SUBSTANCE DATA PROCESSING ADDENDUM

A services agreement relating to the provision of access to the “Views” software has been entered into by and between SUBSTANCE 2005 LIMITED (a company registered in England and Wales with company number 9170484 and whose registered office address is Canada House, Chepstow Street, Manchester M1 5FW) (the Supplier) and the party identified as the "Customer" in the agreement (hereinafter referred to as the Agreement).

This Addendum is supplemental to the Agreement entered into between the parties.

This Addendum and the changes to the Agreement implemented by this Addendum, shall take effect on 25 May 2018 (the Effective Date).

Unless the context otherwise requires, references to clauses are to clauses in this Addendum, and references to paragraphs are to paragraphs in the Schedule to this Addendum.

AGREED TERMS

1. DEFINITIONS

1.1. Capitalised terms used in this Addendum shall have the meanings given below or (where no definition is given) the meanings ascribed to them in the Agreement:

"Applicable Laws" all laws (including laws relating to anti-bribery and anti-corruption), statutes, regulations, decisions, rulings, sanctions, governmental and regulatory policies, industry guidelines and/or codes of practice which may from time to time be in force anywhere in the world and relevant to any rights and/or obligations under and/or the performance of this Addendum and/or the Agreement;

"Customer Personal Data" any personal data uploaded, inputted, stored, transmitted and/or otherwise communicated to or via the Software by or on behalf of the Customer and/or any other personal data which the Supplier is required to process on behalf of the Customer (as a data processor) in order to provide the Services pursuant to the Agreement;

"Data Protection Legislation" the General Data Protection Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (the "GDPR"), the Data Protection Act 2018 and any other national law which implements the GDPR in the United Kingdom; the Privacy and Electronic Communications (EC Directive) Regulations 2003, and all other Applicable Laws relating to the processing of personal data, privacy and the protection of personal data in electronic communications and direct marketing, including any applicable law or regulation which supersedes, replaces or implements any of the foregoing in the United Kingdom; and

"Data Protocol" a protocol setting out the types of personal data which will be processed by the Supplier in connection with hosting the Software and providing the Services, the subject matter and purposes of the processing and the duration of the processing, as set out in the Schedule to this Addendum and any further data protocol which is agreed by the parties from time to time (and which shall form part of and be incorporated into this Addendum).

“international organisation” and “personal data breach” shall each have the applicable meaning set out in the Data Protection Legislation.

1.3. References to clauses are to the clauses of this Addendum, unless stated otherwise.

1.4. The rules of interpretation set out in the Agreement shall apply to this Addendum.

2. GENERAL

2.1 The parties acknowledge and agree that this Addendum:
(a) forms part of the Agreement;
(b) sets out the parties’ respective obligations in respect of the processing of personal data in connection with the provision and receipt of the Services; and
(c) amends and replaces the provisions in the Agreement that relate expressly to the parties’ use of personal data, including any specific clauses relating to data protection (including the section in the Supplier's specific terms and conditions headed Data and Data Protection), and any other provisions in the Agreement that conflict with the terms of this Addendum.

2.2 In addition to the Customer Personal Data which the Supplier processes on behalf of the Customer, the Supplier may also process personal data in connection with the Agreement in the Supplier's own capacity as a data controller (where the Supplier will determine the purposes and means of the processing). The provisions of this Addendum shall not apply to such processing where the Supplier is the data controller, but the Supplier shall undertake such processing in accordance with the Supplier's legal obligations to data subjects under the Data Protection Legislation.

2.3 Each party agrees that in respect of its processing of Customer Personal Data in connection with the provision of Services and the licensing of the Software under the Agreement and this Addendum, it shall comply with its obligations under the Data Protection Legislation, together with the provisions of this Addendum and any applicable Data Protocol.

2.4 Notwithstanding anything to the contrary in this Addendum, in the event of any conflict between the provisions of this Addendum and the provisions of the remainder of the Agreement, the provisions of this Addendum shall take precedence.

3. CUSTOMER’S OBLIGATIONS

3.1 As a data controller, it is the Customer’s responsibility to ensure that the Customer is entitled to process and to authorise the Supplier to process the Customer Personal Data in the manner and for the duration envisaged by this Addendum. If at any time the Customer has reason to believe that the processing of any Customer Personal Data under this Addendum is in breach of the Data Protection Legislation, the Customer shall immediately notify the Supplier, together with an explanation of the concern.

3.2 Prior to sharing any Customer Personal Data with the Supplier, the Customer must identify the lawful basis on which the parties can rely under the Data Protection Legislation to process such Customer Personal Data. Unless the lawful basis the Customer wishes to rely on is performance of a contract or the data subject's consent, the Customer shall inform the Supplier of the lawful basis for processing such Customer Personal Data (prior to sharing such personal data with the Supplier) and if the lawful basis for processing changes, the Customer shall notify the Supplier as soon as practicable, but in any event no later than 14 days after such change occurs.

3.3 The Customer shall ensure at all times that the Customer's instructions to the Supplier for the processing of Customer Personal Data under this Addendum comply with Data Protection Legislation and that compliance with such instructions would not cause the Supplier to breach the Data Protection Legislation.

3.4 The Customer shall be responsible for the provision of the corresponding fair processing information to relevant data subjects and for obtaining any consents that may be required (in each case to the extent necessary in order to comply with Data Protection Legislation) from that data subject. The Customer shall ensure that such fair processing notices are accurate and
complete, and that any consents are sufficient in order for the Supplier to lawfully process the Customer Personal Data in the manner set out in this Addendum.

3.5 If the Customer requires the Supplier to transfer any Customer Personal Data to a third party provider engaged by the Customer, the Customer shall be solely responsible for identifying the lawful basis under the Data Protection Legislation on which the parties can rely under the Data Protection Legislation to transfer such Customer Personal Data to the relevant third party provider (and the Customer shall notify the Supplier of the same). A written data processing agreement must be in place between the Customer and such provider. The Customer acknowledges and agrees that the Supplier has no control over and shall have no liability in respect of how any personal data is processed by such third party provider engaged by the Customer.

4. SUPPLIER’S RESPONSIBILITIES

4.1 In respect of the Customer Personal Data processed by the Supplier as a data processor on the Customer’s behalf, the Supplier shall:

(a) only process Customer Personal Data on behalf of the Customer where and to the extent necessary to host the Software and otherwise to perform the Supplier’s obligations under the Agreement, this Addendum and Applicable Law, and only in accordance with the terms of this Addendum, any additional applicable Data Protocol, and any additional reasonable instructions the Customer may issue from time to time (provided that such instructions are within the scope of the Supplier’s obligations under this Addendum), unless otherwise required by law, regulation, court of competent jurisdiction or any other governmental or regulatory body;

(b) implement appropriate technical and organisational measures, taking into account the nature and purposes of the processing, for the protection of the security of the Customer Personal Data to protect against unauthorised or unlawful processing of the Customer Personal Data and against accidental loss or destruction of, or damage to, the Customer Personal Data, appropriate to the nature of the personal data to be protected, details of which are available from the Supplier upon request and which measures the Customer shall have the opportunity to review and assess in accordance with the Customer’s own obligations under the Data Protection Legislation. The Supplier reserves the right to revise the technical and organisational measures at any time, without notice, provided that such revisions will not materially reduce the overall security provided for the Customer Personal Data that the Supplier processes in the course of hosting the Software;

(c) ensure that personnel who have access to and/or process the Customer Personal Data are obliged to keep the Customer Personal Data confidential;

(d) not transfer the Customer Personal Data outside of the European Economic Area (EEA) without complying with the provisions of the Data Protection Legislation in respect of such transfer, save that if the Customer requires the Supplier to transfer any Customer Personal Data outside the EEA pursuant to the Customer’s instructions, it shall be the Customer’s responsibility to ensure that any such transfer complies with the provisions of the Data Protection Legislation and to notify the Supplier of any specific instructions or restrictions in respect of the same;

(e) notify the Customer without undue delay if the Supplier becomes aware of any personal data breach or of any request or objection from a data subject pursuant to the Data Protection Legislation, in each case relating to the Customer Personal Data;

(f) to the extent that the Customer does not have the ability to address a request from a data subject to exercise the data subject’s rights under the Data Protection Legislation (including requests for access to personal data; rectification or erasure of personal data; restrictions of processing personal data; and portability of personal data) (a “Data Subject Request”) in respect of the Supplier’s processing of Customer Personal Data, the Supplier shall, upon the Customer’s request and insofar as is reasonably possible, provide commercially reasonable assistance, at the Customer’s cost, to facilitate such Data Subject Request;
reasonably assist the Customer, at the Customer's cost, in ensuring compliance with the Customer's obligations under the Data Protection Legislation with respect to consultations with supervisory authorities or regulators;

(h) provide the Customer with reasonable cooperation and assistance, at the Customer's cost, as may be required to fulfil the Customer's obligation under the GDPR to carry out a data protection impact assessment related to the Customer's use of the Software, to the extent that the Customer does not otherwise have access to the relevant information and to the extent that such information is available to the Supplier;

(i) inform the Customer without undue delay after becoming aware of the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to Customer Personal Data transmitted, stored or otherwise processed by the Supplier in connection with this Addendum;

(j) maintain records and information regarding the Supplier's processing activities in respect of the Customer Personal Data to demonstrate the Supplier's compliance with this Addendum;

(k) allow for audits by the Customer or the Customer's designated auditor of the Supplier's systems and procedures relevant to the processing of Customer Personal Data, provided that in the case of any audit, the Supplier shall:

(i) comply with any reasonable requirements or security restrictions that the Supplier may impose to safeguard the Supplier's systems, personal data the Supplier holds on behalf of other clients and the Supplier's own confidential or commercially sensitive information and to avoid unreasonable disruption to the Supplier's business and operations;

(ii) reimburse the Supplier for any time expended by the Supplier for any such audit, at the Supplier's then current professional services rates, which shall be made available to the Customer upon request, which costs shall be reasonable, taking into account the resources expended by the Supplier; and

(iii) before the commencement of any audit, the parties shall mutually agree on the scope, timing, and duration of the audit.

5. SUB-PROCESSORS

5.1 The Supplier may use the following types of processors who may process Customer Personal Data in connection with hosting the Software:

- third-party hosting service providers (currently Rackspace and such replacement and/or additional providers as the Supplier may appoint from time to time);
- providers of penetration testing services;
- providers of cloud storage;
- providers of hosted software;
- third party APIs;
- data centres; and
- telecommunication providers,

details of which are available to the Customer upon request. The Supplier may update the list of its processors from time to time. The Customer acknowledges that such information is confidential.

5.2 The Customer hereby consents to the Supplier appointing the processors set out in clause 5.1 above as processors of the Customer Personal Data under this Addendum. The Supplier shall have in place a written contract with such processors in respect of such processing of the Customer Personal Data.

5.3 The Supplier shall inform the Customer of any intended changes or replacements to any such processors or any additional processors. Within a period of 30 days of the date of notification of such changes, the Customer may object to any such changes on reasonable grounds, in which event either party shall have the right to terminate this Addendum on giving the other party 30 days' written notice, without liability to the other party. If the Customer has not objected
to any such changes within a period of 30 days of the date of the notification of the changes, the Customer shall be deemed to have accepted such changes.

6. **LIABILITY**

Each party’s liability under this Addendum shall be subject to the exclusions and limitations of liability in the Agreement.

7. **CHANGE OF LAW**

If there are any changes and/or updates to any Applicable Law (including Data Protection Legislation) or codes of practice issued by the Information Commissioner’s Office after the Effective Date which require or make it desirable (as determined by the Supplier) for any amendments to be made to this Addendum, the Supplier shall be entitled to vary this Addendum and shall confirm any changes in writing to the Customer.

8. **SEVERANCE**

If any provision (or part of a provision) of this Addendum is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

9. **GOVERNING LAW AND JURISDICTION**

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

9.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) that arises out of or in connection with this Addendum or its subject matter or performance.
Schedule
Data Protocol

Subject matter and purpose of processing

The Supplier shall process the Customer Personal Data for the purpose of hosting the Software licensed to the Customer and providing the Services as outlined in this Addendum and the Agreement.

Types of personal data to be processed and categories of data subject

The type and categories of personal data comprising the Customer Personal Data are solely controlled and dictated by the Customer. It is agreed and acknowledged that the Supplier has no control or oversight over the Customer Personal Data.

The data subjects to whom the Customer Personal Data relates, will be primarily individuals, staff, volunteers and stakeholders who attend the Customer's sessions, events, classes, workshops or courses, or other users of the Customer's services from time to time.

The types of Customer Personal Data which the Supplier may process when hosting the Software will include any personal data the Customer chooses to store on the Software, which may include:

- Names, addresses and dates of birth of the Customer’s service users;
- Demographic information including ethnicity, religion and disability;
- Passport numbers;
- Attendance records;
- Medical records;
- Photographs and other media content;
- Such other personal data as the Customer may decide to upload, input, store, transmit and/or otherwise communicate to or via the Software from time to time.

Additional measures

The Supplier shall make secure back-up copies of the Customer Personal Data in line with the Supplier's Data Processing Statement (a copy of which shall be made available to the Customer upon request). Such Data Processing Statement may be amended by the Supplier at any time, without notice, provided that such revisions will not materially reduce the overall security provided for the Customer Personal Data that the Supplier processes in the course of hosting the Software.

The Customer is required to undertake its own assessment to ensure that the technical and organisational measures implemented by the Customer are appropriate, taking into account the nature and purposes of the processing, for the protection of the security of the Customer Personal Data in accordance with Data Protection Legislation. If the Customer has any concerns in this regard, it must raise them immediately with the Supplier.

In the event of any corruption or loss of any Customer Personal Data, the Supplier shall, at the Customer's request, restore or procure the restoration of the Customer Personal Data to its state immediately prior to the said corruption or loss.

Third party APIs

Where directed by the Customer, the Supplier may allow third party application programming interfaces (APIs) to integrate with the Software and access the Customer Personal Data for the purpose of providing additional services and/or functionality to the Customer. This shall be undertaken solely at the Customer's risk and expense.

The Customer shall be solely responsible for identifying the lawful basis under the Data Protection Legislation on which the parties can rely under the Data Protection Legislation to share such Customer Personal Data with the relevant third party API provider (and the Customer shall notify the Supplier of the same). A written data processing agreement must be in place between the Customer and such provider. The Customer acknowledges and agrees that the Supplier has no control over and shall have no liability in respect of how any personal data is processed by such third party provider engaged by the Customer.
Duration of the processing

The Supplier shall not process the Customer Personal Data on behalf of the Customer for any longer than is required for the purposes of hosting the Software. Following termination of the Software licence, the Supplier shall cease processing and delete all Customer Personal Data in accordance with the Agreement, save to the extent: (a) required by Applicable Law; (b) as a result of the Supplier's automatic archiving and backup procedures; and/or (c) to comply with bona fide internal compliance and audit policies and procedures. The Supplier shall not be liable to the Customer for any such deletion of the Customer Personal Data.