

8 October 2019

Licence of Situational Judgement Tests

MSC ASSESSMENT ⁽¹⁾ and
HEALTH EDUCATION ENGLAND ⁽²⁾

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DATE **8 OCTOBER 2019**

PARTIES

- (1) **MSC ASSESSMENT**, a charitable company limited by guarantee, incorporated in England with registered number 8578576, whose registered office is at Woburn House, 20 Tavistock Square, London WC1H 9HQ and registered with the Charity Commission with registered number 1153045) (**MSC Assessment**).
- (2) **HEALTH EDUCATION ENGLAND**, a non-departmental public body organised and empowered under the provisions of the Care Act 2014, with an office at 1st Floor Blenheim House, Duncombe Street, Leeds LS1 4PL (the **Licensee**)

BACKGROUND

- (A) MSC Assessment's charitable objects are to advance medical education for the benefit of the public including, without limitation, by the preparation, validation, accreditation, conduct and administration of any tests, examinations or other systems for the assessment evaluation and recording any aspect of medical education and training.
- (B) MSC Assessment has worked to produce and develop a number of situational judgement tests, examinations and materials in which MSC Assessment owns the copyright.
- (C) The Licensee and MSC Assessment wish to enter into an agreement to grant the Licensee access to and the right to use the examination materials.

AGREED TERMS

1. DEFINITIONS AND INTERPRETATION

- 1.1 The definitions and rules of interpretation in Clause 1 apply:

| | |
|---------------------------------|---|
| Advance | The sum of £33175 exclusive of VAT |
| Alliance | the partnership of undergraduate members of the MSC which have developed and run a communal bank of examination questions that are accessible to all partner medical schools. |
| Confidential Information | shall have the meaning set out in clause 6.1. |
| Control | means the beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or cause the direction of the management of the company. |
| Database | the database of examination questions, including the Questions. stored centrally and controlled and administered by the MSC. |
| Field | the assessment of aspiring medical students and professionals and the administration, organisation, setting, and management of such examinations, assessments and qualification in the Territory. |
| Licensed Acts | means to use, copy, reproduce, publish, distribute, market, promote, store, print, rent or lend, perform, broadcast, communicate to the public, edit, translate, modify or adapt, in the course of its business and for its own internal purposes only. |
| Licence Term | shall have the meaning set out in clause 10.1. |
| MSC | Medical Schools Council, a charitable company limited by guarantee, Company No. 8817383) and registered charity number |

1155370, whose registered office is at Woburn House, 20 Tavistock Square, London WC1H 9HQ.

| | |
|-----------------------|--|
| Purpose | examining and assessing the education, training, suitability and skills of medical school students and professionals. |
| Rights | means all copyright and equivalent rights subsisting in the SJT Questions. |
| Royalty Period | each and every 12month period calculated from the date of this Agreement. |
| SJT Questions | means examination questions, answers and ideas for examination questions which are submitted to or stored in the private area of the Database including those which may have been developed, modified, adapted, contributed, reviewed and amended as part of the contract between HEE and MSC (later MSC Assessment) for the delivery of the Situational Judgment Test for the Foundation Programme FP2013-2020. |
| Territory | TBC |
| VAT | value added tax or any equivalent tax chargeable in the UK |
| Virus | any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices. |

1.2 In this Agreement a reference to:

- 1.2.1 this Agreement includes its schedules, appendices and annexes (if any);
- 1.2.2 clauses are to the clauses of this Agreement;
- 1.2.3 a 'party' includes that party's personal representatives, successors and permitted assigns;
- 1.2.4 writing or written includes email;
- 1.2.5 a 'person' includes a natural person, corporate or unincorporated body (in each case whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns;
- 1.2.6 a gender includes each other gender; and
- 1.2.7 legislation is a reference to that legislation as in force as at the date of this Agreement.

1.3 In this Agreement a reference to words:

- 1.3.1 in the singular include the plural and vice versa; and

- 1.3.2 that follow 'include', 'includes', 'including', 'in particular' or any similar words and expressions shall be construed as illustrative only and shall not limit the sense of any word, phrase, term, definition or description preceding those words.
- 1.4 The table of contents, background section and any clause, schedule or other headings in this Agreement are included for convenience only and shall have no effect on the interpretation of this Agreement.
- 2. GRANT OF THE LICENCE**
- 2.1 Subject to the terms and conditions of this Agreement and in consideration of the Licensee paying the royalty due under this Agreement, MSC Assessment hereby grants to the Licensee, during the Licence Term, a non-exclusive, non-transferable and non-sublicensable licence of the Rights to carry out the Licensed Acts in the Field in relation to or connection with the promotion, advertising, distribution, use of the SJT Questions in the Territory.
- 2.2 The Licensee shall not use the Rights or the SJT Questions for any purpose other than as expressly permitted under the terms of this Agreement and if the Licensee wishes to use the SJT Questions or the Rights for any other purpose it must be authorised to do so in a separate licence agreement.
- 2.3 Except as expressly set out in this Agreement or otherwise expressly agreed in writing by the parties, no rights of either party are assigned, transferred or licensed.
- 2.4 The Licensee agrees that it shall notify MSC Assessment of any improvements, corrections, amendments, enhancements, modifications, adaptations or other variations, in whole or in part, that it may make to the SJT Questions (the **Improvements**), upon creation of the same.
- 2.5 In consideration of the benefit of the licence granted to the Licensee under this Agreement, the Licensee hereby assigns to MSC Assessment with full title guarantee all of its rights, title and interest in and to any Improvements that it may make absolutely on creation, and MSC Assessment hereby grants the Licensee a licence to use the Improvements under the terms of this Agreement (as though they form part of the SJT Questions) for the duration of the Licence Term without any additional fee.
- 2.6 The Licensee shall, at MSC Assessment's request, promptly deliver to MSC Assessment the details, instructions and reasoning behind any Improvements in a format and by a method reasonably requested by MSC Assessment
- 3. THE SJT QUESTIONS**
- 3.1 The Licensee may use up to a maximum of 150 SJT Questions for the Purpose in each Royalty Period until the expiry or termination of the Agreement.
- 3.2 The Licensee shall confirm to MSC Assessment, in writing including identifying details, the number of the SJT Questions which it has selected or retained for use in each Royalty Period promptly after making a selection (or if applicable a reselection) of all or any of the SJT Questions but always up to a maximum of 150 SJT Questions in any given Royalty Period.
- 3.3 MSC Assessment shall not, without the Licensee's consent, use or authorise the third party use of the Rights in any SJT Questions, about which MSC Assessment has been notified under clause 3.2 as being selected or reselected by the Licensee (**Selected SJTs**), during the Royalty Period for which the Selected SJTs have been selected or reselected. Nothing shall prevent or restrict MSC Assessment or its authorised third parties from using the Rights in the Selected SJTs if such use or preparation for use had commenced prior to notification under clause 3.2.
- 3.4 Save to the extent that the Licensee wishes to retain and reuse any of the SJT Questions that it selected for use in the preceding Royalty Period into the following Royalty Period, it shall not use and it shall return promptly (or at MSC Assessment's election destroy) at the Licensee's expense all records and copies of the SJT Questions or any other documents or information which are

derived from or incorporate any SJT Questions, in whole or in part, that are in the Licensee's power, custody or control.

- 3.5 The Licensee shall comply with any reasonably required processes and protocols as instituted by MSC Assessment or the MSC which relate to the SJT Questions or the Database.

4. ACCESS TO THE DATABASE

- 4.1 MSC Assessment shall supply the Licensee with log in details so that it can access the SJT Questions which are stored on the Database. The Licensee acknowledges that such details are confidential and agrees to:
- 4.1.1 notify MSC Assessment immediately if the Licensee becomes aware of any unauthorised use of the Database log in details or any other breach of security; and
 - 4.1.2 log out of the Database at the end of each session.
- 4.2 MSC Assessment shall endeavour to ensure that access to the Database is available 24 hours a day and seven days a week but it does not guarantee that the Database will operate continuously or without interruptions, be error-free or be free from any Virus.
- 4.3 MSC Assessment or MSC may, at either or both of their discretions, withdraw, suspend or modify the Database or certain features or parts of the Database with or without notice to the Licensee.
- 4.4 The Licensee shall not:
- 4.4.1 introduce or permit the introduction of any Virus into the Database;
 - 4.4.2 attempt to obtain, or assist third parties in obtaining, access to Database and/or the SJT Questions, other than as permitted by this Agreement; and
 - 4.4.3 attempt to interfere with the proper working of the Database and, in particular, the Licensee must not attempt to circumvent security, tamper with, hack into, or otherwise disrupt the Database.
- 4.5 MSC Assessment is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet.

5. LICENSEE' S OBLIGATIONS

- 5.1 The Licensee shall:
- 5.1.1 ensure that any of the SJT Questions which are included in any examinations or assessments are appropriate for the qualification and level of the examination's 'assessment's participants;
 - 5.1.2 comply with all applicable laws and regulations and good market practices pertaining to copyright or the use, distribution of the SJT Questions in the Territory; and
 - 5.1.3 conduct all publicity and promotion professionally and responsibly and in a manner that is not detrimental to MSC Assessment's interests, including on social media.
- 5.2 The Licensee shall not:
- 5.2.1 do anything, or allow anything to be done, which would or might prejudice MSC Assessment's right in any SJT Questions or which might suggest that it has any title or interest in the SJT Questions other than the licence granted under this Agreement; and

- 5.2.2 and shall not permit or allow others to, use, edit, adapt, modify, alter or make additions to the SJT Questions in any way which is or could be deemed to be obscene, defamatory or otherwise unlawful.
- 5.3 The Licensee shall, upon MSC Assessment's request, provide for approval to MSC Assessment, at the Licensee's cost, copies of any materials (including drafts) which the Licensee uses proposes to use for the Purpose which incorporate any or all of the SJT Questions to allow MSC Assessment to determine compliance of such materials to the terms and conditions of this Agreement. The Licensor may refuse to approve any samples of SJT Questions where it considers, in its reasonable discretion, that such do not comply with the terms and conditions of this Agreement.
- 5.4 If MSC Assessment rejects any sample or material under clause 5.3, it shall give notice of such rejection to the Licensee. Upon receipt of such a rejection notice, the Licensee shall:
- 5.4.1 immediately cease any distribution, publication or use of; and
- 5.4.2 use its best endeavours to remove from publication, distribution or use, such SJT Questions until further notification from MSC Assessment.

6. CONFIDENTIALITY

- 6.1 The parties each undertake to keep confidential and not to disclose to any third party, or to use themselves other than for the Purpose or as permitted under or in accordance with this Agreement, any confidential or secret information in any form directly or indirectly belonging or relating to the other, its or their business or affairs, disclosed by the one and received by the other pursuant to or in the course of this Agreement, including any SJT Questions, and the existence and terms of this Agreement (**Confidential Information**).
- 6.2 Each party may disclose the other party's Confidential Information:
- 6.2.1 to its employees, officers, representatives or advisers who need to know such information for the purposes of carrying out the party's obligations under this Agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 6; and
- 6.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 6.3 The obligations contained in this clause 6 shall survive the expiry or termination of this Agreement for any reason, but shall not apply to any Confidential Information which:
- 6.3.1 is publicly known at the time of disclosure to the receiving party; or
- 6.3.2 becomes publicly known otherwise than through a breach of this Agreement by the receiving party, its officers, employees, agents or contractors; or
- 6.3.3 can be proved by the receiving party to have reached it otherwise than by being communicated by the other party including:
- (a) being known to it prior to disclosure; or
- (b) having been developed by or for it wholly independently of the other party; or
- (c) having been obtained from a third party without any restriction on disclosure on such third party of which the recipient is aware, having made due enquiry.

- 6.3.4 is required by law, regulation or order of a competent authority (including any regulatory or governmental body or securities exchange) to be disclosed by the receiving party, provided that, where legally permissible, the disclosing party is given reasonable advance notice of the intended disclosure.
- 6.4 No party shall use any other party's Confidential Information for any purpose other than to perform its obligations under this Agreement.
- 7. ROYALTIES AND LEGAL COSTS**
- 7.1 In consideration for the rights granted by MSC Assessment to the Licensee under this Agreement, the Licensee shall pay to MSC Assessment an annual royalty of the greater of:
- 7.1.1 7% of the total value of any and all contracts or arrangements with users or purchasers of the SJT Questions during a given Royalty Period; and
- 7.1.2 the Advance.
- 7.2 The Licensee shall pay the Advance annually to MSC Assessment:
- 7.2.1 within 30 days from the date of this Agreement; and
- 7.2.2 within 30 days of the beginning of each subsequent Royalty Period.
- 7.3 The Advance shall be set off by the Licensee against the royalties payable by the Licensee in the Territory during each Royalty Period. The total amount of royalties payable by the Licensee to MSC Assessment in respect of a given Royalty Period shall not be less than the Advance.
- 7.4 The Licensee agrees to provide to MSC Assessment within 30 days of the end of each Royalty Period, a detailed statement (**Royalty Statement**) including the following information:
- 7.4.1 the Royalty Period to which the Royalty Statement applies;
- 7.4.2 total value of any and all contracts or arrangements with users or purchasers of the SJT Questions for the Royalty Period;
- 7.4.3 any other information MSC Assessment may reasonably require and request in advance of the provision of such a Royalty Statement.
- 7.5 In the event that, following the expiry of a Royalty Period, the amount of royalties due to be paid by the Licensee to MSC Assessment in respect of a previous Royalty Period exceeds the amount of the Advance paid, the Licensee shall promptly pay to MSC Assessment a sum which is equal to the difference between the sum owing and the Advance.
- 7.6 All payments made by the Licensee under this Agreement are exclusive of VAT. If any such payment constitutes the whole or any part of the consideration for a taxable or deemed taxable supply by MSC Assessment, the Licensee shall increase that payment by an amount equal to the VAT which is chargeable in respect of the taxable or deemed taxable supply in question, provided that MSC Assessment shall have delivered a valid VAT invoice in respect of such VAT to the Licensee. If the Licensee fails to comply with its obligations under this clause, it shall additionally pay all interest and penalties, which thereby arise to MSC Assessment. If any VAT invoice is delivered to the Licensee after the relevant payment has been made, the Licensee shall pay the VAT due within five business days of MSC Assessment delivering a valid VAT invoice.
- 7.7 The Licensee shall maintain during the term of this Agreement and for a period of at least six years thereafter, accurate records of account showing the details of any and all contracts or arrangements with users or purchasers of the SJT Questions (including details of the customers, copies of the contracts or arrangements and the Royalties paid under this agreement).

- 7.8 The Licensee shall allow MSC Assessment and/or its agents to access, inspect and audit the Licensee's records, accounts and other relevant information (including allowing copying of documents) to the extent this is reasonably required for the purpose of verifying the accuracy of the information in the Royalty Statements and the amount of the royalties payable by the Licensee.
- 7.9 All royalties and other sums payable under this Agreement shall be paid free and clear of all deductions and withholdings unless the deduction or withholding is required by law. If any deduction or withholding is required by law the Licensee shall pay to MSC Assessment such sum as will, after the deduction or withholding has been made, leave MSC Assessment with the same amount as it would have been entitled to receive in the absence of any such requirement to make a deduction or withholding.
- 7.10 Royalties and any other sums payable under this Agreement shall be paid in sterling to the credit of a bank account to be designated in writing by MSC Assessment.
- 7.11 In the event of any delay in paying any sum due under this Agreement by the due date, the Licensee shall pay to MSC Assessment:
- 7.11.1 interest on the overdue amount at the rate of 4% per annum above the Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Licensee shall pay the interest together with the overdue amount; and
- 7.11.2 an amount equal to any penalties incurred by MSC Assessment as a direct result of the delay.
- 7.12 The Licensee shall, on execution of this Agreement, pay to MSC Assessment the sum of £2,500 plus VAT as a contribution towards its legal fees associated with the preparation of this Agreement.
- 7.13 The provisions of this clause 7 shall remain in effect notwithstanding termination or expiry of this Agreement until the settlement of all subsisting claims by MSC Assessment.
- 7.14 In each of the academic years 2020-21, 2021-22 and 2022-23 the licensee shall pay an additional [REDACTED] to MSC Assessment to recompense the Medical Schools for the costs of producing an Educational Performance Measure.

8. PROTECTION OF THE COPYRIGHT

- 8.1 The Licensee shall promptly notify MSC Assessment in writing giving full particulars if any of the following matters come to its attention:
- 8.1.1 any actual, suspected or threatened infringement of the Rights;
- 8.1.2 any claim made or threatened that the SJT Questions infringe the rights of any third party; or
- 8.1.3 any other form of attack, charge or claim to which the Rights may be subject.
- 8.2 In respect of any of the matters listed in Clause 8.1:
- 8.2.1 MSC Assessment shall:
- (a) in its absolute discretion, decide what action to take, if any;
- (b) have exclusive control over, and conduct of, all claims and proceedings; and
- (c) bear the cost of any proceedings and shall be entitled to retain all sums recovered in any action for his own account.

- 8.2.2 the Licensee shall:
- (a) not make any admissions other than to MSC Assessment and shall at the Licensee's cost provide MSC Assessment with all assistance that it may reasonably require in the conduct of any claims or proceedings; and
 - (b) at the request of MSC Assessment, recall the affected SJT Questions as soon as reasonably practicable and use best endeavours to notify customers and any persons to whom it has knowledge are in possession, custody or control of the affected SJT Questions of the recall, provided that the method of recall and the content of any such communication with customers shall be subject to MSC Assessment's prior written approval.
- 8.3 In the event that MSC Assessment requests the recall of any affected SJT Questions it shall, to the extent reasonably possible, procure additional examination questions to replace the number of SJT Questions that have been recalled.
- 8.4 The provisions of sections 101 and 101A of the Copyright, Designs and Patents Act 1988 (or equivalent legislation in any jurisdiction) are expressly excluded.
- 8.5 MSC Assessment warrants to the Licensee that it has the right, power and authority to enter into this Agreement.
- 8.6 All other warranties and representations, whether statutory or implied, are hereby expressly excluded to the fullest extent permitted by law, and without limitation to this, nothing in this Agreement or the licences granted hereunder shall be construed as a representation or warranty that:
- 8.6.1 the Rights or any of them are valid or subsisting;
 - 8.6.2 the Rights do not infringe any Intellectual Property Rights of any third party;
 - 8.6.3 the authors of any of the SJT Questions have waived their moral rights; or
 - 8.6.4 the Rights or the SJT Questions will be of satisfactory quality or fit for the purpose for which the Licensee intended.

9. LIMITATION OF LIABILITY

- 9.1 To the fullest extent permitted by law, MSC Assessment and MSC shall not be liable to the Licensee for any costs, expenses, loss or damage (whether direct, indirect or consequential, and whether economic or other) arising from the Licensee's exercise of the rights granted to it under this Agreement.
- 9.2 The Licensee shall indemnify MSC Assessment against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by MSC Assessment arising out of or in connection with:
- 9.2.1 the Licensee's exercise of its rights granted under this Agreement;
 - 9.2.2 the Licensee's breach or negligent performance or non-performance of this Agreement; and
 - 9.2.3 the enforcement of this Agreement.
- 9.3 This indemnity shall apply whether or not MSC Assessment has been negligent or at fault.

- 9.4 If a payment due from the Licensee under this clause is subject to tax (whether by way of direct assessment or withholding at its source), MSC Assessment shall be entitled to receive from the Licensee such amounts as shall ensure that the net receipt, after tax, to MSC Assessment in respect of the payment is the same as it would have been were the payment not subject to tax.
- 9.5 Nothing in this Agreement shall have the effect of excluding or limiting any liability for death or personal injury caused by negligence.

10. LICENCE TERM AND DURATION

- 10.1 This Agreement shall commence on the date of signature and, subject to earlier termination in accordance with its terms, shall continue in full force and effect until it automatically expires on the fourth anniversary of the date of this agreement (the **Licence Term**).
- 10.2 This Agreement may be terminated by MSC Assessment giving a minimum of two months' notice in writing to the Licensee.
- 10.3 Either party may terminate this Agreement at any time by giving notice in writing to the other party if the other party:
- 10.3.1 commits a material breach of this Agreement and such breach is not remediable;
 - 10.3.2 undergoes a change of Control
 - 10.3.3 commits a breach of this Agreement which is not remedied within 30 days of receiving written notice of such breach; or
 - 10.3.4 has failed to pay any amount due under this Agreement on the due date and such amount remains unpaid within 30 days after the other party has received notification that the payment is overdue.
 - 10.3.5 stops carrying on all or a significant part of its business, or indicates in any way that it intends to do so;
 - 10.3.6 is unable to pay its debts either within the meaning of section 123 of the Insolvency Act 1986 or if the non-defaulting party reasonably believes that to be the case;
 - 10.3.7 becomes the subject of a company voluntary arrangement under the Insolvency Act 1986;
 - 10.3.8 has a receiver, manager, administrator or administrative receiver appointed over all or any part of its undertaking, assets or income;
 - 10.3.9 has a resolution passed for its winding up;
 - 10.3.10 has a petition presented to any court for its winding up or an application is made for an administration order, or any winding-up or administration order is made against it;
 - 10.3.11 is subject to any procedure for the taking control of its goods that is not withdrawn or discharged within seven days of that procedure being commenced;
 - 10.3.12 has a freezing order made against it;
 - 10.3.13 is subject to any recovery or attempted recovery of items supplied to it by a supplier retaining title to those items;
 - 10.3.14 is subject to any events or circumstances analogous to those in clauses 10.3.5 - 10.3.13 (inclusive) in any jurisdiction;

- 10.4 The right of a party to terminate this Agreement pursuant to clause 10.3 shall not apply to the extent that the relevant procedure is entered into for the purpose of amalgamation, reconstruction or merger (where applicable) where the amalgamated, reconstructed or merged party agrees to adhere to this Agreement.
- 10.5 Termination or expiry of this Agreement will not affect any accrued rights and liabilities of either party at any time up to the date of termination.
- 10.6 In the event of termination of this Agreement for any reason, or on the expiry of the Licence Term:
- 10.6.1 the Licensee shall return to the Licensor or destroy all copies of the SJT Questions that are within its possession, custody or control and shall certify to the Licensor that it has done so;
- 10.6.2 the Licensee shall submit a final Royalty Statement to MSC Assessment within 30 days of termination or expiry, and any amounts outstanding between the parties will be invoiced within 30 days of termination or expiry and shall be payable in accordance with the terms of this Agreement.

11. FURTHER ASSURANCE

Each party shall and shall use all reasonable endeavours to procure that any necessary third party shall, promptly execute and deliver such documents and perform such acts as may be required for the purpose of giving full effect to this Agreement.

12. NOTICES

- 12.1 Notices under this Agreement shall be in writing and sent to a party's registered office as set out on the first page of this Agreement (or to the email address of an authorised representative of the party as updated from time to time). Notices may be given, and shall be deemed received:
- 12.1.1 by first-class post: two days after posting;
- 12.1.2 by hand: on delivery; and
- 12.1.3 by email: on receipt of a delivery notice.

- 12.2 This clause does not apply to notices given in legal proceedings.

13. NO PARTNERSHIP OR AGENCY

Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other.

14. VARIATION

No variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

15. ASSIGNMENT AND OTHER DEALINGS

Except as set out in this Agreement, no party shall assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights and obligations under this Agreement without the prior written consent of the other parties.

16. SEVERANCE

- 16.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Agreement.
- 16.2 If one party gives notice to the other of the possibility that any provision or part-provision of this Agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

17. WAIVER

- 17.1 A waiver of any right or remedy under this Agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default.
- 17.2 A failure or delay by a party to exercise any right or remedy provided under 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 or partial exercise of any right or remedy provided under this Agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.

18. COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

19. THIRD PARTY RIGHTS

No party other than a party to this Agreement and MSC as well as their successors and permitted assignees, shall have any right to enforce any of its provisions.

20. ENTIRE AGREEMENT

- 20.1 This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous drafts, agreements, arrangements and understandings between them, whether written or oral, relating to its subject matter.
- 20.2 Each party agrees that it shall have no remedies in respect of any representation or warranty (whether made innocently or negligently) that is not set out in this Agreement. No party shall have any claim for innocent or negligent misrepresentation based on any statement in this Agreement.

21. GOVERNING LAW

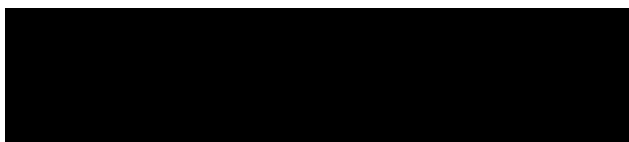
This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England.

22. JURISDICTION

Each party irrevocably agrees that the courts of England shall have non-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).

This Agreement has been entered into on the date stated at the beginning of it.

Signed by a director for and on behalf of **MSC
ASSESSMENT**

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Signed by an authorised person for and on behalf of
HEALTH EDUCATION ENGLAND

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NATIONAL PROGRAMME LEAD