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## Terms of Use

### End User Terms & Conditions for the GradeMaker Pro software service Version No. 1.4

Issued by GradeMaker Ltd

#### Terms of Use

Welcome to the GradeMaker Pro Service.

Please read these Terms of Use carefully before using the software which throughout this document is referred to as GradeMaker Pro; your organisation may have selected a different operational name for the system but regardless of the operational name selected you will see © GradeMaker at the bottom left of the screen and these Terms of Use apply.

By using GradeMaker Pro you are agreeing to be legally bound by these Terms of Use.

If you do not agree to these Terms of Use, you must not use the GradeMaker Pro Service.

Terms specific to these Terms of Use are defined in Appendix 1, and existing definitions are carried over from the Licence and Services Agreement.

#### 1. Agreement

- 1.1. We are GradeMaker Ltd. ("GM"), a company based in the United Kingdom (company number 8936673), and we are the publishers of the GradeMaker Pro Software and Documentation.
- 1.2. GM has entered into an agreement ("Licence and Services Agreement") with your organisation under which you, as an authorised User, have been granted certain rights to use the GradeMaker Pro Service subject to you agreeing with these Terms of Use.
- 1.3. GM and you, as an authorised User of the GradeMaker Pro Service are both parties to this Terms of Use Agreement.

#### 2. Grant of Access

- 2.1. In consideration of you agreeing to abide by these Terms of Use, GM agrees to make the GradeMaker Pro Service available to you, the User, for the sole purpose of carrying out your organisation's internal business operations.
- 2.2. If as a User, you do not accept the terms of this Terms of Use agreement, then you may not use the Service. You should not access the Service and you should notify the senior representative of your organisation.
- 2.3. If as a User, you continue to use the Service after first login this will constitute binding acceptance of these Terms of Use.



- 2.4. GM reserves the right to amend or modify these terms from time to time. Such amendments will be published on the GM website at <http://www.grademaker.com/Products/Terms> . Users will be notified of these changes on login to the Service and continuing to use the Service after such notification will constitute acceptance of the changes.
- 2.5. Each User shall keep secure and confidential a password solely for their own use of the Service and not to be divulged to any other individual or User; and their password shall be changed In accordance with your organisation’s policy, or as otherwise determined by the Software settings.
- 2.6. Each User acknowledges that the security of the Service is of the essence and shall use their best endeavours to prevent any unauthorised access to or use of the Service, and in the event that the User becomes aware of any unauthorised access or use shall promptly notify a senior representative of their organisation or GM directly at [security@grademaker.com](mailto:security@grademaker.com).
- 2.7. GM shall audit the Service on a regular basis in such a way as not to materially interfere with the normal conduct of business in order to identify and confirm the identity of all Users.
- 2.8. Should GM, acting reasonably, identify that a password has been acquired by any individual who is not a User, then without prejudice to GM’s other rights, GM or your organisation shall promptly cancel their access, disable such passwords and shall not issue any new passwords to the individual.

### **3. Restrictions on Use**

- 3.1. Each User shall not, except as may be allowed by any applicable law which is not capable of exclusion, and only then for the specific limited purpose permitted by law:
  - 3.1.1. enter, upload, store, transfer, display, present, transmit or distribute any Unacceptable Content when using the Service; or
  - 3.1.2. attempt to copy, modify, translate, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit or distribute all or any part of the Software and/or Documentation in any form or media or by any means, save that Users may download, publish and distribute to Users only those parts of the Documentation which constitute GM User instructions or training materials ; or
  - 3.1.3. attempt to reverse compile, disassemble, reverse engineer, or otherwise reduce to human-readable form all or any part of the Software; or
  - 3.1.4. access all or any part of the Service including the Documentation in order to design, develop or build a product or service which competes with the Service; or
  - 3.1.5. copy, mimic, duplicate, redesign or redevelop any or part of the underlying concepts, functions, architecture or designs of the Software; or



- 3.1.6. use the Service, Software or Documentation to provide services to third parties either paid for or free of charge; or
  - 3.1.7. license, sub-license, rent, lease, transfer, assign, distribute, display, disclose, sell, resell, or otherwise commercially exploit the Service, Software or Documentation; or
  - 3.1.8. remove, obscure or alter any notice of patent, copyright, trademark, branding or other proprietary notice on the Software or Documentation; or
  - 3.1.9. make the Service or Software available to any third party save other Users; or
  - 3.1.10. attempt to obtain or assist third parties in obtaining access to the Service, Software or Documentation other than is provided in this clause 2.
- 3.2. If a User becomes aware of any Unacceptable Content within the Software or Documentation then they shall promptly either a) irrevocably delete, withdraw or remove such Content from the Service; or if this is not possible b) notify a senior member of their organisation or GM directly by email ([security@grademaker.com](mailto:security@grademaker.com)), providing full information to allow the Unacceptable Content to be identified and removed.

#### 4. Right to Change

- 4.1. GM reserves the right in its sole and absolute discretion to amend the Software or Documentation or any part thereof at any time
- 4.2. GM reserves the right to amend its support services in its sole and absolute discretion from time to time upon notification to Users via its website <http://www.grademaker.com/Products/Terms> as may be modified from time to time.

#### 5. Customer Data

- 5.1. Your organisation shall own all rights, title, and interest in and to all of the Customer Data and its Users shall have responsibility for the rights to use, legality, reliability, integrity, and accuracy of the Customer Data.
- 5.2. GM shall follow its back up procedures for the Customer Data as set out in the SLA, and as may be amended by GM in its sole discretion from time to time. GM shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by its Users or by any third party save those third parties sub-contracted by GM to perform services relating to the Service and the maintenance and back up of Customer Data.
- 5.3. In providing the Service GM shall comply with its Information Security Policy which is available at its website <http://www.grademaker.com/Products/Terms> and which may be amended from time to time by GM in its sole and absolute discretion.
- 5.4. Users acknowledge that where GM processes any personal data on behalf of your organisation that GM shall be a data processor in the relationship, as is meant by the General Data Protection Regulation (GDPR) and in such case:



- 5.4.1. GM shall process the personal data only in accordance with this Agreement and any lawful instructions reasonably given by your organisation from time to time;
- 5.4.2. Users shall take appropriate technical and organisational measures against unauthorised or unlawful processing of the personal data or its accidental loss, destruction or damage;
- 5.4.3. in the case that your organisation or place of work is located inside the European Economic Area (EEA), Users acknowledge that their personal data may be transferred or stored outside the EEA, but will not be transferred to a 'Third Country' (I.e. a country / location which is not deemed to have appropriate data protection policies and procedures). Personal data may be transferred out of the country where Users are located in order to carry out the Service and meet GM's other obligations under this Agreement.

## 6. User Obligations

- 6.1. Users shall provide GM with:
  - 6.1.1. all necessary co-operation to allow GM to deliver its obligations under this Agreement; and
  - 6.1.2. all necessary access to such information as may be reasonably required by GM on reasonable notice;  
  
in order to deliver the Service including the processing of Customer Data and Content, and to manage security access information for Users.
- 6.2. Users shall also:
  - 6.2.1. comply with all applicable laws and regulations with respect to its activities under this Agreement;
  - 6.2.2. carry out all their obligations set out in these Terms of Use in a timely manner. In the event of any delay in the provision of such assistance as is agreed by the parties, GM may adjust any agreed timetable or delivery schedule pro rata as reasonably necessary;
  - 6.2.3. access and use the Service including the Software and Documentation in accordance with these Terms of Use;
  - 6.2.4. acknowledge that the Service may make use of cookies to deliver the Service and that they will accept their use without blockage on any connected devices;
  - 6.2.5. use screens with 1060px wide resolution and enable JavaScript within their browsers; and
  - 6.2.6. use browsers, operating systems and screens which conform with the terms of the GradeMaker service, which is that GradeMaker will provide full support for users using:
    - Internet Explorer – the latest two major versions on the latest major version of OS
    - Chrome – the latest two versions



- Safari – the latest major version for the latest major version of Mac OS
  - Firefox – the latest version
- and reasonable endeavours support (meaning the system is functional but not pixel perfect) for users with:
- Internet Explorer – one version before supported versions
  - Chrome – previous versions released over the last year
  - Safari – previous major version to the supported version
  - Firefox – previous versions released over the last year
  - Edge – latest major version
  - Opera – latest major version

New browsers and operating systems are fully supported 6 months after release. On this date the oldest version of the relevant browser or operating system is downgraded (to Reasonable Endeavours or Not Supported as appropriate); and

- 6.3. Users shall not send, convey or communicate to GM through any physical or electronic medium any confidential Content including, but not limited to, live examination topics, questions, answers or mark schemes in any state of publication or readiness.

## 7. Intellectual Property

- 7.1. Users acknowledges and agrees that GM and its licensors own all intellectual property rights in the Service, including for the avoidance of doubt, the Software and Documentation. Except as expressly stated herein, these Terms of Use do not grant the Users any rights to or in any inventions, patents, copyrights, database rights, design rights, trade names, trade secrets, trademarks (whether registered or unregistered), domain names, know-how, and all other intellectual property rights, derivatives thereof and forms of protection of a similar nature anywhere in the world, or any other rights or licences in respect of the Service.
- 7.2. GM makes no warranty or representation as to the validity or enforceability of any Intellectual Property relating to the GradeMaker Pro Service.
- 7.3. Users are not permitted to use the GradeMaker Pro Service in any way that may infringe any rights contained in the Software or Documentation or in any third party's intellectual property rights.
- 7.4. Users hereby grant to GM a worldwide, non-exclusive, sub-licensable, royalty-free, perpetual licence to use, adapt, publish, translate, copy, distribute or display any and all Content or parts thereof which is generated by Users, such licence to apply only to Content usage within the Software and not under any circumstances outside the Software and also to be subject to the strict observance by GM of the security conditions of Content such that Content is not disclosed to unauthorised persons or Users without permission to view that Content.

## 8. Confidentiality

- 8.1. With respect to all information which is directly or indirectly communicated to one party (hereinafter referred to as the "Receiving Party") by the other party (hereinafter referred to as the "Supplying Party") under these Terms of Use or otherwise in



connection with the provision of the Service (including technical information or other information relating in any manner to the business or affairs of such other party) which information is either marked 'confidential' or is of a confidential nature (the "Confidential Information") the Receiving Party hereby undertakes to the Supplying Party that it will keep confidential the Supplying Party's Confidential Information and will not disclose the same to any third party without prior written consent of the Supplying Party except to the extent that it is reasonably necessary in or for the purposes of the performance of its obligations or the exercise of the rights and licences granted to it pursuant to these Terms of Use. The Receiving Party further undertakes to the Supplying Party that it will not during that period use the same except in or for the said purposes.

- 8.2. Provided always that such undertaking shall not in any case be deemed to extend to any information which is:
  - 8.2.1. in the possession of the Receiving Party at the date of receipt from the Supplying Party, or
  - 8.2.2. public knowledge or becomes public otherwise than by breach of these Terms of Use, or
  - 8.2.3. obtained by the Receiving Party from a third party in good faith without breach of a confidentiality obligation owed to the Supplying Party, or
  - 8.2.4. disclosed by the Receiving Party in compliance with a legal requirement of a governmental agency or otherwise where disclosure is required by operation of laws.
- 8.3. Without prejudice to the generality of Clause 8.1 each party undertakes to establish suitable procedures for ensuring that technical and other information of the other party is restricted to those employees, including Users, needing such information for the purposes of the duties assigned to them and that all such employees and Users are themselves subject to suitable obligation of confidence.
- 8.4. Users acknowledge that details of the Service, including but not limited to technical details, security, functions, reporting, analysis, performance tests or acceptance tests, constitute GM's Confidential Information.
- 8.5. GM acknowledges that the Customer Data and Content is the Confidential Information of the Customer.

## 9. Term and Termination

- 9.1. In the event that our Licence and Services Agreement with your organisation expires or is terminated, Users' rights to access and to use the GradeMaker Pro Service including the Customer Data shall terminate with immediate effect.
- 9.2. All Users shall acknowledge that in the event that they breach any of these Terms of Use, GM at its sole discretion shall be entitled to suspend or disable their access to the Service, in whole or in part, with immediate effect.



9.2.1. In the event that a User breaches these Terms of Use, GM shall be entitled to notify the organisation and provide full details of the breach.

## 10. Force Majeure

10.1. GM shall have no liability to the Users under these Terms of Use if it is prevented from or delayed in performing its obligations under these Terms of Use by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock outs or other industrial disputes (whether involving GM's workforce or otherwise), failure of a utility service or transport or telecommunications network, act of God, war, riot, disorder, coup, civil commotion, acts of terrorism, malicious damage, compliance with any law or government order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors provided that your organisation is notified of such an event and its expected duration.

## 11. Liability

11.1. GM provides no guarantees as to the functionality of the GradeMaker Pro Service nor that it will be available on an error free or uninterrupted basis and nor that the Service is free of Viruses or other malware and GM accepts no liability in respect of losses or damages arising out of such.

11.2. Users acknowledge that GM accepts no responsibility for any Content or Customer Data which may be inaccurate or illegal or in any way offensive.

11.3. Nothing in these Terms of Use excludes the liability of GM for:

11.3.1. death or personal injury caused by GM's negligence or that of its employees, contractors or agents; or

11.3.2. fraud or fraudulent misrepresentation; or

11.3.3. any other matter in respect of which the law prescribes that liability may not be limited or excluded.

11.4. Save for clause 11.3, except as expressly set out in these Terms of Use, all warranties, conditions and other terms implied by statute or common law are to the fullest extent permitted by law excluded from the contract between Users and GM.

11.5. GM's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with these Terms of Use shall be limited to [UKP 0.01].

## 12. Entire Agreement

12.1. These Terms of Use and any documents referred to in it constitute the whole agreement between the parties and supersede any previous Terms of Use between them relating to the subject matter they cover.

## 13. Assignment



13.1. GM may assign these Terms of Use at any time at its sole discretion.

#### **14. Third Party Rights**

14.1. These Terms of Use do not confer any rights on any person or party (other than the parties to this Terms of Use and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

#### **15. Waiver**

15.1. Failure by either party to exercise or delay exercising any of the Terms of Use shall not constitute or be deemed to be a waiver of its rights under this contract nor prejudice its rights to take subsequent action.

#### **16. Governing Law and Jurisdiction**

16.1. These Terms of Use and any dispute or claims arising from it or its subject matter shall be governed by and interpreted in accordance with English Law. The parties hereby irrevocably submit to the exclusive jurisdiction of the English courts.





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## Appendix 1 – Definitions

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- “Content”** means any digital content, item, or material, in any format, which is uploaded to the Software either via the Service or otherwise and which is accessible by users via the Service;
- “Customer”** means the party to the Licence and Services Agreement other than GM and which represents the organisation to which you belong for the purpose of these Terms of Use;
- “Customer Data”** means the data or information, including any personal data, which is input by the Customer or its Users or by GM on the Customer’s behalf for the purpose of using the Service or supporting the Customer’s use of the Service;
- “Documentation”** means any document or digital content or media which is made available to the Customer or its Users via the GM web address <http://www.grademaker.com/Products/Terms> or such other web address notified to the Customer from time to time or via the Service and which sets out a description of, and any instructions for, the use of the Service;
- “Licence”** means the terms and conditions for use of the Service and the Software as defined by the Licence and Services Agreement;
- “Service”** means the online subscription service access to the Software and Documentation provided by GM;
- “SLA”** means the service level agreement between GM and the Customer which sets out the service parameters, targets and thresholds for the Service;
- “Software”** means the online software application(s) listed in Schedule 1 developed, published and hosted by GM;
- “Unacceptable Content”** means any Content which is or contains material that a) is or may reasonably be considered to be defamatory, libellous, obscene, threatening, in contempt of court or in contravention of any law or regulation, or that infringes the rights of GM or any third party; or b) promotes violence or discrimination based on gender, race, colour, sexual orientation, religion, disability or age; or c) promotes any illegal activity; or d) may be reasonably considered to be damaging to the reputation of all or any part of the Service or of GM; or e) to which the Customer does not own the rights or is not properly licensed to use at any time or in any instance; or f) is or appears to be a Virus;



**“Users”** means those employees, agents and contractors of the Customer who are explicitly and fully authorised by the Customer to use the Service;

**“Virus”** means any device, digital or otherwise, (including but not limited to software, code, file or program) which may prevent, impair or otherwise adversely affect the operation of any computer software, hardware or equipment, network or communication service or device; or may prevent, impair or otherwise adversely affect access to or the operation of any program or data including affecting the reliability of any program or data; or adversely affect the user experience; or may corrupt, damage, distribute illegally, or steal Customer Data or other data; or is a worm, Trojan horse, logic bomb, trap door, spyware, or other malware agent.