

matrix Standard Services Terms and Conditions

These Terms and Conditions apply to the provision of matrix Standard services (“**Services**”) by The Growth Company Limited. These Terms and Conditions, together with any other documents or other terms to which specific contractual reference is made in the booking of the Services, constitute the “**Agreement**” between you (the “**Customer**”) and The Growth Company Limited (“**The Growth Company**”). Your booking of matrix Standard Services and agreement to the provision of the Services signifies your agreement to these Terms and Conditions.

Parties

- A. “**The Growth Company**” shall mean The Growth Company Limited, a company registered in England with Company Registration Number 2443911 and a Registered Address of Lee House, 90 Great Bridgewater Street, Manchester, M1 5JW.
- B. “**Customer**” shall mean the other party to this Agreement who acknowledges that they have had the opportunity of reading this Agreement and has agreed to be bound by its terms.

Recital

- A. The Growth Company holds the contract to manage the matrix Standard on behalf of the Department for Education. This includes the delivery of assessment and advisory work to support Customers to achieve and benefit from accreditation to the matrix Standard.
- B. The Customer has requested Service(s) from Growth Company.

1. Interpretation

- 1.1. “**Service**” means the service(s) that the Customer has agreed The Growth Company to provide for example, assessment, advice, guidance, workshops.
- 1.2. “**Project Plan**” mean the document outlining the details of the Service that The Growth Company will provide.

2. Payment of fees

- 2.1. The Growth Company’s charges and expenses for the delivery of the Services will be confirmed in advance of the start of the Service.
- 2.2. Invoices for Services delivered shall be submitted to the Customer by The Growth Company prior to the Service start date unless:
 - 2.2.1. A different payment schedule is agreed in advance by both parties; and
 - 2.2.2. The full payment amount is covered by a Purchase Order from the Customer.
- 2.3. Invoices are payable together with VAT at the appropriate rate within 30 days of the Invoice date without right of set-off or counterclaim statutory or otherwise.
- 2.4. The Growth Company reserves the right to charge interest at a rate of 4% per annum above the prevailing base lending rate of National Westminster Bank Plc on any bills which remain unpaid after 30 days.

Cancellation and Postponement

- 2.5. If the Customer postpones or cancels the service or any part thereof, before the first onsite date, or if the Customer’s actions mean that the activity cannot proceed on the confirmed dates, the Customer will be liable for the agreed fees based on the following:
 - 2.5.1. 50% of the price quoted if cancellation/postponement occurs within 90 days before the First Day On Site.
 - 2.5.2. 75% of the price quoted cancellation/postponement occurs within 30 days before the First Day On Site.
 - 2.5.3. 100% of the price quoted cancellation/postponement occurs within 10 days before the First Day On Site.
- 2.6. For the purposes of 2.5 above, First Day on Site shall mean the date indicated as such in the Project Plan.
- 2.7. If the Customer has paid for the Service in advance, the cancellation/postponement fee shall be effected by refunding any remaining amount.

3. Verification

- 3.1. Following a tendering process, the Department of Education has granted to The Growth Company the contract to manage the matrix Standard.
- 3.2. The scope of the work that The Growth Company has agreed with the Customer is as set out in the Project Plan.
- 3.3. The Customer recognises that neither the Services, nor management of the Service, shall constitute financial or audit advice. All advice, consultancy, assessments, conclusions, recommendations, and training in the Project Plan and any subsequent report, letter or communication, both verbal and written, are made in good faith and on the basis of the information available to The Growth Company at that time whether from the Customer or information which is in the public domain and the validity thereof will

depend, amongst other factors, on the effective co-ordination of the Customer, and the Customer's Staff. Hence, no condition, warranty or representation, express or implied, is given as to the results or performance obtained or to be obtained from the Services provided by The Growth Company and the Customer shall be responsible for the proper adaptation of The Growth Company's recommendations to the Customer's own circumstances. The Growth Company cannot warrant that the work will be outside the scope of any patent or registered design and will not be liable to the Customer for any loss or claim which is not reasonably foreseeable on acceptance of the Project Plan.

- 3.4. Unless expressly stated, The Growth Company will not be obliged to verify the information, or the reasonableness of any assumptions reflected in the information the Customer supplies. The Growth Company will not carry out work equivalent to that which would be performed in a statutory audit of financial statements. Our work is not designed to detect fraud or dishonesty.

4. Sub-contracting

- 4.1. In order to facilitate the provision of the Services, The Growth Company will engage a Practitioner(s) to deliver the Services set out in the Project Plan.
- 4.2. The Growth Company may, at its discretion, engage a Practitioner(s) from its network of sub-contracted Practitioners. The Growth Company will ensure that any sub-contracted Practitioner engaged are suitably qualified and experienced to conduct the project and carry suitable accreditations and insurances.

5. Limitation of liability

- 5.1. The Growth Company shall use all reasonable skill and care in carrying out the project and unless prevented by unforeseen circumstances or circumstances beyond its reasonable control shall deliver the project outcomes/outputs to the Customer by the agreed date.
- 5.2. The Growth Company shall not be liable to the Customer for loss or damage to the Customer's property unless due to the negligence or other failure of The Growth Company to perform its obligations under this agreement or general law.
- 5.3. The Growth Company shall have no liability to the Customer for any indirect, special or consequential loss arising out of or in connection with the provision of the Project (except in respect of death or personal injury resulting from negligence) and the total liability of The Growth Company for any other loss to the Customer arising pursuant to this agreement in respect of any one event or series of connected events shall not exceed the amount of any indemnity cover arranged pursuant to the terms of engagement or if no such cover has been arranged the aggregate charges payable by the Customer in respect of the Project.

6. Potential conflicts of interest and independence

- 6.1. By agreeing to these Terms and Conditions, the Customer confirms its understanding of the roles that The Growth Company is undertaking and that it considers that there are no conflicts of interest or independence in relation to these roles. Should a conflict of interest or independence arise then this shall be promptly disclosed to the other party and appropriate safeguards discussed. If it is not possible to put appropriate safeguards in place, either party may terminate the Project Plan without liability.

7. Responsibility and reliance

- 7.1. The Growth Company's advice, consultancy, assessments, conclusions, and recommendations will be based on information provided by, and discussions with, the Customer, which The Growth Company shall be entitled to rely upon without further investigation. The Growth Company's advice, assessments, conclusions, and recommendations may be subject to change should additional information become available after the date of the Service; however, The Growth Company will be under no obligation to update the advice, consultancy, assessments, conclusions and recommendations.
- 7.2. To the fullest extent permitted by law, The Growth Company does not accept or assume responsibility to anyone other than the Customer under this Agreement for the Service provided.
- 7.3. To the fullest extent permitted by law, The Growth Company does not accept any responsibility for any loss or damages arising out of the use of reports, advice, assessments, training, or other communications by the Customer for any purpose other than in connection with the Service.
- 7.4. Notwithstanding the scope of this Agreement, responsibility for management decisions will remain with the directors of the Customer and not with The Growth Company. The directors should perform a credible review of recommendations and options allowing them to determine which to implement following The Growth Company's advice, assessment or training.

8. Governing law

- 8.1. This proposal shall be governed by and construed in accordance with English Law and the Customer hereby agrees with The Growth Company to submit for all purposes in connection with this proposal to the exclusive jurisdiction of the English courts.

9. Force Majeure clause

- 9.1. No party to this agreement shall be held in any way responsible for any failure to fulfil its obligations under this Agreement if such failure has been caused (directly or indirectly) by circumstances beyond the control of the defaulting party. This shall include war, riot, acts of terrorism, industrial action, accident or equipment failure (except where such accident or equipment failure has been caused by the negligence of the defaulting party, its employees, sub-licensees, subcontractors, agencies or otherwise).

10. Data Protection

- 10.1. The Growth Company and the Customer each agrees to comply with its obligations as set out in Schedules 1A and 1B of this Agreement.

11. Bribery Act

11.1. The policy of The Growth Company is to conduct all of its business in an honest and ethical manner, and to comply with all applicable anti-corruption legislation, including the Bribery Act 2010. The Growth Company takes a zero-tolerance approach to bribery and corruption and is committed to acting professionally and with integrity in all its business dealings and relationships whether in the UK or abroad. Where The Growth Company instructs any third party on the Customer's behalf to provide services in relation to any engagement, The Growth Company will implement proportionate risk-based procedures which are designed to prevent any relevant third party from engaging in, or agreeing to engage in, any acts of bribery or corruption in relation to the services that are provided.

Schedule 1A to Appendix 1 – Data Protection

1. Definitions

In this Schedule 1A the following definitions shall apply:

"Applicable EU Law"	means any law of the European Union or the law of one or more of the Member States of the European Union;
"Controller", "Processor", and "Data Subject"	shall have the meaning given to those terms in the applicable Data Protection Laws;
"Data Protection Laws"	means (a) any law, statute, declaration, directive, regulation or other legislative enactment (as amended, consolidated or re-enacted from time to time) which relates to the protection of individuals with regards to the Processing of Personal Data to which a Party is subject, including the GDPR or, in the event that the UK leaves the European Union, all legislation enacted in the UK in respect of the protection of personal data; and (b) any code of practice or guidance published by the ICO (or equivalent regulatory body) from time to time;
"Data Processing Particulars"	means, in relation to any Processing under this Agreement: (a) the subject matter and duration of the Processing; (b) the nature and purpose of the Processing; (c) the type of Personal Data being Processed; and (d) the categories of Data Subjects; set out in Schedule 1B
"Data Subject Request"	means an actual or purported request from a Data Subject exercising his rights under the Data Protection Laws in relation to Personal Data including without limitation: the right of access by the Data Subject, the right to rectification, the right to erasure, the right to restriction of processing, the right to data portability and the right to object;
"GDPR"	means the General Data Protection Regulation (EU) 2016/679;
"ICO"	means the UK Information Commissioner's Office, or any successor or replacement body from time to time;
"Losses"	means all losses, fines, penalties, liabilities, damages, costs, charges, claims, amounts paid in settlement and expenses (including legal fees (on a solicitor/client basis), disbursements, costs of investigation (including forensic investigation), litigation, settlement (including ex gratia payments), judgment, interest and penalties), other professional charges and expenses, disbursements, cost of breach notification including notifications to the data subject, cost of complaints handling (including providing data subjects with credit reference checks, setting up contact centres (e.g. call centres) and making ex gratia payments), all whether arising in contract, tort (including negligence), breach of statutory duty or otherwise;
"Permitted Purpose"	means the purpose of the Processing as set out in more detail in the Data Protection Particulars
"Personal Data"	means any personal data (as defined in the Data Protection Laws) Processed by either Party in connection with this Agreement, and for the purposes of this Agreement includes Sensitive Personal Data (as such Personal Data is more particularly described in Schedule 1B (<i>Data Protection Particulars</i>));
"Personal Data Breach"	has the meaning set out in the Data Protection Laws;
"Personnel"	means all persons engaged or employed from time to time by The Growth Company in connection with this Agreement, including employees, consultants, contractors and permitted agents;
"Processing"	has the meaning set out in the Data Protection Laws (and " Process " and " Processed " shall be construed accordingly);
"Restricted Country"	means a country, territory or jurisdiction outside of the European Economic Area which the EU Commission has not deemed to provide adequate protection in accordance with Article 25(2) of the DP Directive and/or Article 45(1) of the GDPR (as applicable);
"Sensitive Personal Data"	means Personal Data that reveals such special categories of data as are listed in Article 9(1) of the GDPR;
"Services"	means matrix Standard services and
"Third Party Request"	means a written request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by law or regulation

2. DATA PROTECTION

2.1 Arrangement Between the Parties

- 2.1.1 The Parties acknowledge that the factual arrangement between them dictates the classification of each party in respect of the Data Protection Laws. Notwithstanding the foregoing the Parties anticipate that the Customer shall act as a Controller and The Growth Company shall act as a Processor where The Growth Company is Processing the Personal Data on behalf of the Customer in relation to the Permitted Purpose in connection with the performance of its obligations under this Agreement;
- 2.1.2 Each of the Parties shall in performing its obligations under this Agreement, comply with the obligations imposed upon it under the Data Protection Laws.
- 2.1.3 Each of the Parties acknowledges and agrees that Schedule 1B (Data Processing Particulars) to this Agreement is an accurate description of the Data Processing Particulars.

2.2 Data Controller Obligations

- 2.2.1 Without limiting the generality of the obligations set out in Paragraph 2.1.2, in particular, the Customer shall:
 - (a) make all required notification(s) to the ICO in relation to its Processing of Personal Data;
 - (b) ensure that it is not subject to any prohibition or restriction which would: (i) prevent or restrict it from disclosing or transferring Personal Data to The Growth Company; (ii) prevent or restrict it from granting The Growth Company access to Personal Data; and/or (iii) prevent or restrict The Growth Company from Processing Personal Data, in each case as required for The Growth Company to perform the Services in accordance with this Agreement;
 - (c) ensure that all fair processing notices have been given (and/or, as applicable, consents obtained) and are sufficient in scope to allow The Growth Company to Process Personal Data as required in connection with the provision of the Services under this Agreement and in accordance with the Data Protection Laws;
 - (d) ensure that all Personal Data disclosed or transferred to, or accessed by, The Growth Company is accurate, up-to-date, adequate, relevant and not excessive to enable The Growth Company to process Personal Data as required for The Growth Company to perform the Services in accordance with this Agreement;
 - (e) maintain technical and organisational security measures sufficient to comply at least with the obligations imposed on the Controller by Data Protection Laws including, without limitation, (i) ensuring a level of security appropriate to the risk involved in the processing (which shall include without limitation and, as appropriate, taking steps such as the pseudonymisation and/or encryption of personal data, taking steps to ensure the ongoing confidentiality, integrity, availability and resilience of the systems and services used to process Personal Data, ensuring the ability to restore the availability and access to Personal Data and regularly testing the effectiveness of the systems in place); (ii) adhering to any relevant codes of conduct or approved certifications; and (iii) ensuring that all individuals who have access to Personal Data maintain the confidentiality and security of Personal Data and comply with the terms of this Agreement; and
 - (f) not do anything which shall damage the reputation of The Growth Company.

2.3 Data Processor Obligations

- 2.3.1 To the extent that The Growth Company Processes any Personal Data as a Processor on behalf of the Customer for the purpose of performing the Services under this Agreement, The Growth Company undertakes to the Customer that The Growth Company shall:
 - (a) only Process Personal Data for and on behalf of the Customer for the purposes of performing its obligations under this Agreement and only in accordance with the Customer's instructions from time to time, unless otherwise required by law;
 - (b) inform the Customer immediately if it considers any of the Customer's instructions infringes Data Protection Laws;
 - (c) implement and maintain appropriate technical and organisational security measures to safeguard against any unauthorised or unlawful Processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data and where requested provide to the Customer evidence of its compliance with such requirement;
 - (d) take all reasonable steps to ensure the reliability and integrity of any of its staff and independent contractors who have access to Personal Data and ensure that only staff and contractors who are required to assist in performing the Services have access to such Personal Data;
 - (e) ensure that any of its staff and/or contractors who have access to Personal Data have entered into appropriate contractually binding confidentiality undertakings;
 - (f) not disclose Personal Data to a third party (including a sub-contractor or sub-processor) unless the third party agrees to terms which are substantially the same as the terms set out in this Agreement or in response to Third Party Requests where The Growth Company is prohibited by law or regulation from notifying the Customer;
 - (g) at the Customer's reasonable request: (i) make available to the other party evidence to demonstrate The Growth Company's compliance with the requirements of this Paragraph 2.3.1; and/or (ii) allow for and contribute to audits of The Growth Company's Processing activities pursuant to this Agreement conducted by or on behalf of the Customer on reasonable notice;

- (h) at the Customer's direction, arrange for the prompt and safe return and/or secure permanent destruction of all Personal Data, together with all copies in its possession or control (if any) within forty (40) days of such direction and, where requested by the Customer, certify that such destruction has taken place, except where The Growth Company is required by Applicable EU Law or any regulatory body to retain any of such Personal Data;
- (i) not transfer any Personal Data to a Restricted Country unless such transfer is made in compliance with the Data Protection Laws;
- (j) at the Customer's request use all reasonable endeavours to assist the Customer to comply with the obligations imposed on the Customer by or in relation to:
 - (i) the rights of Data Subjects;
 - (ii) assistance to the ICO; and/or
 - (iii) Data Protection Impact Assessments

provided that any such assistance shall be provided to the Customer subject to a fee payable to The Growth Company to be agreed between the Parties.

3. RECOVERABLE LOSS

3.1 Notwithstanding any other clause, The Growth Company shall not be prevented from recovering any Losses it incurs.

4. INDEMNITY

4.1 The Customer shall indemnify on demand and keep indemnified The Growth Company against any Losses incurred by, awarded against or agreed to be paid by The Growth Company to the extent arising from the Customer's failure to comply with the Data Protection Laws.

5. INSURANCE

5.1 The Customer agrees:

- 5.1.1 to obtain and keep in full force and effect at all times, in respect of the Processing of Personal Data, a policy or policies of insurance covering liability for damage arising to persons as a result of the Customer's failure to comply with the GDPR and/or the provisions of this Schedule 1A (Data Protection) with policy limits and provisions conforming to such requirements as The Growth Company may from time to time prescribe;
- 5.1.2 to deliver to The Growth Company copies of all applicable insurance policies taken out pursuant to the provisions of this Agreement.

Schedule 1B to Appendix 1 – Data Protection Particulars

The subject matter of the Processing	The delivery of matrix Standard Assessment and Advisory projects
The nature of the Processing	<ul style="list-style-type: none"> • Obtaining, recording and retaining details of the Head of Organisation and nominated contact(s) from the Customer; and • Obtaining, recording and retaining the details of the Customer's employees, contractors, volunteers and Board members. • The personal data will be transmitted by The Growth Company to the allocated Practitioner.
The duration of the Processing	For the length of the Services as set out in the Project Plan
The purpose of the Processing	<ul style="list-style-type: none"> • To communicate with the Customer's nominated contact(s) to facilitate the smooth running of the Services. • To plan a robust schedule of staff interviews ensuring a representative sample of job roles, genders, ages and lengths of service.
The type of Personal Data being Processed	<ul style="list-style-type: none"> • Identity Data - first name, last name, title, age and gender. • Contact Data - delivery address, email address and telephone numbers. • Employment & Educational Data - job title, employment status, length of service
The categories of Data Subjects	the Customer's employees, contractors, volunteers and Board members.