Quest Data Processing Agreement

This agreement records the terms upon which the Supplier will process Customer Data for the purpose of providing the Services.

BY CONTINUING TO USE QUEST ASSESSMENTS AND TRANSMITTING OR GRANTING ACCESS TO SOME OR ALL OF THE CUSTOMER DATA, THE CUSTOMER AGREES TO THE TERMS OF THIS DATA PROCESSING AGREEMENT

1. Definitions and Interpretation

1.1. Unless otherwise defined herein, capitalised terms and expressions used in this Agreement shall have the following meaning:

1.1.1. "Agreement" means this Data Processing Agreement;
1.1.2. "Platform" means the learning platforms provided by Quest Assessments, which is a brand name of Atom Learning Ltd;
1.1.3. "Confidential Information" means all confidential information (however recorded or preserved) disclosed by the School to Quest Assessments in connection with this Agreement which is either labelled as such or else which could be reasonably considered confidential because of its nature and the manner of its disclosure;
1.1.4. "Customer Data" means Personal Data relating to students, parents and guardians, and staff of the Customer.
1.1.5. "Data" has the meaning given in the DPA as amended or replaced from time-to-time;
1.1.6. "Data Controller" has the meaning given in the DPA as amended or replaced from time-to-time;
1.1.7. "Data Processor" has the meaning given in the DPA as amended or replaced from time-to-time;
1.1.8. "Data Protection Laws" means the DPA, and all applicable laws and regulations relating to the processing of personal data and privacy applicable in the United Kingdom from time-to-time;
1.1.9. "DPA" means the Data Protection Act 2018;
1.1.10. "Good Industry Practice" means using standards, practises, methods and procedures conforming to the law and exercising that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body

engaged in a similar type of undertaking under the same or similar circumstances;

1.1.11. "Personal Data" has the meaning given in the DPA as amended or replaced from time-to-time;

1.1.12. "Personal Data Breach" means the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, any Personal Data transmitted, stored, or otherwise processed;

1.1.13. "Processed" or "Processing" has the meaning given in the DPA as amended or replaced from time-to-time;

1.1.14. "Quest" or "Quest Assessments" means Atom Learning Ltd (Quest is a brand name of Atom Learning Ltd);

1.1.15. "Services" means the services performed by Quest Assessments for the benefit of the Customer;

1.1.16. "Supplier" means Atom Learning Ltd, supplying its product Quest Assessments.

1.2. A reference to writing or written includes emails and writing in any electronic form.

2. General Provisions

2.1. By continuing to use the Platform, and by granting access to the Supplier and the Platform to some or all of the Customer Data, the Customer agrees to the terms of this Agreement.

2.2. The Customer and Supplier acknowledge that, for the purposes of Data Protection Legislation, the Supplier is a Data Processor and the Customer is a Data Controller in respect of the Customer Data comprising Personal Data.

3. Processing of Customer Data

3.1. The Supplier shall comply with all applicable Data Protection Laws in respect of the processing of the Customer Data.

3.2. The Supplier shall not process any Customer Data other than on the instructions of the Customer (unless such processing shall be required by any law to which the Supplier is subject).

3.3. The Customer hereby instructs and authorises the Supplier to process Customer Data for the purpose of providing the Platform to students and staff of the Customer, and as otherwise reasonably necessary for the provision of the Services by the Supplier to the Customer.

3.4. The Customer warrants and represents that the transfer by the Customer of the Customer Data to the Supplier for the purpose of the Supplier processing the Customer Data as set out in this clause 3.3, is lawful under, and in full compliance with, Data Protection Laws. The Customer shall indemnify the Supplier against all costs, claims, damages, expenses, losses, and liabilities incurred by the Supplier

arising out of or in connection with any breach of the foregoing warranty and representation.

3.5. The Customer and Supplier confirm that:

3.5.1. the processing of Customer Data by the Supplier will comprise the creation of user accounts for the relevant students and staff that allow them to access and make use of the Platform;

3.5.2. the purpose of the processing of Customer Data by the Supplier is to enable the provision of the Services; and

3.5.3. the data that will be processed by the Supplier will be Customer Data, and the data subjects will be students of the Customer and staff of the Customer.

3.6. The Supplier shall inform the Customer as soon as reasonably possible if asked to do something which would infringe UK GDPR or this Agreement.

4. Ownership of the Customer Data and Confidential Information

4.1. The Customer Data shall always remain the property of the Customer.

4.2. The Supplier shall keep all Customer Data confidential and shall not:

4.2.1. use any Confidential Information or Customer Data except for the purpose of performing the Services; or

4.2.2. disclose any Confidential Information in whole or in part to any third party, except as expressly permitted by this Agreement, or to the extent required by law.

4.3. The Supplier shall ensure that all persons authorised by the Supplier to process the Personal Data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.

5. Security

5.1. Taking into account the state of the art, the costs of implementation and the nature, scope, context, and purposes of Processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, the Supplier shall in relation to the Customer Data implement appropriate technical and organisational measures to ensure a level of security appropriate to that risk, including, as appropriate, the measures referred to in Article 32(1) of the UK GDPR.

5.2. In assessing the appropriate level of security, the Supplier shall take account in particular of the risks that are presented by Processing, in particular from a Personal Data Breach.

6. Subprocessing

6.1. The Supplier may appoint a subcontractor to carry out any or all of its processing activities in accordance with the terms of clause 6.

6.2. The Customer hereby authorises the Supplier to appoint third parties to provide electronic data storage and transmission services to the Supplier in connection with the processing of the Customer Data. The Supplier shall notify the Customer of any changes to the identity of such third parties from time-to-time.

6.3. Save as permitted by clause 6.2, the Supplier shall not appoint any subcontractor in connection with the processing of the Customer Data without the prior written permission of the Customer.

6.4. Where the Supplier appoints a subcontractor pursuant to this clause 6, it shall ensure that the arrangement between it and the subcontractor is governed by a written contract including terms which offer at least the same level of protection for the Customer Data as those set out in this Agreement, and meet the requirements of Data Protection Laws.

7. Deletion or return of Customer Data

7.1. The Supplier shall within a reasonable period of either a written request from the Customer or the termination of this Agreement, delete and procure the deletion of all copies of the Customer Data.

7.2. Subject to clause 7.3, the Customer may in its absolute discretion by written notice to the Supplier at any time require the Supplier to:

7.2.1. return a complete copy of all Customer Data by secure file transfer in such format as is reasonably notified by the Customer to the Supplier; and

7.2.2. delete and use all reasonable endeavours to procure the deletion of all other copies of Customer Data processed by the Supplier or any of its subcontractors. The Supplier shall use all its reasonable endeavours to comply with any such written request within 30 days of receiving such request.

7.3. The Supplier and its subcontractors may retain Customer Data to the extent required by any applicable law, provided that the Supplier and its subcontractors shall ensure the confidentiality of all such Customer Data retained, and shall ensure that such Customer Data is only processed as necessary for the purpose(s) specified by the applicable laws requiring its storage and for no other purpose.

7.4. The Supplier shall, within 30 days of request from the Customer, provide written certification to the Customer that it has fully complied with this clause 7.

8. Data Subject Rights

8.1. Taking into account the nature of the Processing, the Supplier shall assist the Customer by implementing appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of the Customer's obligations, to respond to requests to exercise Data Subject rights under the Data Protection Laws.

8.2. The Supplier shall:

8.2.1. advise Data Subjects to contact the Customer directly to exercise their Data Subject rights under any Data Protection Law; and

8.2.2. ensure that it does not respond to that request except on the documented instructions of the Customer or as required by Applicable Laws to which the Supplier is subject, in which case the Supplier shall to the extent permitted by Applicable Laws inform the Customer of that legal requirement before the Supplier responds to the request.

9. Data Breach

9.1. The Supplier shall notify the Customer without undue delay upon the Supplier becoming aware of a Personal Data Breach affecting Customer Data, providing the Customer with sufficient information to allow the Customer to meet any obligations to report or inform Data Subjects of the Personal Data Breach under the Data Protection Laws.

9.2. The Supplier shall cooperate with the Customer and take reasonable commercial steps as directed by the Customer to assist in the investigation, mitigation, and remediation of each such Personal Data Breach.

10. Data Protection Impact Assessment

10.1. The Supplier shall provide reasonable assistance to the Customer with any data protection impact assessments, and prior consultations with competent data privacy authorities, which the Customer reasonably considers to be required by Article 35 or 36 of the UK GDPR or equivalent provisions of any other Data Protection Law, in each case solely in relation to Processing of Customer Data by, and taking into account the nature of the Processing and information available to the Supplier.

11. Audit rights

11.1. Subject to clauses 11.2, 11.3 and 11.4, the Supplier shall:

11.1.1. make available to the Customer on request all information necessary to demonstrate the Supplier's compliance with this Agreement; and

11.1.2. allow for and contribute to audits, including inspections, by the Customer or any auditor nominated by the Customer in relation to the processing of the Customer Data by the Supplier and its subcontractors.

11.2. The information and audit rights of the Customer under clause 11.1 shall apply only to the extent required by Data Protection Laws.

11.3. The Customer shall give the Supplier reasonable notice of any audit or inspection that it wishes to conduct under this clause 11.1, and shall (and shall ensure that any nominated auditor shall) avoid causing (or, if it cannot avoid, minimise) any

damage, injury or disruption to the Supplier's or its subcontractors' premises, equipment, personnel, and business.

11.4. Without prejudice to clause 11.3, the Supplier or its subcontractors are not required to give access to their premises for the purposes of an audit or inspection:

11.4.1. to any individual unless he or she produces reasonable evidence of identity and authority;

11.4.2. outside normal business hours at those premises;

11.4.3. for the purposes of more than one audit or inspection in any calendar year.

12. Data Transfer

12.1. The Supplier may not transfer or authorise the transfer of Customer Data to countries outside the UK or EU without the prior written consent of the Customer.

13. Liability

13.1. The Supplier shall have no liability to the Customer, whether arising in contract, tort (including negligence), breach of statutory duty or otherwise, for or in connection with:

13.1.1. loss, interception, or corruption of any data; other than to the extent such loss is caused by the negligence or fault of the Supplier.

13.1.2. loss, interception, or corruption of any data resulting from any negligence or default by any provider of telecommunications services to the Supplier or the Customer;

13.1.3. damage to reputation or goodwill;

13.1.4. any indirect or consequential loss.

13.2. In all other circumstances, the Supplier's maximum liability to the Customer, whether arising in contract, tort (including negligence), breach of statutory duty, or otherwise, in connection with the Services shall be limited to £1 million.

13.3. Nothing in this clause shall limit the liability of the Supplier for any death or personal injury caused by its negligence, fraud, or fraudulent misrepresentation, or any other matter for which liability cannot be limited or excluded as a matter of law.

14. Insurance

14.1. The Supplier maintains a policy of insurance in respect of public liability in respect of the Services provided by the Supplier and the processing of the Customer Data and shall produce a copy of such policy to the Customer if requested to do so.

15. Term of the Agreement

15.1. This Agreement shall commence on the date that the Customer first approves access to the Customer Data via one of the Supplier's integration partners or electronically sends or uploads any Customer Data to the Platform and shall continue in full until the Supplier is instructed by the Customer to terminate the Services.

15.2. Upon termination of this Agreement, clauses 3.4, 4, and 7 shall continue to apply.

16. Rights of Third Parties

16.1. No person who is not a party to this Agreement shall have any rights under this Agreement, whether pursuant to The Contracts (Rights of Third Parties) Act 1999 or otherwise.

17. Entire Agreement

17.1. Save for any statement, licence, representations, or assurances as to the method or location of storage this Agreement and the schedules to it constitute the entire agreement and understanding between the parties and with respect to all matters which are referred to and shall supersede any previous agreements between the parties in relation to the matters referred to in this Agreement.

18. Variation

18.1. Any variation to the terms of this Agreement shall be made in writing between the Supplier and the Customer.

19. Governing Law

19.1. 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 laws of England and Wales.

19.2. The Parties irrevocably agree 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).

20. Notices

20.1. All notices and communications given under this Agreement must be in writing via email to gdpr@questassessments.com.