided that: (i) the Customer is given prompt notice of any such claim; (ii) Skills Forward provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and (iii) the Customer is given sole authority to defend or settle the claim.
- 12.2 Skills Forward shall defend the Customer, its officers, directors and employees against any claim that any of the Services infringe any United Kingdom patent effective as of the Effective Date, copyright, trade mark, database right or right of confidentiality, and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that: (i) Skills Forward is given prompt notice of any such claim; (ii) the Customer provides reasonable co-operation to Skills Forward in the defence and settlement of such claim, at Skills Forward's expense; and (iii) Skills Forward is given sole authority to defend or settle the claim.
- 12.3 In the defence or settlement of any claim, Skills Forward may procure the right for the Customer to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate this Agreement on not less than 3 Business Days' notice to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer.

- 12.4 In no event shall Skills Forward, its employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on: (i) a modification of the Services by anyone other than Skills Forward; or (ii) the Customer's and/or End User's use of the Services in a manner contrary to the instructions given by Skills Forward (including in any user guides published from time to time by Skills Forward); or (iii) the Customer's use of the Services after notice of the alleged or actual infringement from Skills Forward or any appropriate authority.
- 12.5 The foregoing and clause 13.3.2 state the Customer's sole and exclusive rights and remedies, and Skills Forward's (including Skills Forward's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.

13. **Limitation of liability**

- 13.1 Except as expressly and specifically provided in this Agreement:
- 13.1.1 the Customer assumes sole responsibility for results obtained from the use of the Services and the Documentation by the Customer and/or its End Users, and for conclusions drawn from such use, whether by the Customer or by the End Users. Skills Forward shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to Skills Forward by the Customer in connection with the Services, or any actions taken by Skills Forward at the Customer's direction; and
- 13.1.2 the Services are provided to the Customer on an "as is" basis and all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this Agreement.
- 13.2 Nothing in this Agreement excludes the liability of Skills Forward: (i) for death or personal injury caused by Skills Forward's negligence; or (ii) for fraud or fraudulent misrepresentation.
- 13.3 Subject to clause 13.1 and clause 13.2:
- 13.3.1 neither party shall be liable to the other whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this Agreement; and
- 13.3.2 Skills Forward's total aggregate liability for any claim (or a series of connected claims) in contract (including in respect of the indemnity at clause 12.2), tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement shall be limited to the total Licence Fees paid for the End User Licences during the 12 months immediately preceding the date on which the claim (or the first claim in a series of connected claims) arose.

14. **Term and termination**

- 14.1 This Agreement shall, unless otherwise terminated as provided in this clause 14, commence on the Effective Date and shall continue for the Initial Licence Term and, thereafter, this Agreement shall be automatically renewed for successive periods equal to the duration of the Initial Licence Term (each a **Renewal Period**), unless:
- 14.1.1 either party notifies the other party of termination, in writing, at least 60 days before the end of the Initial Licence Term or any Renewal Period, in which case this Agreement shall terminate upon the expiry of the applicable Initial Licence Term or Renewal Period; or
- 14.1.2 it is otherwise terminated in accordance with the provisions of this Agreement;
- and the Initial Licence Term together with any subsequent Renewal Periods shall constitute the **Licence Term**.
- 14.2 Without affecting any other right or remedy available to it, either party may terminate this Agreement with immediate effect by giving written notice to the other party if:
- 14.2.1 the other party fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than 60 days after being notified in writing to make such payment;
- 14.2.2 the other party commits a material breach of any other term of this Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
- 14.2.3 the other party repeatedly breaches any of the terms of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement; or
- 14.2.4 the other party is affected by an Insolvency Event.
- 14.3 On termination of this Agreement for any reason:
- 14.3.1 the right granted under clause 3.1 (right to permit End Users to use the Product(s)) of this Agreement and all other licences granted under or pursuant to this Agreement shall immediately terminate;
- 14.3.2 all End User Access shall cease immediately;
- 14.3.3 each party shall return and make no further use of any equipment, property, Documentation and other items (and all copies of them) belonging to the other party; and
- 14.3.4 any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination shall not be affected or prejudiced.
15. **Force majeure.** Skills Forward shall have no liability to the Customer under this Agreement if it is prevented from or delayed in performing its obligations under this Agreement, or from carrying on its business, by acts, events, omissions or accidents

beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of Skills Forward or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors, provided that the Customer is notified of such an event and its expected duration.

16. **Conflict.** Unless otherwise expressly specified in the relevant Schedule, if there is an inconsistency between any of the provisions in the main body of this Agreement and the Schedules, the provisions in the main body of this Agreement shall prevail.
17. **Variation.** No variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
18. **Waiver.** No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
19. **Rights and remedies.** Except as expressly provided in this Agreement, the rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.
20. **Severance**
- 20.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Agreement.
- 20.2 If any provision or part-provision of this Agreement is deemed deleted under clause 20.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.
21. **Entire agreement**
- 21.1 This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 21.2 Each party acknowledges that in entering into this Agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement.
- 21.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.
22. **Assignment**

- 22.1.1 Save as provided in clause 22.1.2 and/or clause 22.2, neither party may subcontract, assign, transfer, novate, grant any trust over, or otherwise deal with any of its rights or obligations under this Agreement without the prior written consent of the other party, such request not to be unreasonably withheld or delayed.
- 22.1.2 Notwithstanding clause 22.1.1, either party may assign, transfer, novate, grant any trust over, or otherwise deal with its rights and obligations under this Agreement, in part or in full, without the prior written consent of the other party to an acquirer of assets or a successor by merger.
- 22.2 Skills Forward shall be entitled to subcontract its obligations under this Agreement (subject to the provisions of paragraph 8 of the Data Protection Schedule) to any third party or engage third-party agents or subcontractors without obtaining the Customer's prior consent.
23. **No partnership or agency.** Nothing in this Agreement is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).
24. **Third party rights.** This Agreement does not confer any rights on any person or party (other than the parties to this Agreement and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.
25. **Notices**
- 25.1 Any notice required to be given under this Agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in this Agreement, or such other address as may have been notified by that party for such purposes, or sent by email to the other party's email address as set out in this Agreement.
- 25.2 A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9 am on the first Business Day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice sent by email shall be deemed to have been received at the time of transmission.
26. **Governing law.** This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
27. **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

Schedule 1 Interpretation

1. Interpretation
2. The definitions and rules of interpretation in this clause apply in this Agreement.

“Agreement” means the agreement between the Customer and Skills Forward for the supply of the Product(s) and the Services on the terms set out in these Conditions, and/or the Order Confirmation.

“Business Day” means a day other than a Saturday, Sunday or public holiday in England when banks in Newcastle are open for business.

“Conditions” means these terms and conditions.

“Customer” means the person or organisation procuring the Product(s) from Skills Forward and named as such on the Order Confirmation.

“Data Protection Legislation” means:

- (a) unless and until the General Data Protection Regulation ((EU) 2016/679) (GDPR) is no longer directly applicable in the UK, the GDPR and any national implementing laws (including the Data Protection Act 2018), regulations and secondary legislation, as amended or updated from time to time, in the UK; and then
- (b) any successor legislation to the GDPR or the Data Protection Act 2018.

“Data Protection Schedule” means Schedule 2 to these Conditions.

“Documentation” means any document made available to the Customer and/or any End User by Skills Forward in connection with the use of the Product(s), whether online or by any other means.

“Effective Date” means the date when the Order is accepted by Skills Forward, which shall be the date when Skills Forward issues a written or electronic confirmation of its acceptance of the Order (**“Order Confirmation”**), at which point the Agreement shall come into existence.

“End User(s)” means an individual authorised by the Customer to use and access the Product(s), being a member of the Customer’s personnel (whether admin user or a teacher), a student and/or an apprentice undertaking a course or study and/or apprenticeship with the Customer.

“End User Access” means the right of an End User to access and use the

Product(s) and the Documentation;

“End User Licences”	means the Licences purchased by the Customer pursuant to this Agreement which entitle End Users to access and use the Product(s) and the Documentation in accordance with this Agreement.
“End User Terms and Conditions”	means the terms and conditions of use of the Product(s) by the End Users as published on the website on which the Product(s) are made available to the End Users, including any policies, such as privacy policy and/or acceptable use policy.
“Skills Forward”	means Skills Forward Limited, a company incorporated in England and Wales with company number 05440652 and registered office address at Q6 Quorum Business Park, Benton Lane, C/O Emma Hoare, Newcastle Upon Tyne, England, NE12 8BT.
“Skills Forward Content”	means all training resources, including text, information, data, images, audio or video material in whatever medium or form developed by or on behalf of Skills Forward and made available to the End Users from time to time in connection with the Product(s).
“Initial Licence Term”	means the period of time of the duration specified in the Order Confirmation and commencing on the Start Date.
“Insolvency Event”	in relation to either party, that party: (a) is unable to pay its debts or becomes insolvent or bankrupt; (b) is the subject of an order made or a resolution passed for its administration, winding-up or dissolution; (c) is subject to any proceedings for the appointment of an administrative or other receiver, manager, trustee, liquidator, administrator, or similar officer over all or any substantial part of its assets; (d) proposes or enters into any composition or arrangement with its creditors generally (except for the purposes of a bona fide solvent amalgamation, reconstruction or re-organisation (provided this does not materially reduce the assets of that party)); or (e) is subject to an analogous event to any of the foregoing in any jurisdiction.
“Licence Fees”	means the Licence fees payable by the Customer to Skills Forward for the End User Licences, as set out in the Order Confirmation.
“Licence Term”	has the meaning given in clause 14.1 (Term and termination), being the Initial Licence Term together with any subsequent Renewal Periods.
“Normal Business”	means 9.00 am to 5.30 pm local UK time Monday to Thursday

Hours”	inclusive and 9.00am to 4.30pm local UK time on Fridays.
“Order”	means, the Customer’s request for the provision of the Services by Skills Forward, submitted by an authorised representative of the Customer, whether online, in writing or by telephone.
“Product(s)”	means the online solution(s) specified in the Order Confirmation.
“Renewal Period”	means the period described in clause 14.1 (Term and termination).
“Services”	means the Licence services provided by Skills Forward to the Customer under this Agreement in respect of the Product(s), including the Documentation and the Skills Forward Content made available through or in connection with the Product(s).
“Software”	means the software programmes in the Product(s).
“Start Date”	means the date when the Product(s) become available for access and use by the End Users, as such date is specified in the Order Confirmation.
“User Content”	means the data inputted by the Customer, End Users, or Skills Forward on the Customer’s behalf, for the purpose of using the Services or facilitating the use of the Product(s) by the End Users.
“Virus”	means any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

3. A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
4. Any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
5. A reference to writing or written includes email, but not fax.

6. If there is any inconsistency or conflict between any of the provisions of these Conditions, any Order and/or any Order Confirmation, the following order of priority shall apply: (i) these Conditions; (ii) Order Confirmation; and (iii) Order.

Schedule 2 Data Protection Schedule

1. The provisions of this Data Protection Schedule shall take precedence over any conflicting or inconsistent provisions of the main body of this Agreement and/or the Order Confirmation.
2. Skills Forward shall, in providing the Services, comply with its Privacy Policy available at Skills Forward's website from time to time.
3. Both parties will comply with all applicable requirements of the Data Protection Legislation. This paragraph 3 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.
4. The parties acknowledge that:
 - 4.1 in relation to any personal data (as defined in the Data Protection Legislation) of End Users ("**Protected Data**"), the Customer is the data controller and Skills Forward is the data processor in respect of such Protected Data for the purposes of the Data Protection Legislation (where **data controller** and **data processor** have the meanings as defined in the Data Protection Legislation);
 - 4.2 paragraph 0 of this Schedule sets out the scope, nature and purpose of processing by Skills Forward, the duration of the processing and the types of Protected Data and categories of data subject (as defined in the Data Protection Legislation); and
 - 4.3 the Protected Data may be transferred or stored outside the EEA or the country where the Customer and the End Users are located in order to carry out the Services and Skills Forward's other obligations under this Agreement.
5. Without prejudice to the generality of paragraph 3, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Protected Data to Skills Forward for the duration and purposes of this Agreement so that Skills Forward may lawfully use, process and transfer the Protected Data in accordance with this Agreement on the Customer's behalf. For the avoidance of doubt, this obligation extends to any special categories of data provided by the Customer or uploaded by the End Users in the course of the receipt of the Services.
6. Without prejudice to the generality of paragraph 3, Skills Forward shall, in relation to any Protected Data processed as a data processor for the Customer in connection with the performance by Skills Forward of its obligations under this Agreement:
 - 6.1 process that Protected Data only on the written lawful instructions of the Customer unless Skills Forward is required by the laws of any member of the European Union or by the laws of the European Union applicable to Skills Forward to process Protected Data (**Applicable Laws**). Where Skills Forward is relying on laws of a member of the European Union or European Union law as the basis for processing Protected Data, Skills Forward shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit Skills Forward from so notifying the Customer;

- 6.2 not transfer any Protected Data outside of the European Economic Area (or the United Kingdom, in the event the United Kingdom is no longer part of the European Economic Area) unless the following conditions are fulfilled:
- (a) the Customer or Skills Forward has provided appropriate safeguards in relation to the transfer;
 - (b) the data subject has enforceable rights and effective legal remedies;
 - (c) Skills Forward complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Protected Data that is transferred; and
 - (d) Skills Forward complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Protected Data;
- 6.3 assist the Customer, at the Customer's cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- 6.4 notify the Customer without undue delay on becoming aware of a Protected Data breach;
- 6.5 at the written direction of the Customer (received not later than 60 days from the date of termination of the Agreement), delete or return Protected Data and copies thereof to the Customer on termination of the Agreement unless required by Applicable Law to store the Protected Data; and
- 6.6 maintain complete and accurate records and information to demonstrate its compliance with this paragraph 6.
7. Each party shall ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the other party, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting personal data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to personal data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it).
8. The Customer consents to Skills Forward appointing the entities listed in paragraph 9 of this Schedule as "Approved Sub-Processors" as a third-party processor(s) of Protected Data under this Agreement. Skills Forward confirms that it has entered or (as the case may be) will enter with the third-party processor into a written agreement on that third party's standard terms of business or incorporating terms which are substantially similar to those set out in this Data Protection Schedule, in each case provided that such terms comply with the requirements of the Data Protection Legislation. As between the

Customer and Skills Forward, Skills Forward shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this paragraph 8.

9. Approved Sub-Processors:

a) NCFE (Skills Forward group company) – finance and IT services;

(b) Amazon Web Services – cloud hosting services;

(c) Databarracks – Server/AWS support services;

(d) Potts Print – Supplier of paper-based Initial Assessments, Diagnostics, Level Checkers, and online print shop;

(e) ReciteMe – Web accessibility service, allowing website text to be read aloud

10. Specification of processing of personal data to be carried out by Skills Forward as a data processor for the Customer:

Scope and purpose of processing:	processing of personal data of End Users for the purpose of the provision of the Services pursuant to this Agreement.
Duration of processing:	the duration of the Agreement.
Categories of data subject:	End Users, being the Customer’s personnel, students and apprenticeships
Types of personal data:	<p>Contact information: full name, email address, telephone number, contact address, country of residence</p> <p>Account information: picture (if uploaded by the End User), profile information summary, preferences regarding contact method and subject matter, privacy preferences of the End User, preferences regarding participating in forums.</p> <p>Additional information: date of birth, ethnicity, gender, National Insurance number, student reference number.</p> <p>Use information: messages sent and received via the Skills Forward website/platform, in respect of learner End Users, educational history and attainment, information about courses, assessments and other activities undertaken on the website/platform.</p> <p>Special category of personal data: information about health collected for the purpose of providing reasonable adjustments and/or special considerations (including learning difficulties, disabilities or health problems).</p>