

These Terms & Conditions apply to your subscription to access and use the Challenge Tracker provided by National Numeracy Solutions.

1 Interpretation

1.1 The definitions in this clause apply in this Contract.

Authorised Users: those employees, agents and independent contractors of the Customer who are authorised by the Customer to use the Services and the Documentation, as further described in clause 3.2.

Business Day: a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

Confidential Information: information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in clause 10.6 or clause 10.7.

Conditions: the terms and conditions set out in this document as amended from time to time.

Contract: the contract between the Supplier and the Customer for the supply of the Services and the Documentation in accordance with these Conditions.

Customer: the person or firm who purchases the Services from the Supplier as referred to on the Order.

Customer Data: the data inputted by the Customer or the Authorised Users for the purpose of using the Services or facilitating the Customer's use of the Services.

Documentation: the document made available to the Customer by the Supplier via email to the Challenge Tracker contact email address as specified on the Order.

Effective Date: the date on which the Supplier accepts the Order as referred to in condition 2.3.

Initial Subscription Term: the initial term of 12 months from the Effective Date.

Normal Business Hours: 9.00 am to 5.00 pm local UK time, each Business Day.

Order: the Customer's order for the Services, as submitted in writing via email or paper order form to the Supplier.

Supplier: National Numeracy Solutions Ltd, a company limited by shares and registered in England under Company No: 8700221 whose registered office is at Phoenix House, 32-33 North St., Lewes, East Sussex BN7 2QJ.

Renewal Period: the period described in clause 12.1.

Services: the subscription services provided by the Supplier to the Customer under this Contract as described in the Documentation and via nnchallenge.org.uk or any other website notified to the Customer by the Supplier from time to time.

Subscription Fees: the subscription fees payable by the Customer to the Supplier for the User Subscriptions as set out on the Order.

Subscription Term: has the meaning given in clause 12.1 (being the Initial Subscription Term together with any subsequent Renewal Periods).

User Subscriptions: the user subscriptions purchased by the Customer pursuant to clause 7.1 which entitle Authorised Users to access and use the Services and the Documentation in accordance with these Conditions.

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 these conditions, any reference to National Numeracy Solutions includes National Numeracy and vice versa.

2. Basis of contract

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

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

2.3 The Order shall only be deemed to be accepted when the Supplier issues a written acceptance of the Order, at which point the Contract shall come into existence.

3. User subscriptions

3.1 Subject to the Customer purchasing the User Subscriptions in accordance with clause 7.1, the restrictions set out in this clause 3 and the other terms and conditions of these Conditions, the Supplier hereby grants to the Customer a non-exclusive, non-transferable right, without the right to grant sub-licences, to permit the Authorised Users to use the Services and the Documentation during the Subscription Term solely for the Customer's internal business operations.

3.2 In relation to the Authorised Users, the Customer undertakes that:

- (a) it will not allow or suffer any User Subscription to be used by more than one individual Authorised User;
- (b) each Authorised User shall keep a secure password for his use of the Services and that each Authorised User shall keep his password confidential;
- (c) the Challenge Tracker Contact as specified on the Order is authorised to access and use the Documentation in accordance with clause 9.10; and
- (d) if any changes are needed to the Challenge Tracker Contact name or email address as specified on the Order form, the Customer shall notify the Supplier in writing prior to the next scheduled report for the Documentation.

3.3 The Customer shall not access, store, distribute or transmit any Viruses, or any material during the course of its use of the Services that:

- (a) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
- (b) facilitates illegal activity;
- (c) depicts sexually explicit images;
- (d) promotes unlawful violence;
- (e) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
- (f) is otherwise illegal or causes damage or injury to any person or property;

and the Supplier reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's access to any material that breaches the provisions of this Condition.

3.4 The Customer shall not:

- (a) except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under these Conditions:
 - (i) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Documentation or Challenge website (as applicable) in any form or media or by any means; or
 - (ii) attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Documentation of Challenge website; or
- (b) access all or any part of the Services and Documentation in order to build a product or service which competes with the Services and/or the Documentation; or
- (c) use the Services and/or Documentation to provide services to third parties; or
- (d) license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or Documentation available to any third party except the Authorised Users, or
- (e) attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation, other than as provided under this clause 3; and

3.5 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify the Supplier.

3.6 The rights provided under this clause 3 are granted to the Customer only, and shall not be considered granted to any subsidiary or holding company of the Customer.

4. Services

4.1 The Supplier shall, during the Subscription Term:

- (a) provide the Services to the Customer on and subject to the terms of these Conditions;
- (b) make the Documentation available to the Customer to an agreed schedule and frequency as specified on the Order or subsequent written agreement and on and subject to the terms of these Conditions.

4.2 The Supplier will, as part of the Services and at no additional cost to the Customer, provide the Customer with the Supplier's standard customer support services during Normal Business Hours.

4.3 The Supplier shall use commercially reasonable endeavours to make the Services available 24 hours a day, seven days a week, except for planned maintenance carried out in a maintenance window where the Supplier has used reasonable endeavours to give the Customer at least 6 Normal Business Hours' notice in advance.

4.4 The Supplier may send important emails to the Customer or employees of the Customer registered as Authorised Users about provision of the Services and Documentation and may send emails to Authorised Users in accordance with the terms referenced in clause 6(d). The Supplier will not send marketing materials to the Customer or the Authorised Users unless given express permission to do so.

5. Customer data

5.1 The Customer shall own all right, title and interest in and to all of the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data.

5.2 Customer Data (which includes personal data) may include: names of Authorised Users; email addresses of Authorised Users; passwords of Authorised Users; age of Authorised Users; gender of Authorised Users; geographical region of Authorised Users; information on Authorised Users' activity and results on the Services; and such other information as outlined in the terms and conditions referenced in clause 6(d).

5.3 The Supplier collects and stores the Customer Data (which includes personal data) only to facilitate the Customer's use of the Services. The Customer Data will be stored and, where applicable, deleted in accordance with the terms and conditions referenced in clause 6(d).

5.4 Customer Data (which includes personal data) shall be processed by the Supplier and by contracted sub-processors as outlined in clause 9.

6. Customer's obligations

The Customer shall:

- (a) provide the Supplier with:

- (i) all necessary co-operation in relation to these Conditions; and
 - (ii) all necessary access to such information as may be required by the Supplier; in order to provide the Services, including but not limited to Customer Data, security access information and configuration services;
- (b) comply with all applicable laws and regulations with respect to its activities under this Contract;
- (c) carry out all other Customer responsibilities set out in this Contract in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, the Supplier may adjust any agreed timetable or delivery schedule as reasonably necessary;
- (d) ensure that the Authorised Users use the Services and the Documentation in accordance with these Conditions and the Terms and Conditions for the National Numeracy Challenge website: <https://www.nnchallenge.org.uk/terms-conditions/index.html> and are aware that their data will be shared with National Numeracy, contracted third party providers as outlined in clause 9, and the Customer;
- (e) ensure that the Authorised Users or, where applicable, the parents/guardians of Authorised Users are aware of the way in which their data will be shared and stored;
- (f) obtain and shall maintain all necessary licences, consents, and permissions necessary for the Supplier, its contractors and agents to perform their obligations under this Contract, including without limitation the Services;
- (g) ensure that its network and systems comply with the relevant specifications provided by the Supplier from time to time; and
- (h) be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to the Supplier's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.

7. Charges and payment

- 7.1 The Customer shall pay the Subscription Fees to the Supplier for the User Subscriptions in accordance with this clause 7.
- 7.2 The Customer shall on the Effective Date provide to the Supplier approved purchase order information acceptable to the Supplier and any other relevant valid, up-to-date and complete contact and billing details and the Supplier shall invoice the Customer:
- (a) within one month of the Effective Date for the Subscription Fees payable in respect of the Initial Subscription Term; and
 - (b) subject to clause 12.1, within one month of the anniversary of the Effective Date for any Subscription Fees payable in respect of the next Renewal Period (if renewed), and the Customer shall pay each invoice within 30 days after the date of such invoice.

- 7.3 If the Supplier has not received payment within 30 days after the due date, and without prejudice to any other rights and remedies of the Supplier:
- (a) the Supplier may, without liability to the Customer, withhold the Customer's access to all or part of the Documentation and the Supplier shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and
 - (b) interest shall accrue on a daily basis on such due amounts at an annual rate equal to 3% over the then current base lending rate of Clydesdale Bank from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.
- 7.4 All amounts and fees stated or referred to in this Contract:
- (a) shall be payable in pounds sterling;
 - (b) are, subject to clause 11.3(b), non-cancellable and non-refundable;
 - (c) are exclusive of value added tax, which shall be added to the Supplier's invoice(s) at the appropriate rate.
- 7.5 The Supplier shall be entitled to increase the Subscription Fees at the start of each Renewal Period, upon prior notice to the Customer.
- 8. Proprietary rights**
- 8.1 The Customer acknowledges and agrees that the Supplier and/or its licensors own all intellectual property rights in the Services and the Documentation. Except as expressly stated herein, this Contract does not grant the Customer any rights to, under or in, any patents, copyright, database right, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Services or the Documentation.
- 8.2 The Supplier confirms that it has all the rights in relation to the Services and the Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with this Contract.
- 9. Data Protection**
- 9.1 The Customer shall be the Data Controller in respect to Customer Data and personal information supplied for the purposes of this Contract.
- 9.2 The Supplier shall be the Data Processor in respect to Customer Data and personal information supplied for the purposes of this Contract.
- 9.3 All personal information relating to individuals is confidential and subject to Data Protection Laws. Such information shall not be divulged to any person other than those who require it for the effective delivery of the Services. Any personal information provided shall be stored securely in accordance with the UK Data Protection Act 1998 and GDPR 2018 and shall only be passed on to a third party where required by law, to comply with statutory obligations or where express written consent has been received from all relevant parties.

- 9.4 All data (which includes personal data) provided by the Customer as Customer Data shall be collected, processed and stored by third party providers (sub-processors) acting under contract with the Supplier to provide and support the Services and Documentation via nnchallenge.org.uk or any other website notified to the Customer by the Supplier from time to time. It is possible that some of the computer systems and third party providers that process the Customer Data may be based in countries outside the European Union. By inputting Customer Data, the Customer agrees that any such data may be so transferred, made available, stored or processed.
- 9.5 The Supplier shall take all steps reasonably necessary to ensure that Customer Data is treated securely and in accordance with the UK Data Protection Act 1998 and GDPR 2018 by third party providers. The Supplier shall ensure that written agreements are in place with such third party providers.
- 9.6 The Supplier shall not appoint additional sub-processors without the consent of the Customer.
- 9.7 The Supplier shall maintain a detailed record of all processing activities relating to personal data in accordance with article 30 of the GDPR 2018. The Customer may request access to this record at any time.
- 9.8 Compliance with the provisions of the Data Protection Act 1998 and GDPR 2018 is the responsibility of all employees, contracted consultants and representatives of organisations named on the Order. All parties confirm that they operate sufficient and appropriate organisational measures to protect against unauthorised or unlawful processing of personal data and shall, upon request, provide to each other evidence of the measures taken to comply with their obligations under this clause.
- 9.9 The Supplier shall notify the Customer without undue delay after becoming aware of a personal data breach.
- 9.10 The agreed Documentation for the Customer will be sent by National Numeracy to the Challenge Tracker contact named on the Order by email, unless and until an alternative named contact is agreed in writing in accordance with clause 3.2(d). When any Documentation is emailed to the named Challenge Tracker contact, the protection of the data included in that Documentation becomes the responsibility of the Customer.
- 9.11 The Supplier shall not process personal data except as outlined in this Agreement or under the instruction of the Customer otherwise provided in writing.

10. Confidentiality

- 10.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under this Contract. A party's Confidential Information shall not be deemed to include information that:
- (a) is or becomes publicly known other than through any act or omission of the receiving party;

- (b) was in the other party's lawful possession before the disclosure;
 - (c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or
 - (d) is independently developed by the receiving party, which independent development can be shown by written evidence.
- 10.2 Subject to clause 10.4, each party shall hold the other's Confidential Information in confidence and not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this Contract.
- 10.3 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of this Contract.
- 10.4 A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction, provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 11.4, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.
- 10.5 Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.
- 10.6 The Customer acknowledges that details of the Services, and the results of any performance tests of the Services, constitute the Supplier's Confidential Information.
- 10.7 The Supplier acknowledges that the Customer Data is the Confidential Information of the Customer.
- 10.8 No party shall make, or permit any person to make, any public announcement concerning this Contract without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.
- 10.9 The above provisions of this clause 10 shall survive termination of this Contract, however arising.
- 11. Limitation of liability**
- 11.1 Except as expressly and specifically provided in these Conditions:
 - (a) the Customer assumes sole responsibility for results obtained from the use of the Services and the Documentation by the Customer, and for conclusions drawn from such use. The Supplier shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to the Supplier by the

Customer in connection with the Services, or any actions taken by the Supplier at the Customer's direction;

- (b) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from these Conditions; and
- (c) the Services and the Documentation are provided to the Customer on an "as is" basis.

11.2 Nothing in these Conditions excludes the liability of the Supplier:

- (a) for death or personal injury caused by the Supplier's negligence; or
- (b) for fraud or fraudulent misrepresentation.

11.3 Subject to clause 11.1 and clause 11.2:

- (a) the Supplier shall not be liable whether in tort (including for [negligence or] breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under these Conditions; and
- (b) the Supplier's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Contract shall be limited to the total Subscription Fees paid for the User Subscriptions during the 12 months immediately preceding the date on which the claim arose.

12. Term and termination

12.1 This Contract shall, unless otherwise terminated as provided in this clause 12, commence on the Effective Date and shall continue for the Initial Subscription Term and, thereafter, this Contract may be renewed for successive periods of 12 months (each a **Renewal Period**), on agreement in writing between the Customer and the Supplier, unless otherwise terminated in accordance with the provisions of these Conditions; and the Initial Subscription Term together with any subsequent Renewal Periods shall constitute the **Subscription Term**.

12.2 Without affecting any other right or remedy available to it, either party may terminate this Contract with immediate effect by giving written notice to the other party if:

- (a) the other party fails to pay any amount due under this Contract on the due date for payment and remains in default not less than 60 days after being notified in writing to make such payment;
- (b) the other party commits a material breach of any other term of these Conditions which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 60 days after being notified in writing to do so;

- (c) the other party repeatedly breaches any of the terms of these Conditions in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of these Conditions;
- (d) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 ;
- (e) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (f) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (g) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party;
- (h) the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;
- (i) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- (j) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
- (k) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 12.2(d) to clause 12.2(j) (inclusive); or
- (l) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

12.3 On termination of this Contract for any reason:

- (a) all licences granted under this Contract shall immediately terminate and no further Documentation will be provided to the Customer;
- (b) the Supplier shall continue to process the Customer Data from Authorised Users in accordance with the terms referenced in clause 6(d);
- (c) Notwithstanding clause 12.3(b) the Supplier may destroy or otherwise dispose of any of the Customer Data in its possession; and
- (d) any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach

of the agreement which existed at or before the date of termination shall not be affected or prejudiced.

13. Governing law

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

14. Jurisdiction

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).