

Agreement for the Provision of Services

BETWEEN

CENTRE FOR EVALUATION AND MONITORING

AND

WARWICKSHIRE COUNTY COUNCIL

This AGREEMENT is deemed to be made on the 1st day of January 2020.

BETWEEN:

1. **The Chancellor, Masters and Scholars of the University of Cambridge** acting through its departments, The University of Cambridge Local Examinations Syndicate of the Triangle Building, Shaftesbury Road, Cambridge, CB2 8EA, and Cambridge University Press of the University Printing House, Shaftesbury Road, Cambridge, CB2 8BS (the "**Centre for Evaluation and Monitoring**" or "**CEM**"); and
2. **Warwickshire County Council**, registered address Shire Hall Warwick, CV34 4RR

(hereinafter the "**Customer**").

WHEREAS:

- A. The Customer is a Local Authority and wishes to purchase certain entrance testing services from CEM (the "**Services**"). The Services will include CEM making available to each of the schools listed in Schedule 7 to this Agreement (the "**Schools**") which are within the Customer's jurisdiction, a number of Test Materials belonging to CEM, which have been compiled by CEM using newly created Test Content and Test Materials. Such Test Materials shall be used by the Schools on behalf of the Customer in provision of entrance assessments (the "**Tests**") which will be administered for the purpose of the Customer assessing applicants wishing to be accepted for admission to the Schools.
- B. CEM has agreed to provide the Services to the Customer as described in Schedule 1 to this Agreement, in accordance with the Timetable described in Schedule 2, subject to the terms and conditions of this Agreement.

For the purposes of this Agreement, the following terms shall be considered to have the following meanings:

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| "Answer Sheets" | means the papers provided to Candidates to mark each of their chosen answers to the Test Items; |
| "Candidates" | means individual applicants wishing to be accepted for admission to the Customer's Schools who will sit the Test; |
| "CEM Representative" | means the individual identified in Schedule 1; |
| "Completion Date" | means 1 st October 2022; |
| "Counterparts" | means all schools within the Test Group; |
| "Customer Representative" | means the representative appointed by the Customer from time to time as the key point of contact for the Services and the Agreement as set out in Schedule 1; |

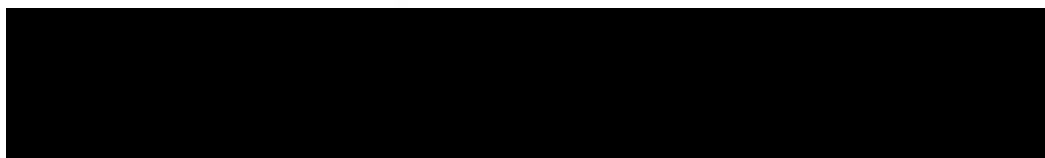
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| "Data Controller" | means as defined in the Data Protection Act 2018; |
| "Data Processor" | means as defined in the Data Protection Act 2018; |
| "Data Protection Regulations" | means the Data Protection Act 2018, the Regulation EU/2016/679 of the European Parliament and of the Council of 27 April 2016 (the General Data Protection Regulation) and all applicable laws and regulations relating to processing of personal data and privacy including where applicable the guidance and codes of practice issued by the Information Commissioner; |
| "Effective Date" | means 1 st January 2020; |
| "Financial Schedule" | means the payments and charges payable by the Customer for provision of the Services as outlined in Schedule 3; |
| "FOIA" | means the Freedom of Information Act 2000, and any subordinate legislation made under the Freedom of Information Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation; |
| "Intellectual Property Rights" | means any and all intellectual property rights of any nature anywhere in the world whether registered, registerable or otherwise, including patents, utility models, trademarks, registered designs and domain names, applications for any of the foregoing, trade or business names, goodwill, copyright and rights in the nature of copyright, design rights, rights in databases, moral rights, know-how and any other intellectual property rights which subsist in computer software, computer programs, websites, documents, information, techniques, business methods, drawings, logos, instruction manuals, lists and procedures and particulars of customers, marketing methods and procedures and advertising literature, including the "look and feel" of any websites; |
| "Invigilation Guide" | means the instructions and guidelines issued by CEM for the purposes of outlining best practice for administration of the Tests; |
| "Late Testing" | means any testing which takes place other than on the Test Date as set out in Schedule 2; |
| "Model Procedure" | means the procedure for dispute resolution as set out in clause 10.1.1 herein; |
| "Personal Data" | means as set out in the Data Protection Act 2018; |
| "Personnel" | means the employees and contractors of CEM involved in the delivery of the Services; |

- “Question Booklet”** means the papers containing Test Items;
- “Services”** means the services described in Schedule 1, as updated or amended from time to time;
- “Sound Files”** means the standard time sound file and the extra time sound file as described in Schedule 1;
- “Supplementary Test Date”** means any additional test date as described in Schedule 1;
- “Sound Transcript”** means the standard time sound file transcript and the extra time sound file transcript as described in Schedule 1;
- “Test Content”** means the combination of Test Items compiled by CEM to form the Question Booklet;
- “Test Cycle”** means each phase of Test delivery from Test development to conclusion of Late Testing as set out in Schedule 2; The first Test Cycle commences on the Effective Date, any subsequent Test Cycle thereafter, commences on the next anniversary of the Effective Date;
- “Test Date”** means in each Test Cycle the date of the Test as described in clause 4.1 and defined within the Timetable;
- “Test Group”** means all Counterparts sharing the same Test in any given Test Cycle, as set out in Schedule 6;
- “Test Invigilators”** means all individuals appointed by the Customer to oversee administration of the Test;
- “Test Items”** means all questions/problems compiling the Test Content of the Question Booklet;
- “Test Materials”** means collectively all materials necessary for provision of the Test, including but not limited to Question Booklets, Answer Sheets and SEN materials;
- “Test Support Materials”** means collectively all materials necessary for administration of the Test, including but not limited to Invigilation Guide, Familiarisation Guide, Sound File Transcript, SEN Sound File Transcript, Sound File and SEN Sound File;
- “Test Weighting”** means as set out in clause 2.4 of Schedule 1;
- “Timetable”** means the plan for delivery of the Services as set out in Schedule 2;
- 1.1. Clause, schedule and paragraph headings shall not affect the interpretation of this Agreement.
- 1.2. A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors and permitted assigns.
- 1.3. The schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement and any reference to this Agreement includes the schedules.

- 1.4. A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5. Words in the singular shall include the plural and vice versa.
- 1.6. A reference to one gender shall include a reference to the other genders.
- 1.7. A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.8. A reference to writing or written includes faxes and e-mail.
- 1.9. Any obligation in this Agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.10. A reference to a document is a reference to that document as varied or novated (in each case, other than in breach of the provisions of this Agreement) at any time.
- 1.11. References to clauses and schedules are to the clauses and schedules of this Agreement; references to paragraphs are to paragraphs of the relevant schedule.

2. TERM AND TIMETABLE

- 2.1. This Agreement shall be deemed to commence on the Effective Date and shall continue in full force and effect until the Completion Date (the "Term") unless further extended or earlier terminated in accordance with the provisions of clause 12 of this Agreement.
- 2.2. CEM and the Customer agree that where the Term spans more than one (1) Test Cycle, and thus this Agreement covers multiple Test Cycles, the Timetable annexed hereto as Schedule 2 to this Agreement shall only cover the first Test Cycle. A draft version of the proposed Timetable for each subsequent Test Cycle shall be provided by CEM for the Customer's consideration at least four (4) weeks prior to commencement of each subsequent Test Cycle. The Customer and CEM shall discuss and work diligently to negotiate in good faith and promptly agree the final Timetable for each subsequent Test Cycle. The final agreed upon version of the Timetable for each subsequent Test Cycle shall be incorporated into this Agreement by addendum, signed by the authorised representative of each party.



3. THE SERVICES

- 3.1. CEM agrees to provide to the Customer the Services as detailed in Schedule 1 over the Term in accordance with the terms and conditions of this Agreement. The Customer acknowledges that where the Term spans more than one (1) Test Cycle, and thus this

Agreement covers multiple Test Cycles, each subsequent Test Cycle will commence on the anniversary of the Effective Date and thus delivery of the Services over each Test Cycle, will overlap with the commencement of the subsequent Test Cycle.

3.2. CEM will use its best endeavours to ensure that the Services are provided with all reasonable care, skill and diligence as would be expected from a reputable Higher Education Institution and in accordance with the standards outlined by the guidelines of the British Educational Research Association (BERA), and in accordance with CEM's ethical research framework, and in accordance with all applicable laws and regulations, and in consultation with the Customer. At all times, CEM shall ensure that:

3.2.1. its Personnel are suitably qualified, adequately trained and capable of providing the applicable Services in respect of which they are engaged; and

3.2.2. there is an adequate number of its Personnel to provide the Services in accordance with the agreed Timetable.

3.3. During the Term and for each Test Cycle, each Party shall ensure they fulfil the obligations assigned to them under both Schedule 1 and the Timetable set out in Schedule 2 to this Agreement, strictly in accordance with the Timetable. The agreed Timetable shall be binding on all parties to this Agreement.

3.4. CEM warrants to the Customer that the Question Booklets to be supplied by CEM as part of the Services shall be compiled using hundred per cent (100%) newly created Test Content.

3.5. The Customer shall agree mutually convenient Test Dates with their Counterparts in the Test Group no later than 28th February in each year of the Term.

3.7. In the event of:

3.7.1. a breach of security by or through the Customer that puts the Test Materials; or any part thereof, in or at substantial risk of being in the public domain;

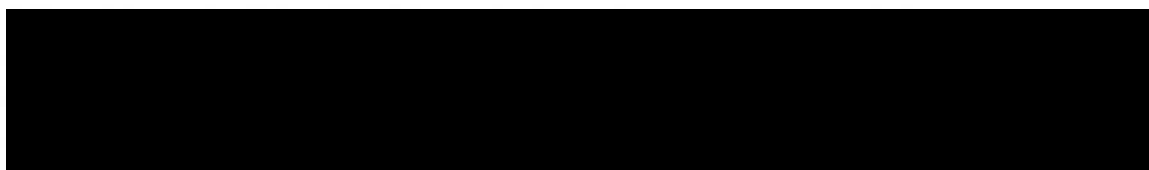
3.7.2. the Customer sharing the Test Materials or any part thereof outside of the examination room and/or with any person who is not a Candidate; or

3.7.3. any other breach of confidentiality relating to the Test that will or could, in CEM's reasonable opinion, jeopardise the integrity of the Test,

- [REDACTED]
- 3.8. The Customer understands and acknowledges that newly created Test Content is trialled during the course of development of Test Items for use in the Test to ensure Test Content is appropriate and effective for use in the Test. Such trialling is undertaken via informal testing of pupils in schools geographically distant to the Customer and the Test Group. The Customer therefore acknowledges that pupils who have accessed Test Content during the course of trialling of Test Items are similarly not under any specific obligation of confidentiality to CEM, and are therefore at liberty to further disclose and/or discuss any information in regards to any Test Content which they may have accessed and which they may have committed to memory, with any third party they choose and through any medium. The Customer acknowledges that this is outside of the control of CEM. CEM shall take appropriate steps to ensure that during the course of trialling of Test Content, no pupil will access the whole or any substantial part of the Test minimising the risk of any disclosure compromising the Test.
- [REDACTED]

- 3.10. CEM agrees that where the Term spans more than one (1) Test Cycle, and thus this Agreement covers multiple Test Cycles, for each subsequent Test Cycle, fresh sets of Test Materials and Test Support Materials shall be provided which shall contain different Test Items from the previous Test Cycle.
- 3.11. The Customer acknowledges that CEM reserves the right to create, source and/or generate Test Items using third party suppliers or subcontractors as CEM sees fit, subject to CEM ensuring that all copyright to such Test Items shall be vested in CEM and all such third party suppliers and/or subcontractors shall be subject to appropriate obligations of confidentiality.
- 3.12. The Customer acknowledges that CEM engages a third party supplier to print some or all Test Materials and Test Support Materials.
- 3.13. On completion of the Services, or where the Term spans more than one (1) Test Cycle, on conclusion of each Test Date, CEM shall provide to the Customer any report(s) detailed in Schedule 1 to this Agreement, using data from the Test Date only.
- 3.14. During each Test Cycle CEM shall compile all information available and to which it has lawful access and the right to process, regarding all Candidates sitting the Test within the Test Group. CEM shall make reasonable efforts to identify any Candidate CEM believes to have, or to be likely to have, entered the Test at more than one school within the Test Group ("Duplicate Candidate").
- 3.14.1. Where following such process CEM is confident a Duplicate Candidate has been identified the Customer shall be provided with only the results of such Duplicate Candidate's first attempt at the Test;

- 3.14.2. Where following such process CEM has concerns that there may be a Duplicate Candidate but this cannot be verified, CEM shall inform the Customer and the Customer may decide which results should be used.



4. ADMINISTRATION AND INVIGILATION OF THE TEST BY THE CUSTOMER AND PROCESSING OF COMPLETED TESTS

- 4.1. The Customer acknowledges that the Customer understands and agrees that in each Test Cycle, Late Testing shall be delivered and processed by CEM as set out in Schedule 1 to this Agreement and in accordance with the Timetable.
- 4.2. The Customer acknowledges and agrees that it is solely responsible and liable for compliance with all relevant laws and codes of practice, particularly any relevant Admissions Codes applicable to the Customer, regarding the fair selection of pupils for future places at the Customer's schools. The Customer hereby warrants to CEM that they have made all enquiries necessary to ensure that its selection processes are fully compliant with all relevant laws and codes of practice and particularly any relevant Admissions Codes applicable to the Customer and that delivery of the Services by CEM as specifically set out in Schedule 1 shall not result in any breach of the same.
- 4.3. The Customer acknowledges and agrees that the Test Weighting shall be applied to Test marks by CEM as detailed in Schedule 1 to this Agreement, which the Customer warrants to CEM shall be in full compliance with all relevant laws and codes of practice, particularly any relevant Admissions Codes applicable to the Customer, regarding the fair selection of pupils for future places at the Customer's schools. The Customer understands that under no circumstances shall the Test Weighting be adjusted by CEM on or after the Test Date in each Test Cycle.
- 4.4. The Customer acknowledges and agrees that the Standardisation shall be applied by CEM as detailed in Schedule 1 to this Agreement, use of which the Customer warrants to CEM shall be in full compliance with all relevant laws and codes of practice, particularly any relevant Admissions Codes applicable to the Customer, regarding the fair selection of pupils for future places at the Customer's schools. The Customer understands that under no circumstances shall the Standardisation be adjusted by CEM on or after the Test Date in each Test Cycle.
- 4.5. The Customer agrees that in each Test Cycle the Customer shall be responsible for diligent administration and invigilation of all matters relating to the Test and Test Materials throughout the Test administered at the Customer's respective venues, including, but not limited to ensuring:

- 4.5.1. all Invigilators appointed by the Customer to invigilate the Test are familiar with, and undertake all invigilation strictly in accordance with the Invigilation Guide issued to the Customer in accordance with Schedule 1 to this Agreement;
- 4.5.2. the Customer's Candidates receive the correct Answer Sheets overprinted only with their own unique Candidate details. Under no circumstances shall overprinted Candidate details be hand amended or scored out by the Customer;
- 4.5.3. each Candidate completes the Answer Sheet for the Test correctly and only places relevant answers correctly within the Answer Sheet. The Customer acknowledges that CEM will not mark Answer Sheets completed incorrectly, or where answers are marked on any other of the Test Materials than the Answer Sheet; and
- 4.5.4. all Question Booklets and Answer Sheets are carefully counted prior to access by Candidates, and then re-counted on completion of the Test by Candidates to ensure all Question Booklets and Answer Sheets are accounted for and no Question Booklets and/or Answer Sheets have been retained by Candidates. In the event that following re-count of Question Booklets and Answer Sheets on completion of the Test by Candidates any Question Booklets and/or Answer Sheets are unaccounted for, the relevant Customer shall use all reasonable endeavours to ascertain the whereabouts of such unaccounted for Question Booklets and/or Answer Sheets and to recover the same.
- 4.6. With the exception of the Candidates, the Customer warrants to CEM that all individuals that the Customer allows to have access to Question Booklets and Answer Sheets, including, but not limited to all Test Invigilators shall be legally bound by confidentiality provisions. The Customer shall ensure that all individuals accessing the Question Booklets and/or Answer Sheets including the Invigilators shall be reminded of the confidential nature of the Question Booklets and Answer Sheets at regular intervals during the course of the Test. The Customer acknowledges and agrees that such Customer shall be solely responsible and liable for the confidentiality of the Question Booklets and Answer Sheets while they are in that Customer's custody and for any breach of confidentiality on the part of that any employee, volunteer or service provider undertaking invigilation or other administration duties relating to the Test.
- 4.7. The Customer understands and agrees that the Customer is solely responsible and liable for its respective compliance with the Equality Act 2010 in respect of making the Test accessible, and making any reasonable adjustments which may be necessary to make the Test accessible to Candidates with a disability or with any Special Educational Needs. CEM shall wherever possible, endeavour to source and supply Test Materials in differing formats where requested by the Customer in order to meet the access needs of any Candidate with a disability or with any Special Educational Needs. The Customer agrees that where such materials have not already been specifically listed as Standard SEN Materials in Schedule 1 to this Agreement and payment for the same included in the charges set out in the Financial Schedule, CEM shall be entitled to charge the Customer requesting such materials for the costs of producing/sourcing such materials on behalf of the Customer as an additional cost. The Customer agrees to use reasonable

endeavours to ensure that any request for Test Materials in differing formats in order to meet the needs of any Candidate with a disability or with any Special Educational Needs is submitted to CEM no later than the date specified in the Timetable. CEM provides no guarantee that CEM shall be able to supply/source the Test Materials in the format requested. In the event that CEM is unable to source the Test Materials in the format requested by the Customer, CEM shall notify in writing the Customer by the date specified in the Timetable. Further, the Customer acknowledges that not all Test Items shall be capable of being translated into every format. In the event that any Test Item is unable to be translated into a format needed to meet the access needs of any Candidate with a disability or with any Special Educational Needs, CEM agrees to cooperate with the Customer to agree a revised scheme of marking in order to make reasonable adjustments to ensure any Candidate with a relevant disability or with any Special Educational Needs is not disadvantaged.

5. CHARGES AND PAYMENTS

- 5.1. In consideration of provision by CEM of the Services for the Term, the Customer hereby agrees to pay to CEM all fees and charges, including all charges for disbursements as detailed in the Financial Schedule annexed hereto as Schedule 3 to this Agreement.
- 5.2. Disbursements shall be charged by CEM as they are incurred on an "At Cost" basis. The final cost of the charges for disbursements will be calculated by CEM as soon as reasonably practicable after all relevant invoices have been received by CEM from CEM's suppliers and agreed. No part refund of any payments shall be made for any uncompleted Test Papers returned to CEM under this Agreement.
- 5.3. CEM shall submit invoices to the Customer for the payments as detailed in the Financial Schedule. Payment of sums invoiced shall be made to CEM by the Customer within thirty (30) days after receipt of an invoice.
- 5.4. NOT USED
- 5.5. In the event that the Customer incurs additional charges in respect of any additional services, including but not limited to any additional Test Materials and Test Support Materials, delivered by CEM at the request of the Customer, CEM shall invoice the Customer directly for said payment, and the Customer shall be responsible for payment to CEM of the same.

6. INTELLECTUAL PROPERTY

- 6.1. Any and all Intellectual Property Rights held in the Test Materials and Test Support Materials including but not limited to all copyright therein, shall remain the sole and exclusive property of CEM.
- 6.2. CEM grants to the Customer a non-exclusive, revocable licence to use all Test Materials and Test Support Materials and all intellectual property held therein for the purposes

of provision and administration of the Test only, and strictly in accordance with the terms of this Agreement. Further, CEM grants to the Customer an additional non-exclusive, revocable licence to use and reproduce the Invigilation Guide, Familiarisation Guide, Transcripts and Sound Files for the purposes of provision and administration of the Test.

- 6.3. CEM shall at its own expense obtain written permission for the inclusion of any copyright material in the Test Materials and Test Support Materials, and shall be responsible for the payment of all fees charged for the use of such material subject to copyright.
- 6.4. CEM warrants to the Customer that the Intellectual Property Rights in the Test Materials and Test Support Materials, so far as CEM is aware and to the best of CEM's knowledge and belief, do not infringe the rights of any third party and that no third party has threatened or is currently threatening proceedings in respect of such infringement, and none of CEM's Intellectual Property Rights in the Test Materials and Test Support Materials is the subject of any actual or, so far as CEM is aware, threatened challenge, opposition or revocation proceedings.
- 6.5. CEM warrants to the Customer that Test Materials and Test Support Materials will to the best of CEM's knowledge, be original works and will not knowingly violate any existing copyright and that they will contain nothing objectionable, obscene or libellous.
- 6.6. CEM shall immediately give notice to the Customer in writing of any challenge to CEM's Intellectual Property Rights in the Test Materials and Test Support Materials or any inadvertent disclosure or unauthorised use of such Intellectual Property Rights or know-how which comes to CEM's knowledge.
- 6.7. In accordance with Clause 3.4 herein, the Customer acknowledges that the Test is being shared by the Test Group in order to minimise the possibility of Candidates sitting multiple rounds of testing via other customers in the vicinity. CEM undertakes however, to ensure that with the exception of the shared use of the Test by the Test Group, Test Content shall not be re-used in any test provided to any other client of CEM in any Test Cycle. On expiry of each Test Cycle, the Customer acknowledges that CEM shall be free to then re-use Test Content in the course of delivery of entrance testing services to alternative clients having due regard to the frequency and location of further re-use.
- 6.8. The provisions of this clause 6 shall apply during the continuance of the Agreement and indefinitely after its expiry or termination.

7. CONFIDENTIALITY AND SECURITY

- 7.1. The importance of maintaining adequate security for the physical copies of Test Materials and Test Support Materials and ensuring confidentiality of the content of Test Materials and Test Support Materials is acknowledged by CEM and the Customer.
- 7.2. The Customer and CEM agree to use all reasonable endeavours including through the diligent use of appropriate confidentiality provisions in order to ensure that the Test

Materials and Test Support Materials and their content will be treated as confidential information:

- 7.2.1. On the part of CEM, but subject to the provisions of clauses 3.7, all those involved in the provision of the Services, including all third party suppliers and/or sub-contractors engaged by CEM in the course of delivery of the Services; and
- 7.2.2. On the part of the Customer, all those involved in the administration of the Tests and any other individuals to whom the Customer may allow access to the Test, including all employees, sub-contractors and suppliers.
- 7.3. Each party agrees that Test Materials and Test Support Materials will be accorded the same care and discretion that a party would afford to its own confidential information in order to avoid any unauthorised disclosure.
- 7.4. All parties shall ensure that they have in place appropriate technical and contractual measures to ensure the security of the Test Materials and Test Support Materials when in their possession (and to guard against unauthorised or unlawful processing of Test Materials and Test Support Materials and against accidental loss or destruction of, or damage to, the Test Materials and Test Support Materials) and shall:
 - 7.4.1. promptly provide the other with such information as it may reasonably require to satisfy itself that the other is complying with its obligations in respect of confidentiality and security pursuant to this Agreement;
 - 7.4.2. promptly notify the other of any breach of the security measures required to be put in place pursuant to this Agreement and any breach of confidentiality; and/or
 - 7.4.3. promptly inform the other when it becomes aware of any publication (by whatever means) of any of the Test Materials.
- 7.5. All hard copies of Test Materials and Test Support Materials to be delivered to the Customer in accordance with this Agreement and shall be supplied by CEM under the following terms:
 - 7.5.1. Subject to the provisions of clause 6.2, the Customer agrees that under no circumstance shall they be permitted to make any copy of Test Materials or of any part therein, and shall use its best endeavours to procure that no employee or representative of the Customer shall be permitted to make any copy of Test Materials or, except as expressly permitted by this Agreement, supply to any third party, any of the Test Materials or any part thereof;
 - 7.5.2. CEM shall not supply the Test Materials or any part thereof to any third party except in accordance with this Agreement;
 - 7.5.3. The Customer and CEM acknowledge and agree that copies of Test Materials will be accessed by Candidates undertaking the Test, and accepts that neither the Customer nor CEM shall be held liable for any disclosure of the Test Materials made by any Candidate who undertakes the Test.

- 7.6. In the event of a serious breach of security of Test Materials whereby it is agreed that some or all of the Test Materials are in the opinion of CEM, available in the public domain, CEM shall use reasonable endeavours to provide alternative Test Materials to the Customer to enable the Test to proceed according to, or as near as possible to, the agreed Timetable. In the event that alternative Test Materials are to be supplied by CEM pursuant to this clause, the Customer acknowledges and agrees that such alternative Test Materials shall be compiled from one hundred per cent (100%) Re-used Materials and will not be a new original work.
- 7.7. The cost of provision of any alternative Test Materials shall be borne by the party agreed to be responsible for the relevant breach of security and therefore at fault. In the event that the parties cannot agree which party is responsible for the relevant breach of security and therefore at fault, the parties shall follow the Dispute Resolution Procedure set out in clause 10 herein.
- 7.8. The Customer acknowledges and agrees that any breach of security resulting in a leak of Test Items into the public domain, shall result in CEM suffering significant financial loss, as such Test Items shall no longer be suitable for re-use by CEM in future delivery of Entrance Assessment Services.
- 7.9. In the event the parties agree that CEM is responsible for any serious breach of security of Test Materials resulting in a leak of Test Items into the public domain, the Customer will be provided with alternative Test Materials at CEM's cost.
- 7.10. The provisions of this clause shall apply during the continuance of the Agreement and indefinitely after its expiry or termination.

8. DATA PROTECTION

- 8.1. The parties acknowledge that in order for CEM to deliver the Services in accordance with the terms of this Agreement it shall be necessary for the parties to transfer and process certain Personal Data of the Candidates and other individuals. In respect of the same, each party acknowledges it shall be bound by the Data Sharing Agreement annexed hereto as Schedule 4 to this Agreement.

9. FREEDOM OF INFORMATION

- 9.1. The Customer recognises that CEM is subject to legal duties which may require the release of information under FOIA or the Environmental Information Regulations 1992 or any other applicable legislation or codes governing access to information and that CEM may be under an obligation to provide information on request. Such information may include matters relating to, arising out of or under this Agreement.
- 9.2. In the event that CEM receives a request for information under the FOIA or any other applicable legislation governing access to information, CEM shall be entitled to disclose all information and documentation (in whatever form) as necessary to respond to that request in accordance with the FOIA or other applicable legislation governing access to

information, save that in relation to any such information that is exempted information under FOIA.

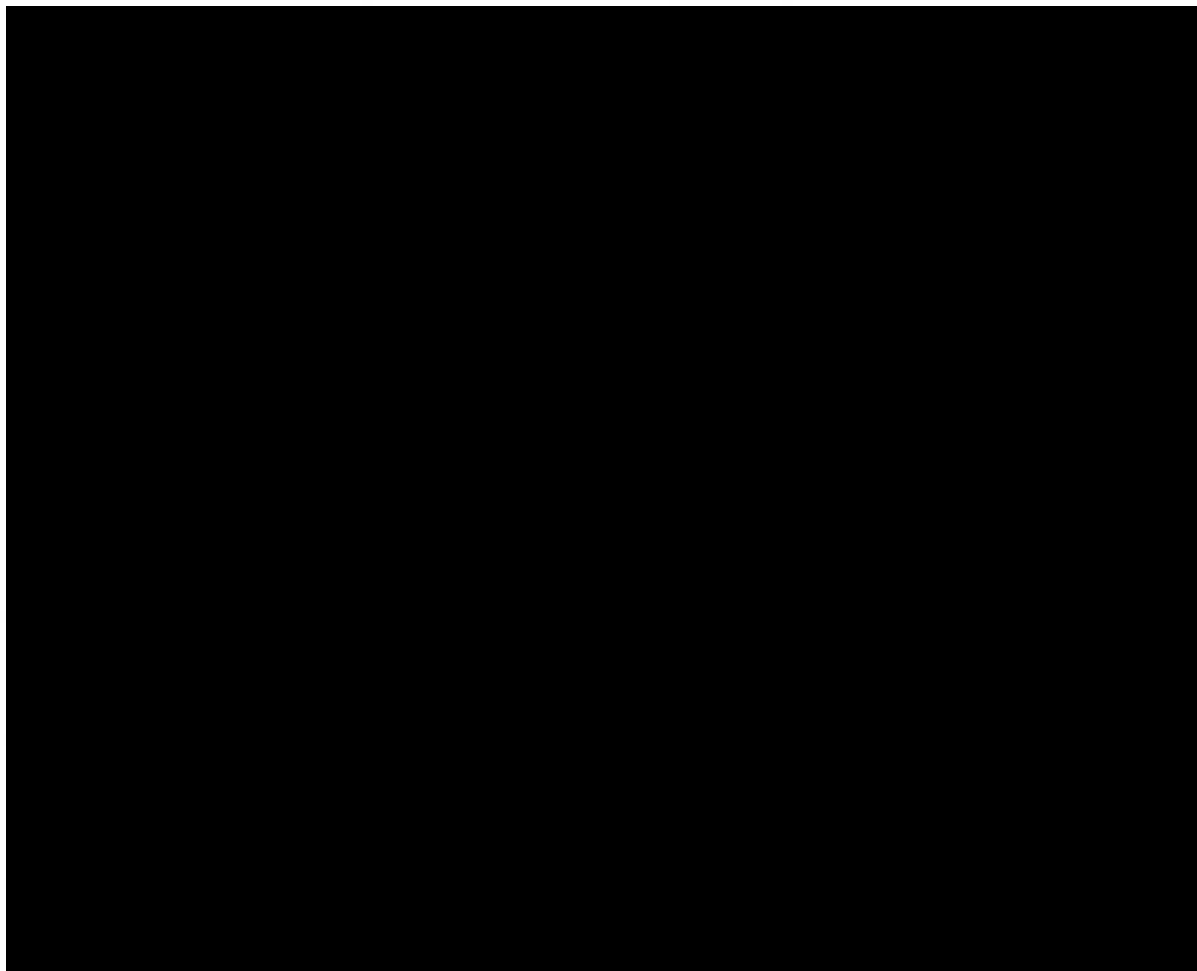
- 9.3. Where CEM receives any request for information which may relate to confidential information of a Customer, where legally permissible, CEM may be able to disclose to that Customer the nature of the request for information under the FOIA, however CEM shall at no time be able to share copies of any request for information or to disclose the identity of a requestor.
- 9.4. CEM shall not disclose information requested, if in CEM's opinion an exemption is, or may be applicable in accordance with the relevant section of the FOIA in the circumstances.
- 9.5. The decision of CEM to confirm or deny that the information requested is held by CEM, or to the decision to disclose such information is at the sole discretion of CEM and CEM's decision shall be final. Any disclosure made by CEM pursuant to CEM's obligations under the provisions of FOIA, shall not constitute any breach of any confidentiality obligation under this Agreement. In any event CEM shall not be liable for any loss, damage, harm or other detriment however caused arising from the disclosure (pursuant to the obligations of the FOIA) of any information relating to this Agreement or the Customer.
- 9.6. In the event that the Customer is similarly subject to the requirements of FOIA, CEM undertakes to assist and co-operate with the Customer (at their own expense) to enable the Customer to comply with these information disclosure requirements. In the event that the information requested includes any confidential information of CEM or intellectual property belonging to CEM, the Customer shall consult with CEM before making any disclosure of the same.
- 9.7. The provisions of this clause 9 shall apply during the continuance of the Agreement and indefinitely after its expiry or termination.

10. DISPUTE RESOLUTION

- 10.1. The parties agree they shall use good faith efforts to resolve any dispute, claim or proceeding arising out of or relating to subject matter of this Agreement through negotiation by the senior executives of the relevant parties who have authority to settle the same. If the matter is not able to be resolved through negotiation, it shall be settled as agreed either by:
 - 10.1.1. mediation in accordance with the Centre for Dispute Resolution ("CEDR") Model Mediation Procedure (the "Model Procedure"). To initiate a mediation a party must give notice in writing to the other Party to the dispute requesting a mediation pursuant to the Model Procedure. A copy of the request shall also be sent to CEDR. Such mediation shall be conducted before a single, jointly agreed upon, mediator; or
 - 10.1.2. by reference to the exclusive jurisdiction of the Courts of England & Wales.

- 10.2. Where the parties are unable to select a mutually agreeable mediator or cannot agree on the forum in which any mediation is to be held within sixty (60) days of a dispute being notified, then the provisions of Clause 10.1.2 shall apply.

11. LIABILITY AND INDEMNITIES

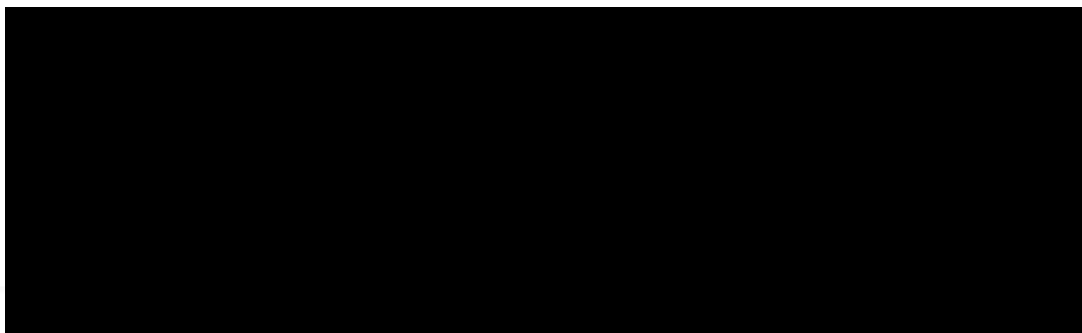


12. TERMINATION

- 12.1. Without prejudice to the rights of CEM to pursue any other remedies available to it in the event of a breach of the terms of this Agreement by the Customer, CEM may either terminate this Agreement by 30 days' written notice to the Customer, or require the Customer's withdrawal from this Agreement where:
- 12.1.1. The Customer is in material breach of this Agreement. The notice of termination shall include a detailed statement describing the nature of the breach. If the breach is capable of being remedied by the Customer and is remedied within the thirty (30) day notice period, then the termination shall not take effect. If the breach is of a nature such that it can be remedied by the Customer but not within the thirty (30) day notice period, then termination shall also not be effected if the Customer begins to remedy the breach within that period and then continues diligently to remedy the breach until it is remedied. If the breach is incapable of remedy, then

the termination shall take effect at the end of the thirty (30) day notice period in any event.

- 12.1.2. The Customer becomes bankrupt or insolvent, or has a receiving order made against it, or compounds with its creditors or, being a corporation, commences to be wound up or is put into administration or if a party attempts to carry on its business under a receiver for the benefit of any of its creditors;
- 12.1.3. The Customer is convicted or has been convicted of a criminal offence relating to the conduct of its business or profession; and/or
- 12.1.4. The Customer commits or is found to have committed an act of gross misconduct in the course of its business or profession;



- 12.3. The Customer may terminate this Agreement immediately by 30 days' written notice to CEM in the event that CEM commits a material breach of this Agreement. The notice shall include a detailed statement describing the nature of the breach. If the breach is capable of being remedied by CEM and is remedied within the thirty (30) day notice period, then the termination shall not take effect. If the breach is of a nature such that it can be remedied by CEM but not within the thirty (30) day notice period, then termination shall also not be effected if CEM begins to remedy the breach within that period and then continues diligently to remedy the breach until it is remedied. If the breach is incapable of remedy, then the termination shall take effect at the end of the thirty (30) day notice period in any event.
- 12.4. Termination of this Agreement shall be without prejudice to any rights of each party against the others which may have accrued up to the date of Termination.

13. NOTICES

- 13.1. A notice given to a party under or in connection with this Agreement:
 - 13.1.1. shall be sent for the attention of the person, at the address specified in this clause (or to such other address or person as that party may notify to the other, in accordance with the provisions of this clause); and

13.1.2. shall be:

- (i) delivered personally; or
- (ii) sent by commercial courier; or
- (iii) sent by pre-paid first-class post or recorded delivery.

13.2. Any notice shall be deemed to have been received:

13.2.1. If delivered by hand, on signature of a delivery receipt; or

13.2.2. If sent by pre-paid first-class post or recorded delivery, at 9.00am on the second business day after posting.

13.3. The addresses for service of a notice are as follows:

13.3.1. **CEM:**

- (iv) address: The Triangle Building, Shaftesbury Road, Cambridge, CB2 8EA
- (v) for the attention of: Assistant General Counsel
- (vi) email: [REDACTED]

13.3.2. **The Customer as follows:**

Warwickshire County Council

- (i) address: Lichfield Road, Sutton Coldfield, England, B74 2NH;
- (ii) for the attention of: INSERT
- (iii) email: INSERT

14. ANTI-CORRUPTION

14.1. The parties each represent, warrant and covenant that they shall not and shall procure that none of their directors, employees, agents, academic supervisor or students shall (a) give or receive any commission, fee, rebate, gift or entertainment of significant cost or value in connection with any matter within the scope or arising under the terms of this Agreement; or (b) subject to the terms of this Agreement, enter into any business arrangement with any director, employee, agent or any Affiliate of any other party other than as a representative of that other party without the prior written agreement thereto of the other Parties; or (c) make any payment or give anything of value to any official of any government or public international organisation, including any officer or employee of any government department, agency, or instrumentality to influence that entity or person's decision, or to gain any other advantage for another party in connection with this Agreement.

14.2. The parties represent, warrant and covenant that if at any time they become aware that any of the circumstances set out in Clause 14.1 are not as it has confirmed it will notify the other parties immediately in writing and will promptly take all such steps as may be

necessary and/or requested by the other parties to ensure minimum adverse effect on this Agreement.

- 14.3. In the event of a breach of the provisions of Clause 14.1 by another Party, the termination provisions under Clause 12 shall apply but with an additional right of any non-breaching Party being able to terminate this Agreement with immediate effect.

15. GENERAL

- 15.1. The Customer warrants to CEM they shall at no point:
- 15.1.1. take any action which is intended, or could reasonably be expected, to harm in any way CEM or CEM's reputation; or
 - 15.1.2. take any action which is intended, or could reasonably be expected to lead to any unwanted or unfavourable publicity for CEM.
- 15.2. CEM warrants to the Customer that it shall at no point:
- 15.2.1. take any action which is intended, or could reasonably be expected, to harm in any way the Customer or any Customer's reputation; or
 - 15.2.2. take any action which is intended, or could reasonably be expected to lead to any unwanted or unfavourable publicity for the Customer.
- 15.3. This Agreement shall not be assigned by any party without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed).
- 15.4. Any failure or delay by any party to exercise any right or remedy provided for in this Agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single partial exercise of any right or remedy provided for under this Agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- 15.5. Any amendment or variation to any provision of this Agreement shall not be binding on any party unless it is made in writing and signed by authorised representatives of each party.
- 15.6. If the whole or any part of any provision of this Agreement is void or unenforceable in any jurisdiction, the other provisions of this Agreement, and the relevant provision or part thereof, shall be deemed deleted and such deletion shall not affect the validity and enforceability of the rest of the Agreement.
- 15.7. Nothing in this Agreement confers or purports to confer on any third party any right to enforce any term of this Agreement.
- 15.8. This Agreement and its Schedules (which are incorporated into and made a part of this Agreement) constitute the entire agreement between the parties for the Tests and supersedes all previous agreements between the parties relating to its subject matter.

- 15.9. This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this Agreement, but all the counterparts shall together constitute the same agreement.
- 15.10. This Agreement and any disputes or claims (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter shall be governed by and construed in accordance with the laws of England and Wales.
- 15.11. Subject to the above, each party irrevocably agrees that the Courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Agreement or its subject matter or formation.

IN WITNESS WHEREOF this Agreement is executed by the parties hereto as follows:

Signed on behalf of the **CENTRE FOR EVALUATION AND MONITORING**:

Signed



Name



Position

Chief Executive

Date

20th October 2020

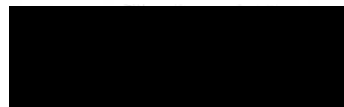
Signed on behalf of Warwickshire County Council

1409/20 Signed

Name

Position

Date



DESIGNATED OFFICER

16.10.2020

SCHEDULE 1 – THE SERVICES

CEM shall provide the following Services, Test Materials and Test Support Materials to the Customer during the Term:

1. For the purpose of the Test, CEM will develop and provide two examination Question Booklets each lasting approximately one hour. The Customer will receive the Test Materials and Test Support Materials as set out below:
 - 1.1 **A set of two Question Booklets (Booklet 1 and Booklet 2) per Candidate.**
 - a. Question Booklets will be produced by CEM and printed, packed and delivered by CEM's third party suppliers.
 - b. Question Booklets will be delivered to the venues as designated by the Customer on the Delivery date stated in Schedule 2 (see Timetable: 2.12 and 2.13).
 - 1.2 **A corresponding set of two Answer Sheets (Answer Sheet 1 and Answer Sheet 2) per Candidate.**
 - a. Answer Sheets will be produced by CEM and printed, overprinted, packed and delivered by CEM's third party suppliers.
 - b. Answer Sheets delivered to the Customer on the Delivery date stated in Schedule 2 (see timetable: 2.12).
 - c. CEM's third party suppliers will collect all used Answer Sheets after the Test Dates and Supplementary Test Date according to Schedule 2 (see Timetable: 2.16 and 2.18) for the scanning (Optical Marking Recognition).
 - 1.3 **Familiarisation guide**
 - a. Familiarisation guide will be produced by CEM in PDF format.
 - b. The PDF file will be sent on the date stated in Schedule 2 (see Timetable: 2.2).
 - 1.4 **Invigilation guide**
 - a. Invigilation guide will be produced by CEM in PDF format.
 - b. Printed copies can be requested until the date stated in Schedule 2 (see Timetable: 2.8).
 - c. The PDF file and hard copies will be sent on the date stated in Schedule 2 (see Timetable: 2.11).

1.5 **Standard time Sound File**

- a. Standard time Sound File will be produced by CEM's third party suppliers in MP3 format.
- b. MP3 files will be delivered on the date stated in Schedule 2 (see 2.3).

1.6 **Extra time Sound File (SEN Sound File)**

- a. Extra time Sound File will be produced by CEM's third party suppliers in MP3 format.
- b. MP3 files will be delivered on the date stated in Schedule 2 (see 2.11).

1.7 **Standard time Sound File Transcript**

- a. The Sound File Transcript will be produced by CEM in PDF format.
- b. Printed copies can be requested until the date stated in Schedule 2 (see Timetable: 2.8).
- c. The PDF file and hard copies will be sent on the date stated in Schedule 2 (see Timetable: 2.11).

1.8 **Extra time Sound File Transcript (SEN Transcript)**

- a. The Sound File Transcript will be produced by CEM in PDF format.
- b. Printed copies can be requested until the date stated in Schedule 2 (see Timetable: 2.8).
- c. The PDF file and hard copies will be sent on the date stated in Schedule 2.

1.9 **Standard SEN Materials**

- a. CEM shall produce and supply any SEN materials listed below to the Customer as requested:
 - I. Standard size Question Booklet and Answer Sheet printed on your choice of colour
 - II. Enlarged Question Booklet and Answer Sheet up to 150%
 - III. Enlarged Question Booklet and Answer Sheet up to 200%
 - IV. Enlarged Question Booklet and Answer Sheet up to 200% and re layout of the items.
- b. Standard SEN Materials can be requested from CEM no later than the deadline stated in Schedule 2 (see Timetable: 2.6).
- c. CEM will deliver Standard SEN materials on the date stated in Schedule 2 (see Timetable: 2.11).

d. Fees shall be payable for the production of Standard SEN Materials as set out in Schedule 3 (see Financial Schedule: 2.3).

("Standard SEN Materials")

1.10 Special SEN Materials

- a. CEM shall supply Special SEN Materials in accordance with clause 4.7.
- b. Special SEN Materials shall be requested from CEM no later than the deadline stated in Schedule 2 (see Timetable: 2.11).
- c. CEM will deliver Special SEN Materials on the date stated in Schedule 2 (see Timetable: 2.11).
- d. The Customer shall reimburse CEM for the costs of production of Special SEN Materials.

("Special SEN Materials")

- 2. CEM will provide the following **Services** to the Customer during the Term period:

2.1 Candidate list and Attendance List

- a. The Customer will provide a single list of Candidates who have registered to sit the Test on the Test Date, in the format as provided by CEM.
- b. The Candidate list shall be provided by the Customer to CEM on the date stated in Schedule 2 (see Timetable: 2.9).
- c. CEM will provide to the Customer an Attendance List with prepopulated Candidates details on a date stated in Schedule 2 (see Timetable: 2.12).
- d. The Customer shall complete the Attendance List and provide it to CEM on the date stated in Schedule 2 (see Timetable: 2.16).

2.2 Duplicate Candidate check

CEM will conduct a Duplicate Candidate check in accordance with clause 3.13.

2.5 Feedback

- a. CEM will supply details of each Candidate's performance in a single Excel spreadsheet as per the template attached in Schedule 5 – Results Template (The "Feedback").
- b. The Feedback will include results of each Candidate's performance as section level raw scores, section level age standardised scores and overall age standardised scores.
- c. The Weighted score shall be provided in the format of two (2) decimal places.

2.6 Report

- a. CEM will provide a standard end of Test Report for each Test Cycle based on the cohort, which sat the test on the Test date.
- b. Each Report will be provided on the date stated in Schedule 2 (see Timetable 2.22).

2.7 Digital Image Library

- a. CEM's third party supplier will scan completed Answer Sheets and upload the images to the digital image library.
- b. CEM will supply access to the library through the digital link on the date stated in Schedule 2 (see Timetable: 2.19).
- c. The Customer will have access to the image library until the date stated in Schedule 2 (see Timetable: 2.26).

2.8 Late Testing

CEM will provide Late Testing as follows:

- a. Supplementary Test will take place on the date stated in Schedule 2 (see Timetable: 2.17).
- b. The Customer shall order necessary Test Materials including **blank Answer Sheets** to cover all late testing, as stated in Schedule 2 (see Timetable: 2.8). Please note it is the Customer's

responsibility to ensure the appropriate number of **blank Answer Sheets** have been ordered to cover all late testing. CEM cannot guarantee additional blank Answer Sheets will be available after the order dates stated in Schedule 2 (see Timetable: 2.8).

d. CEM will provide a marking scheme ("Calculator") to use for the purpose of processing late testing Candidates' scores, on a date stated in Schedule 2 (see Timetable: 2.20).

2.9 Storage

a. The Customer will store, under secure conditions, the materials listed below for Late Testing:

Test Materials

- i. Unused Question Booklets
- ii. Unused spare Answer Sheets (blank)

Test Support Materials

- iii. Invigilation Guide
- iv. Sound File in MP3 format
- v. Extra time Sound File in MP3 format
- vi. Sound File Transcript
- vii. Extra time Sound File Transcript

b. CEM's third party supplier will store under secure conditions, the materials listed below:

- i. Used Question Booklets
- ii. Completed Answer Sheets following both collections stated in Schedule 2 (see Timetable 2.16 and 2.18).
- iii. Digital images of completed Answer Sheets and Attendance List

2.10 Destruction

The Customer shall destroy the materials listed below on a date stated in Schedule 2 (see: Timetable):

- i. Used Booklets
- ii. Unused Question Booklets
- iii. Unused spare Answer Sheets (blank)
- iv. Completed Answer Sheets (used during Late Testing)

Test Support Materials

- v. Invigilation Guide
- vi. Sound File in MP3 format
- vii. Extra time Sound File in MP3 format
- viii. Sound File Transcript
- ix. Extra time Sound File Transcript

CEM's third party supplier shall destroy all physical Test Materials on the date stated in Schedule 2 (see 2.22).

CEM's third party supplier shall destroy all digital Test Materials (including all Candidates' data) on the date stated in Schedule 2 (see 2.23).

The Customer shall reimburse CEM for the costs of storage and destruction as set out in Schedule 3 (see 2.1).

3 **General Customer Support**

Business Hours are Monday to Friday 9-5pm except for Public Holidays.

Email: EAOperations@cem.org

Each Party shall appoint a representative who shall be responsible for overseeing these Services.

The Customer's Representative shall be as outlined below unless otherwise notified to CEM in writing:

Warwickshire County Council, Shire Hall Warwick, CV34 4RR,

██████████ Lead Officer - Coordinated Admissions

Email: ██████████@warwickshire.gov.uk

Phone: 01926 414143

CEM's Representative shall be as outlined below unless otherwise notified to the Customer in writing by CEM:

Centre for Evaluation and Monitoring

Triangle Building, Shaftesbury Road, Cambridge, CB2 8EA

██████████ Head of Operations

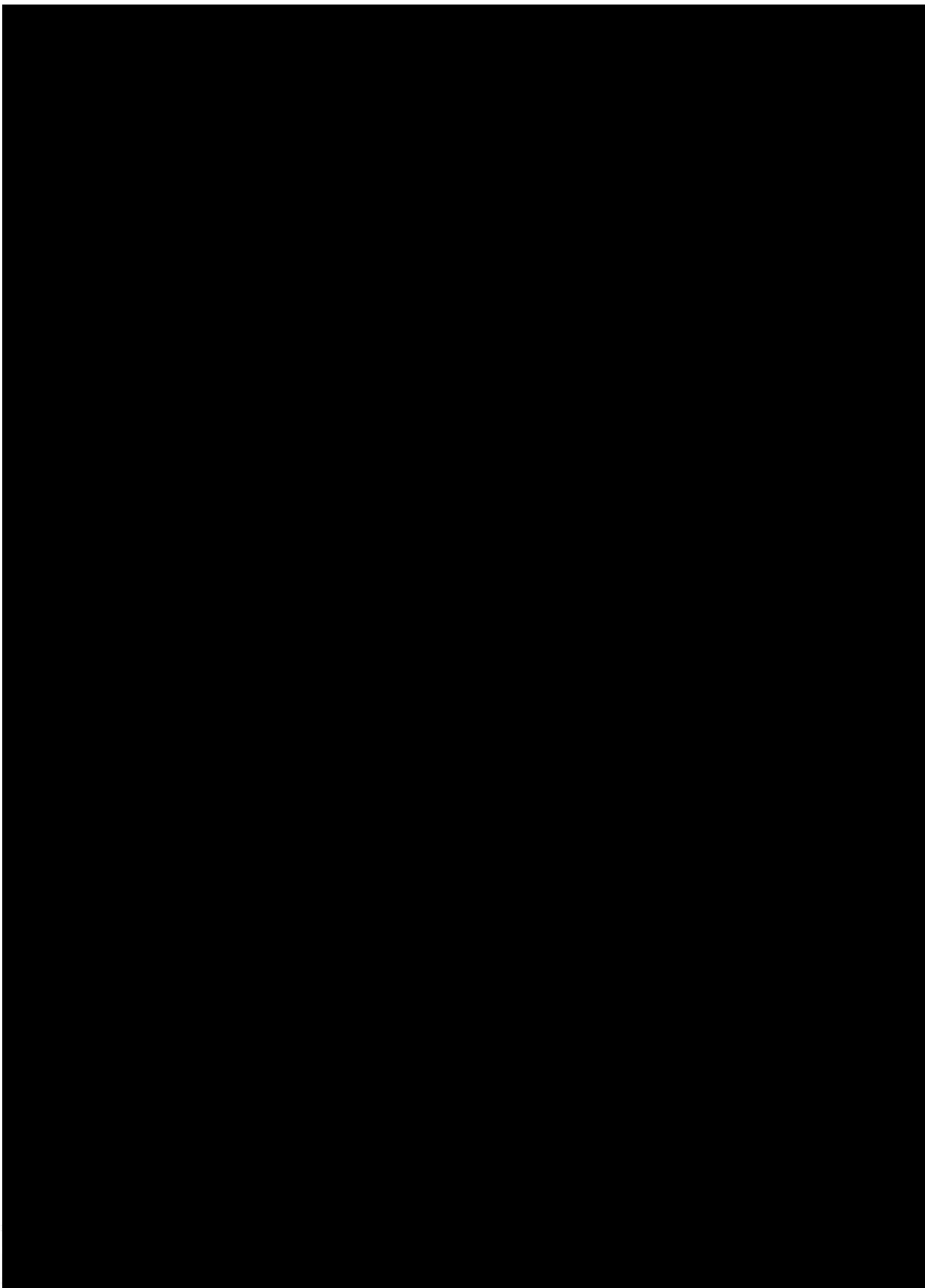
Email: ██████████@cem.org

Phone: 0191 334 4237

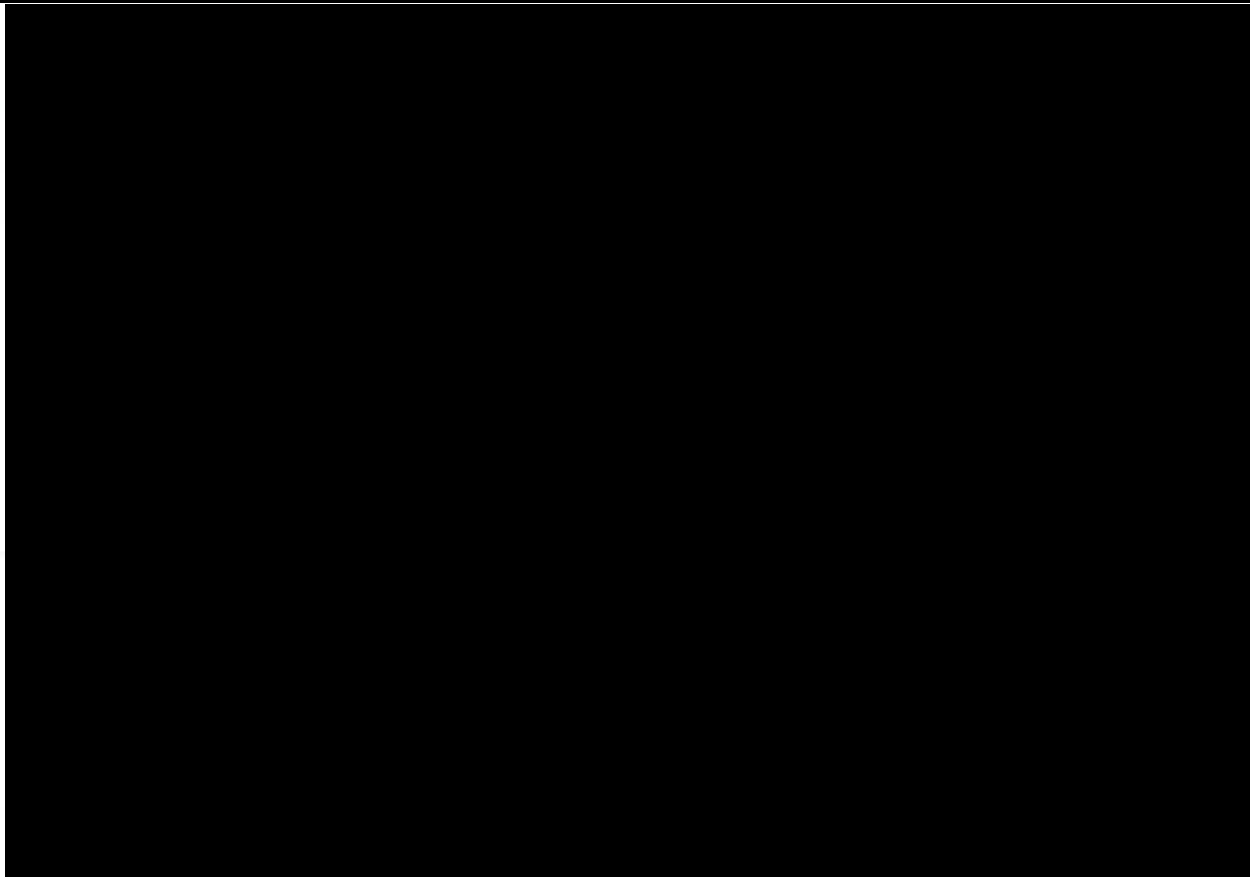
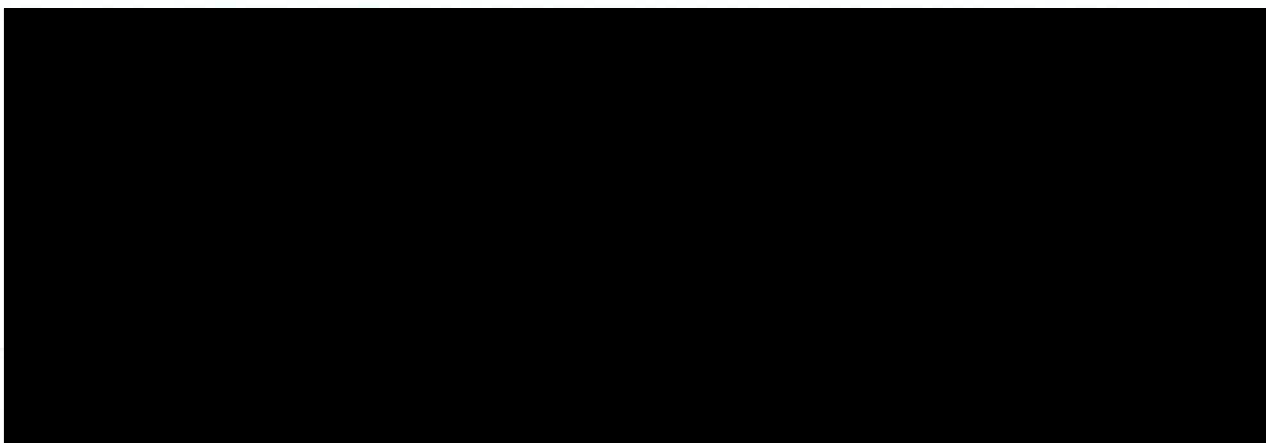
SCHEDULE 2 – TIMETABLE

| Action | Date |
|---|------------------------|
| Familiarisation guide print-ready PDF to client | 06.03.20 |
| Draft Question Booklet delivered to client for comment | 15.05.20 |
| Feedback on draft Question Booklet from client | 21.05.20 |
| Estimated booklets and answer sheets print quantity from client | 05.06.20 |
| Confirmation of SEN & support material requirements from client | 10.07.20 |
| Confirmation of Special Enlarged Question and answer sheets from client | 10.07.20 |
| Confirmation of live test quantities (standard materials) to CEM | 10.07.20 |
| Provision of candidate list including venues to CEM | 23.07.20 |
| Invigilation guide print ready PDF and hard copies to client | 31.07.20 |
| Delivery of live test support items and SEN materials to client | 20.10.20 |
| Delivery of live test materials to client | 20.10.20 |
| Test date 1 | 07.11.20 |
| Test date 2 | 08.11.20 |
| Answer sheets collected (Main test date 1 and 2) | 10.11.20 |
| Supplementary test date 3 | 16.11.20 or thereafter |
| Answer Sheets collected (supplementary test date 3) | 23.11.20 |
| Age Standardised results delivered to client | 08.12.20 |
| Secure destruction of used and unused materials | 02.08.21 |

SCHEDULE 3 – FINANCIAL SCHEDULE



ETS17.E1.WWC/ Local Authority /2 Years/ Bespoke/100% new items/Purchase of 11+ Test
2020,2021 /July 2020/MM



SCHEDULE 4 – DATA SHARING AGREEMENT

1. DEFINITIONS AND INTERPRETATION

1.1 In this Schedule, the following words have the following meanings:

Agreed Purpose: the following purposes:

- (a) CEM to provide services under this Agreement to the Customer;
- (b) without prejudice to paragraph (a) above, CEM to (i) develop assessments and other CEM services and improve on their quality and integrity, including the collection of statistics and other information relating to such assessments and other services for CEM's future use, (ii) carry out marketing and market research and (iii) provide training in order to improve on the delivery of assessments and other services;
- (c) the Customer to benefit from the services provided to it under this Agreement;
- (d) without prejudice to paragraph (c) above, the Customer to offer, and enable pupils, to take CEM's assessments; and
- (e) the Parties to comply with their legal and regulatory obligations and to assist each other in relation to any exercise by a pupil of their rights as a data subject.

Data Subject Request: a request made by a Data Subject to exercise any rights of Data Subjects under Data Protection Legislation;

Data Protection Legislation: (as applicable) the Data Protection Act 2018; Regulation (EU) 2016/679 (the "GDPR"); and any laws, regulations and/or secondary legislation transposing the GDPR into English law or with similar subject matter, including any successor legislation to the Data Protection Act 2018;

Data Sharing: the transfer of the Shared Personal Data;

Shared Data Breach: any security breach or other action or inaction leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure or access to Shared Personal Data;

Shared Personal Data: any personal data shared between the Parties in connection with the Agreement in accordance with paragraph 2.1.

1.2 Where used in this Schedule, the terms **Data Controller**, **Data Processor**, **Data Subject**, **Personal Data** and **processing** and **Special Category Data** all have the meanings given to those terms in the Data Protection Legislation.

1.3 This Schedule is intended to be legally binding and shall prevail over all other agreements, arrangements and understandings between the Parties relating to the Data Sharing, made

before the date of this Schedule and notwithstanding any wording to the contrary in such agreements, arrangements and understandings between the Parties.

- 1.4 In case of any conflict or inconsistency between the provisions of this Schedule and the main terms of the Agreement, the provisions contained in this Schedule shall prevail.
- 1.5 A reference to a statute or statutory provision includes all subordinate legislation made under it from time to time, and is a reference to it as amended, extended or re-enacted from time to time ("**Replacement Law**"). References to terms defined in a statute or statutory provision shall be replaced with or incorporate (as the case may be) references to the equivalent terms defined in any Replacement Laws, once in force and applicable.
- 1.6 To the extent that a term of this Schedule requires the performance by a party of an obligation "in accordance with Data Protection Legislation" (or similar), unless otherwise expressly agreed in this Schedule, this requires performance in accordance with the relevant requirements of such Data Protection Legislation as is in force and applicable at the time of performance (if any).

2. PURPOSE

- 2.1 The Parties acknowledge that this Schedule 4 regulates the sharing of Personal Data as between CEM and the Customer in relation to Personal Data relating to pupils or other individuals within the Customer's schools for the Agreed Purpose, and that the Agreed Purpose does not involve the sharing between Customers of Personal Data relating to pupils or other individuals within their respective schools whether directly or indirectly through CEM. In relation to the Shared Personal Data, CEM and the Customer agrees that it is a Data Controller.
- 2.2 During the term of this Agreement, CEM and the Customer shall share with each other certain Personal Data for the purposes of enabling pupils to take CEM's assessments. The Data Sharing is necessary to support the Agreed Purposes of both Parties.
- 2.3 Each party shall only use the Shared Personal Data for lawful purposes in connection with the Agreed Purpose and not process the Shared Personal Data in a way that is incompatible with the Agreed Purpose or Data Protection Legislation.

3. DATA PROTECTION COMPLIANCE

- 3.1 Each party shall comply with all the obligations imposed on a Data Controller under the Data Protection Legislation. Any material breach of the Data Protection Legislation by a party in connection with the Data Sharing shall constitute a material breach of this Agreement.
- 3.2 Each party shall:
 - (a) process the Shared Personal Data fairly and lawfully, each of them as a Data Controller;

- (b) for each Agreed Purpose, ensure that it processes the Shared Personal Data on the basis of one of the legal grounds set out in Article 6 of the GDPR (Lawfulness of Processing) or Article 9 of the GDPR (Processing of special categories of personal data) (as applicable);
- (c) inform, or otherwise make information available to the Data Subjects of the purposes for which it will process Personal Data and provide or make available all information that it must provide in accordance with its own applicable law to ensure that Data Subjects understand how their Personal Data will be processed by that party;
- (d) ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data;
- (e) not transfer any personal data outside the European Economic Area otherwise than in compliance with the Data Protection Legislation.

4. COOPERATION BETWEEN CEM AND THE CUSTOMER

4.1 Each party shall assist the other in complying with all applicable requirements of the Data Protection Legislation. In particular, in connection with the Shared Personal Data, each party shall:

- (a) ensure that any notices given to Data Subjects in relation to the Shared Personal Data is provided in a manner and according to timing that is compliant with Data Protection Legislation;
- (b) inform the other party if any Personal Data has been transferred to the other party in error or otherwise in breach of the Data Protection Legislation, requesting the immediate deletion of such inappropriately transferred Personal Data;
- (c) if legally required, inform the other party about the receipt of a complaint or Data Subject Request from any Data Subject regarding the Shared Personal Data;
- (d) deal at its discretion with all Data Subject Requests and complaints that it receives directly from a Data Subject or the person making the complaint. For the avoidance of doubt, a Data Subject Request made to one party in its capacity as Data Controller shall not oblige the other party to disclose any Personal Data it holds independently in its capacity as a Data Controller;
- (e) if legally required, inform the other party without delay if a Data Subject requests the erasure of any Shared Personal Data. For the avoidance of doubt, where one party is obliged to erase any Shared Personal Data, the other party shall not be obliged to erase the same Shared Personal Data if that other party may lawfully continue to hold and process such Shared Personal Data;
- (f) provide reasonable and prompt assistance to the other party as is necessary to enable it to comply with a Data Subject Request and/or to respond to any other queries or complaints received from Data Subjects or supervisory authorities or regulators and, in each case related to the Shared Personal Data;

- (g) provide the other party with such information as the other party reasonably requires for maintaining the records it is required to maintain by the Data Protection Legislation; and
- (h) provide the other party with contact details of at least one employee as point of contact and responsible manager for all issues arising out of the Data Protection Legislation, including the procedures to be followed in the event of a Shared Data Breach.

5. DATA BREACHES

5.1 In respect of each Shared Data Breach, each party shall:

- (a) promptly notify the other party of the Shared Data Breach;
- (b) provide the other Party without undue delay (wherever possible, no later than 48 hours after becoming aware of the Shared Data Breach) with such details as the other party reasonably requires regarding the Shared Personal Data.

5.2 To the extent permitted by applicable laws, neither party shall:

- (a) notify a supervisory or regulatory authority of any Shared Data Breach;
- (b) issue a public statement or otherwise notify any Data Subject of such Shared Data Breach,

without first consulting with, and obtaining the consent (not to be unreasonably withheld or delayed) of, the other party.

6. DELETION OR RETURN OF SHARED DATA

6.1 Neither party shall retain or process the Shared Personal Data for longer than is necessary in connection with carrying out the Agreed Purpose.

6.2 Notwithstanding clause 6.1, the Parties shall continue to retain Shared Personal Data in accordance with any statutory or professional retention periods applicable in their respective countries and/or industry.

[REDACTED]

[REDACTED]

SCHEDULE 6 – TEST GROUP

1. **King Edward VI Academy Trust Birmingham**, reg. no 10654935, Foundation Office, Edgbaston Park Road, Birmingham, B15 2UD, comprising:
 - a. King Edward VI Aston School
 - b. King Edward VI Camp Hill School for Girls
 - c. King Edward VI Camp Hill School for Boys
 - d. King Edward VI Five Ways School
 - e. King Edward VI Handsworth School for Girls.
2. **Bishop Vesey's Grammar School**, reg. no 07986921, Lichfield Road, Sutton Coldfield, England, B74 2NH
3. **Sutton Coldfield Grammar School for Girls**, reg. no. 06589755 , Jockey Road, Sutton Coldfield, West Midlands, B73 5PT;
4. **Warwickshire Council**, registered address Shire Hall Warwick, CV34 4RR, comprising:
 - a. Alcester Grammar School,
 - b. Ashlawn School
 - c. King Edward VI School
 - d. Lawrence Sheriff School
 - e. Rugby High School
 - f. Stratford-upon-Avon Grammar for Girls.

Each entity numbered 1 – 4 above is a “Counterpart” to each other in respect of this Test Group.

SCHEDULE 7 – THE SCHOOLS

Warwickshire Council, registered address Shire Hall Warwick, CV34 4RR, comprising:

- a. Alcester Grammar School,
- b. Ashlawn School
- c. King Edward VI School
- d. Lawrence Sheriff School
- e. Rugby High School
- f. Stratford-upon-Avon Grammar for Girls.

