

GENERAL TERMS AND CONDITIONS

IT IS AGREED as follows:-

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement the following terms have the following meanings:-

"Account Manager"	means the person nominated from time to time by the Supplier to manage the Supplier's performance of this Agreement
"Agreement"	shall have the meaning given to it the Order Form
"Applicable Law"	means all laws, regulations, directives, statutes, subordinate legislation, common law and civil codes of any jurisdiction, all judgments, orders, notices, instructions, decisions and awards of any court or competent authority or tribunal, all codes of practice having force of law, statutory guidance, regulatory policy or guidance and industry codes of practice
"Authorised Users"	means those employees and contractors undertaking their work activities at the Licensed Schools, school inspectors and other officials of the Client but excluding, for the avoidance of doubt, any competitor of the Supplier
"Business Day"	means any day which is not a Saturday, Sunday or a public or bank holiday in England
"Change"	means a variation to the Services or to any other terms of this Agreement
"Charges"	means the charges to be paid by the Client for the Services and the Licence as described in the Order Form
"Client Contact"	as defined in the Order Form
"Client Data"	means all data or records of whatever nature in whatever form relating to the Client, its operations, facilities, assets, employees, students or otherwise relating to its business, whether subsisting at the date of this Agreement, or created or processed in connection with the Services or as provided by the Client to the Supplier in connection with the Services. Client Data shall include all Client Personal Data
"Client IPR Claim"	means any claim or allegation that the Client infringes a third party's Intellectual Property Rights that arises out of, or in connection with, the receipt or use of the Services or the Software in accordance with this Agreement
"Client IPR"	means all Intellectual Property Rights subsisting in the Client Data
"Client Personal Data"	means all Personal Data which is owned, controlled or processed by the Client which is provided by or on behalf of the Client to the Supplier or which comes into the possession of the Supplier as a result of or in connection with the supply of the Services
"Confidential Information"	means information of commercial value, in whatever form or medium, which has been kept confidential by the party from whom the information originates and which has not come into the public

		domain during the Contract Term in breach of any obligation of confidence
"Contract Commencement Date"		as defined in the Order Form
"Contract Term"		means the period during which this Agreement is in force and effect as determined by Clause 3
"Dispute Resolution Procedure"	Resolution	means the Dispute resolution procedure in Clause 20
"Dispute"		means any dispute, disagreement or claim arising out of or in connection with this Agreement, its subject matter or formation (including non-contractual disputes and claims)
"Documentation"		means the user documentation in respect of the relevant Software available from time to time on sonar.junipereducation.org
"Force Majeure Event"		means any cause affecting the performance by a party of any of its obligations under this Agreement which is beyond its reasonable control and which, by its nature, could not have been foreseen or, if foreseeable, was unavoidable
"Initial Term"		as defined in the Order Form
"Intellectual Rights"	Property	means any of the following rights existing in any part of the world: all patents, utility models, rights to inventions, copyright and neighbouring and related rights, rights in designs, trade and service marks, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, domain name registrations, database rights and rights in confidential information and all other intellectual property rights, in each case whether registered or unregistered; applications to register any of those rights; rights to apply for and be granted renewals or extensions of, and rights to claim priority from, any of those rights; and any similar or equivalent rights
"Liabilities"		means all losses, claims, damages, liabilities, fines, interest, penalties, costs, charges, expenses, demands and legal and other professional costs (calculated on a full indemnity basis)
"Licence"		as defined in paragraph 1 of Schedule 1 (<i>Software Licence</i>)
"Licensed School"		means the schools to which the Software is licensed as set out in the Order Form
"Order Form"		means the online order form completed by the Client which contains the details of the parties, identifying the applicable schedules and contains certain other details specific to this Agreement
"Permitted Purposes"		as defined in Clause 14.1
"Personal Data"		as defined in Clause 16.1
"Processing"		as defined in Clause 16.1
"Project IPR"		means all Intellectual Property Rights which result from or otherwise come into existence as a result of the supply of the Services,

	including any modification, adaptation or enhancement to the Software
"Service Failure"	means any unplanned disruption to the provision of the Services which remains in place for longer than 4 hours
"Services"	means the services selected in the Order Form
"Software"	as defined in the Order Form
"Supplier Background IPR"	means all Intellectual Property Rights owned by or licensed to the Supplier before the date of this Agreement or developed by the Supplier independently of this Agreement, including all Intellectual Property Rights in the Software
"Supplier IPR Claim"	means any claim or allegation that the Supplier infringes a third party's Intellectual Property Rights that arises out of, or in connection with, the receipt or use of the Client IPR
"Termination Assistance"	means the necessary assistance which is reasonably required by the Client in order to complete the transition of all or part of the Services from the Supplier to the Client or a third party designated by the Client in advance of or following the termination or expiry of this Agreement
"Third Party Software"	means the software programs proprietary to third parties, which are to be provided to the Client by the Supplier pursuant to this Agreement
"VAT"	means value added tax chargeable under the Value Added Tax Act 1994 and any other tax of any jurisdiction based on sales of goods or services such as sales taxes and any similar, replacement or additional tax
"Working Hours"	as defined in the Order Form

1.2 In this Agreement, unless otherwise specified:

- 1.2.1 a reference to this Agreement includes its schedules, appendices and annexes (if any);
- 1.2.2 a reference to a 'party' includes that party's personal representatives, successors and permitted assigns;
- 1.2.3 a reference to 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;
- 1.2.4 a reference to a gender includes each other gender;
- 1.2.5 words in the singular include the plural and vice versa;
- 1.2.6 any words 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;
- 1.2.7 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; and

1.2.8 a reference to legislation is a reference to that legislation as amended, extended, re-enacted or consolidated from time to time and any subordinate legislation made under it.

2. **APPOINTMENT**

With effect from the Contract Commencement Date, and subject to the terms of this Agreement, the Client appoints the Supplier to supply the Services and grant the Licence to the Client.

3. **DURATION**

3.1 This Agreement shall commence on the Contract Commencement Date and continue for the Initial Term unless either party terminates this Agreement by providing not less than 90 days' written notice to the other party prior to the expiry of the Initial Term.

3.2 Where either party fails to provide at least 90 days' written notice prior to the expiry of the Initial Term in accordance with Clause 3.1, this Agreement shall automatically renew for successive periods which are equivalent to the duration of the Initial Term (each an "**Extended Term**") unless and until either party terminates this Agreement by providing not less than 90 days' written notice to the other party prior to the expiry of the then current Extended Term.

3.3 If the Client seeks to terminate this Agreement in accordance with Clauses 3.1 or 3.2, the termination notice shall only be valid and effective if the Client:

3.3.1 sends an email to software.renewals@junipereducation.org notifying the Supplier that it is terminating the Agreement; and

3.3.2 completes the cancellation survey, which the Supplier shall email to the Client Contact following receipt of the termination notice.

4. **SERVICES**

4.1 The Supplier shall supply the Services:-

4.1.1 with reasonable skill and care;

4.1.2 in accordance with all Applicable Laws applying to the Supplier's responsibilities under this Agreement; and

4.1.3 in accordance with the requirements of this Agreement in all material respects.

4.2 The Supplier may from time to time and without notice, change any Services or the Software in order to comply with any Applicable Laws, provided that such changes do not materially affect the nature, scope or, or the Charges for those Services or the Software.

4.3 If the Client commits any breach of this Agreement the Supplier shall be entitled to immediately suspend provision of the Services pending remediation of such breach and, for the avoidance of doubt, such suspension shall not constitute a breach of this Agreement.

5. **CLIENT OBLIGATIONS AND USER ACCESS**

5.1 The Client warrants that it shall:

5.1.1 comply with the requirements of the Licence;

5.1.2 provide the Supplier free of charge during normal business hours (and such other times as the Client may agree, such agreement not to be unreasonably withheld or delayed) with such access to its employees, agents and contractors ("**Client Personnel**") as may be reasonably required to enable the Supplier to properly fulfil its obligations under this Agreement;

- 5.1.3 ensure all Client Personnel cooperate with any reasonable requests by the Supplier that are necessary for the Supplier to carry out its obligations under this Agreement; and
 - 5.1.4 provide the Supplier with such information and documentation as the Supplier reasonably requests from time to time to enable the Supplier to carry out its obligations under this Agreement and the Client further warrants that such information and documentation is true, accurate, complete and not misleading in any material respect.
- 5.2 The Client is responsible for ensuring that each of its users:-
- 5.2.1 comply with the requirements of the Licence;
 - 5.2.2 manages their user account information to ensure it remains up to date;
 - 5.2.3 keeps their account password confidential to ensure no unauthorised access is made to the Services via that user's account; and
 - 5.2.4 regularly changes the account password.
- 5.3 The Client shall ensure that the user accounts for any Client Personnel that at any time cease to be employees, agents and contractors of the Client are immediately deactivated and deleted so that those user accounts can no longer be accessed.
- 5.4 The Supplier shall not be responsible for any Liabilities arising from unauthorised access to the Services arising from the Client's failure to comply with Clause 5.
- 5.5 The Client shall be responsible for the accuracy, completeness and legality of all Client Data managed, stored or processed using the Services.

6. **WARRANTIES AND SERVICE FAILURE**

- 6.1 The Supplier warrants to the Client that the Software will comply with the Documentation in all material respects.
- 6.2 The Supplier shall use reasonable endeavours to minimise the impact of any Service Failure and resume normal supply of the Services as soon as reasonably practicable. The Client shall provide the Supplier with all required assistance and access to its systems to allow the Supplier to investigate and resolve any Service Failure.
- 6.3 Throughout the period of any Service Failure, the Supplier shall use reasonable endeavours keep the Client advised of the status of all remedial efforts being undertaken by it or on its behalf with respect to the underlying cause and effects of the Service Failure.
- 6.4 To the extent permitted by Applicable Law, the Supplier hereby excludes all liability for breach of any warranty and condition, express or implied, which is not expressly set out in this Agreement.

7. **CONTRACT MANAGEMENT**

- 7.1 The Account Manager shall be responsible for handling all queries and concerns relating to the Services and the operation of this Agreement.
- 7.2 The Client Contact shall act as the lead point of contact on behalf of the Client for the receipt of the Services (and shall have authority to commit the Client under this Agreement) and be responsible for proper liaison with the Supplier.

8. **CHARGES AND PAYMENT**

- 8.1 The Client shall pay the Charges in accordance with the terms of this Agreement. The Charges are stated exclusive of VAT (where applicable) which the Client shall pay in addition to the Charges at the rate prevailing on the date of the invoice.

- 8.2 The Client shall pay each invoice within the period of 30 days following the date of the valid invoice. Any Client queries regarding any invoice must be raised with the Supplier within 14 days of receipt of the invoice.
- 8.3 All payments due under this Agreement shall be made in pounds sterling unless otherwise agreed in writing between the parties.
- 8.4 If the Client fails to make any payment due to the Supplier under this Agreement by the due date for payment, the Supplier may charge the defaulting party interest on the overdue amount at the rate of 4% per annum above the base lending rate of the Bank of England, as published from time to time. Such interest shall accrue daily from the due date until the date of actual payment of the overdue amount, whether before or after judgment.
- 8.5 If the Client fails to make any payment due to the Supplier under this Agreement within 30 days following notice from the Supplier that the amount has not been paid by the due date for payment, the Supplier may immediately:-
- 8.5.1 suspend the provision of the Services pending payment in full (plus accrued interest); or
 - 8.5.2 terminate this Agreement by written notice to the Client.
- 8.6 The Client shall not be entitled to set off any Charges due to the Supplier against any amounts due to the Client from the Supplier either under this Agreement or otherwise.
- 8.7 The Supplier shall be entitled to increase the Charges on or following each anniversary of the Contract Commencement Date by giving the Client not less than three months' prior notice.
- 8.8 If the number of students as at an anniversary of the Contract Commencement Date falls below or exceeds the student number banding stated in the Order Form then the Client shall give the Supplier prior written notice and the Supplier shall adjust the Charges in accordance with the Supplier's then current standard price list with effect from such date. The Supplier reserves the right to audit the Client's use of the Software from time to time to verify student numbers and to adjust the Charges accordingly if the Client is found to have underpaid.
- 8.9 The Client will reimburse the Supplier in respect of the costs incurred by the Supplier to procure a UK certificate of tax residence in order to obtain tax relief from the taxation authorities of the jurisdiction in which the Client is resident or operates.

9. **CONTRACT CHANGE**

- 9.1 The Supplier shall be entitled to make a Change by providing the Customer with reasonable prior notice (such notice may be provided electronically) ("**Change Notice**"). The Customer shall be deemed to have accepted all Changes in a Change Notice unless it provides written notice to the Supplier rejecting the Change Notice within 5 Business Days following receipt of the same. In such cases the Changes shall be effective from the date of the Change Notice.
- 9.2 The Customer may request a Change by giving notice in writing to the Supplier describing the Change and the reasons for requesting it in sufficient detail to enable the Supplier to understand the possible impact of the proposed Change ("**Change Request**"). Any Change Request and resulting amendments to this Agreement must be agreed in writing by the Supplier.

10. **INTELLECTUAL PROPERTY RIGHTS**

- 10.1 All Client IPR shall remain vested in and owned by the Client.
- 10.2 All the Supplier Background IPR and Project IPR shall remain vested in and owned by the Supplier or its licensors (as applicable). The parties agree that, except as stated herein or as agreed by the parties in writing, this Agreement does not grant to the Client any right, title or interest in the Supplier Background IPR, the Project IPR or any Intellectual Property Rights subsisting in the Software or any other Intellectual Property Rights of the Supplier.

10.3 Any infringement of the Intellectual Property Rights of either party shall constitute an irremediable material breach of this Agreement.

11. **INTELLECTUAL PROPERTY INDEMNITY**

11.1 In relation to any Client IPR Claim which comes to its attention the Client shall:-

11.1.1 promptly notify the Supplier of the Client IPR Claim;

11.1.2 procure any authorisation reasonably required for the Supplier to conduct or settle the Client IPR Claim;

11.1.3 provide the Supplier with all reasonable assistance to conduct or settle the Client IPR Claim; and

11.1.4 not admit, compromise or settle any part of the Client IPR Claim without first obtaining the Supplier's written agreement.

11.2 In respect of any Service or Software that is the subject of a Client IPR Claim, the Supplier shall (at no cost to the Client) either:-

11.2.1 procure the right for the Client to continue to use that Service in accordance with this Agreement; or

11.2.2 modify or replace the Service so that it no longer infringes any third party's Intellectual Property Rights provided that in doing so the scope, functionality and performance of the Service is not adversely affected.

11.3 The Client shall:-

11.3.1 indemnify the Supplier against any Liabilities suffered or incurred by or awarded against the Supplier arising from a Supplier IPR Claim or any Liabilities that are incurred by the Supplier in complying with its duties under Clause 11.4; and

11.3.2 conduct or (at its option) settle a Supplier IPR Claim (at no cost to the Supplier).

11.4 In relation to a Supplier IPR Claim which comes to its attention the Supplier shall:-

11.4.1 promptly notify the Client of the Supplier IPR Claim;

11.4.2 procure any authorisation reasonably required for the Client to conduct or settle the Supplier IPR Claim;

11.4.3 provide the Client with all reasonable assistance to conduct or settle the Supplier IPR Claim; and

11.4.4 not admit, compromise or settle any part of the Supplier IPR Claim without first obtaining the Client's written agreement.

11.5 This Clause constitutes the Client's exclusive remedy in respect of a Client IPR Claim and the Supplier's exclusive remedy in respect of a Supplier IPR Claim.

12. **NON SOLICITATION**

The Client shall not during the Contract Term or during the period of one year after it has expired or terminated (as the case may be), entice or induce or attempt to entice or induce away from the Supplier any person who, at any time during the Contract Term, is, or has been, employed by the Supplier in relation to the performance of this Agreement.

13. **FORCE MAJEURE**

If either party is delayed or prevented in the performance of any of its obligations under this Agreement by a Force Majeure Event, that party shall not be liable for such delay or non-performance and the time for performance of the affected obligation shall be extended by such period as is reasonable to enable that party, using all reasonable endeavours, to perform that obligation.

14. **CONFIDENTIALITY**

14.1 Each party undertakes not to use the other party's Confidential Information otherwise than in the exercise and performance of its rights and obligations under this Agreement ("**Permitted Purposes**").

14.2 Each party shall treat as confidential all Confidential Information of the other party and shall not divulge any such Confidential Information to any person, except to its own employees and then only to those employees who need to know it for the Permitted Purposes. Each party shall ensure that its employees are aware of, and shall use reasonable endeavours to ensure its employees comply with, this Clause 14; and

14.3 The restrictions imposed by Clause 14.1 and 14.2 shall not apply to the disclosure of any Confidential Information which:-

14.3.1 is now in or hereafter comes into the public domain otherwise than as a result of a breach of this Clause 14;

14.3.2 before any negotiations or discussions leading to this Agreement was already known by the receiving party and was obtained or acquired in circumstances under which the receiving party was not bound by any form of confidentiality obligation; or

14.3.3 is required by law or regulation to be disclosed to any person who is required by law or regulation to receive the same (after consultation, if practicable, with the disclosing party to limit disclosure to such authorised person to the extent necessary).

14.4 Each party shall notify the other party if any of its staff connected with the provision or receipt of the Services becomes aware of any unauthorised disclosure of any Confidential Information of the other party and shall afford reasonable assistance to the other party, at that other party's reasonable cost, in connection with any enforcement proceedings which that other party may elect to bring against any person.

14.5 The obligations of confidentiality set out in this Clause 14 shall survive the expiry or termination of this Agreement.

15. **ANNOUNCEMENTS**

Each party agrees that it will not make or issue any announcement relating to the existence or subject matter of this Agreement or to the fact that the Client is a customer of the Supplier or use the other's logo without the prior written approval of the other party provided that these restrictions shall not apply to any announcement to the extent that such announcement is required by any law, applicable securities exchange, supervisory, regulatory or governmental body.

16. **DATA PROTECTION**

16.1 **Applicability**

Each party will comply with its obligations under this Clause 16 if and to the extent that Personal Data is Processed in connection with this Agreement.

16.2 **Additional Definitions**

In this Clause 16:-

- 16.2.1 **Data Controller or Controller, Data Subject, Personal Data and Processing** shall bear the respective meanings given to them in the Data Protection Act 2018 and the GDPR (and "**Process**" shall be construed accordingly);
- 16.2.2 **The GDPR** means the General Data Protection Regulation 2016 (Regulation (EU) 2016/679); and
- 16.2.3 **Data Protection Law** means the GDPR and any other legislation in force from time to time which implements the GDPR, the Data Protection Act 2018, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive (2002/58/EC), the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2426/2003) and all Applicable Law in any jurisdiction relating to the processing or protection of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner or relevant supervisory authority from time to time.

16.3 **Details of Data Processing**

16.3.1 **Subject Matter**

The subject matter of the data processing is the Client Data as defined in Clause 1.

16.3.2 **Duration**

The duration of the Processing shall be as instructed by the Client or until the relevant Services have been terminated or expire.

16.3.3 **Purpose of Processing**

The purpose of the data Processing is the provision of the Services pursuant to this Agreement.

16.3.4 **Types of Personal Data**

The Supplier processes Personal Data such as name, email address and date of birth. The Supplier also process sensitive personal data such as ethnic origin and religion.

16.3.5 **Categories of Data Subject**

Data Subjects include the Client's employees, suppliers, pupil's contacts, pupils and end-users of the Service.

16.4 **Obligations and Rights**

16.4.1 **Compliance with Laws**

The Supplier and the Client will each comply with Data Protection Law. In particular, the Client warrants and undertakes that:-

- (a) it has obtained appropriate authority from all data subjects to whom it relates, or has provided them with the requisite information required under applicable Data Protection Law or has otherwise satisfied itself regarding the legal basis for processing Personal Data under the GDPR, to enable the Supplier to process the Personal Data in accordance with this Agreement; and

- (b) it has all necessary appropriate consents and notices in place or has otherwise satisfied itself regarding the legal basis for processing Personal Data under the GDPR to enable lawful transfer of the Personal Data to the Supplier for the duration and purposes of this Agreement.

16.4.2 **Processing**

The Supplier will not Process Client Data other than to provide the Services, as instructed by the Client or as necessary to comply with law.

16.4.3 **Submit to Audits and Inspections**

The Supplier will:-

- (a) permit the Client to undertake an audit of the Supplier's records relating to the provision or the Services to the Client to confirm the Supplier's compliance with Data Protection Law provided that the Supplier is given at least 60 days' prior notice and provided further that such audits shall not be performed more than once in any 12 month period (unless otherwise required by a supervisory authority);
- (b) provide all information as reasonably requested by the Client to demonstrate that the Supplier has met their obligations pursuant to Data Protection Law; and
- (c) advise the Client promptly if it becomes aware of any instruction given by the Client that does not comply with the GDPR or any other Data Protection Law.

16.4.4 **Cooperate with Supervisory Authorities**

The Supplier shall, where applicable, cooperate with the supervisory authorities and make any records, if requested, available for auditing purposes.

16.4.5 **Records of Processing Activities**

The Supplier shall keep and maintain records of all Processing activities in respect of provision of the Services in accordance with the requirements of Data Protection Law.

16.4.6 **Transfer of Personal Data**

The Supplier shall only transfer Personal Data of the Client outside the European Economic Area if it has ensured that adequate safeguards have been put in place (as required by Data Protection Law) to protect the rights of the Data Subjects to whom such Personal Data relates.

16.5 **Client Instructions**

The Supplier will only process Personal Data in accordance with the documented instruction of the Client unless required to do so by law, in such a case, the Supplier will inform the Client of that legal requirement before processing, to the extent it is legally permitted to do so.

16.6 **Confidentiality**

The Supplier shall ensure that persons Processing Personal Data for or on behalf of the Supplier are authorised and are subject to appropriate confidentiality, data protection and data security obligations.

16.7 **Security of Processing**

The Supplier has implemented and maintains appropriate technical and organisational measures to ensure the security of processing, including as appropriate:-

- 16.7.1 the pseudonymising and encryption of personal data;
- 16.7.2 the ability to ensure ongoing confidentiality, integrity, availability of processing systems and services;
- 16.7.3 the ability to restore the availability and access to personal data; and
- 16.7.4 the ability to regularly test, assess and evaluate the effectiveness of technical and operational measures.

16.8 **Sub-Processors**

16.8.1 The Client agrees that the Supplier may use subcontractors to fulfil its contractual obligations who will undertake Processing of Client Data ("**Sub-Processors**").

16.8.2 The Supplier website lists Sub-Processors that are currently authorised by the Supplier to Process Client Data.

16.8.3 The Supplier will:-

- (a) limit the Sub-Processor's access to Client Data only to what is necessary to provide or maintain the Service;
- (b) enter into a written agreement with the Sub-Processor which is consistent with the requirements prescribed in Data Protection Law; and
- (c) remain responsible to the Client for any acts or omissions of the Sub-Processor that cause the Supplier to breach any of the Supplier's obligations under this Clause 16.

16.8.4 The Client may object to the appointment of a new Sub-Processor without prejudice to any termination rights the Client has under this Agreement and subject to the applicable terms and conditions.

16.9 **Assisting the Client and the Data Subjects' Rights**

The Supplier will provide all information reasonably requested by the Client to assist the Client:-

- 16.9.1 to meet the Client's obligations to advise data subjects and supervisory authorities of Personal Data breaches;
- 16.9.2 to comply with Data Subject access requests; and
- 16.9.3 to carry out data protection impact assessments ("**DPIA**").

16.10 **Security Breach Notification**

The Supplier will notify the Client of a Personal Data breach without undue delay after becoming aware of such a breach.

16.11 **End of Contract Provisions**

Subject to Data Protection Laws, upon termination of this Agreement, the Supplier will delete or return all Personal Data to the Client as requested by the Client except to the extent any Personal Data is required to be retained by the Supplier under Applicable Laws.

17. **TERMINATION**

17.1 The Supplier may terminate this Agreement (in whole or in part) at any time by giving the Client 30 days' written notice.

17.2 Either party may terminate this Agreement with immediate effect on giving notice to the other party if the other party:-

17.2.1 commits a material breach of this Agreement which is incapable of remedy (save as to time of performance);

17.2.2 commits a material breach of this Agreement which is capable of remedy but fails to remedy that breach within 60 days of being notified of the breach;

17.2.3 stops carrying on all or a significant part of its business, or indicates in any way that it intends to do so;

17.2.4 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;

17.2.5 becomes the subject of a company voluntary arrangement under the Insolvency Act 1986;

17.2.6 has a receiver, manager, administrator or administrative receiver appointed over all or any part of its undertaking, assets or income;

17.2.7 has a resolution passed for its winding up;

17.2.8 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;

17.2.9 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;

17.2.10 has a freezing order made against it;

17.2.11 is subject to any events or circumstances analogous to those in clauses 17.2.3 to 17.2.10 in any jurisdiction;

17.2.12 takes any steps in anticipation of, or has no realistic prospect of avoiding, any of the events or procedures described in clauses 17.2.3 to 17.2.11 including for the avoidance of doubt, but not limited to, giving notice for the convening of any meeting of creditors, issuing an application at court or filing any notice at court, receiving any demand for repayment of lending facilities, or passing any board resolution authorising any steps to be taken to enter into an insolvency process.

18. **CONSEQUENCES OF EXPIRY OR TERMINATION**

18.1 On termination of this Agreement for any reason the Client shall immediately pay to the Supplier any sums due to the Supplier under this Agreement.

18.2 Upon the Client's request made within 30 days of the date of expiry or termination of this Agreement the Supplier will make the Client Data it is storing as part of the Services available to the Client for download in accordance with the Documentation provided by the Supplier. After such 30 day period the Supplier will delete all copies of the Client Data on its systems, save to the extent the Supplier is

required to retain such Client Data to comply with Applicable Laws (including Data Protection Law), and the Supplier shall not have any liability or responsibility to the Client as a result of such deletion.

- 18.3 For up to 30 days following the effective date of expiry or termination of this Agreement the Supplier may, at its sole discretion, provide Termination Assistance to the Client. Any fees, costs or expenses payable by the Client to the Supplier for the Termination Assistance shall be chargeable at the Supplier's then current day rates as agreed in writing by the parties.
- 18.4 The expiry or termination of this Agreement shall not affect the accrued rights, remedies, obligations or liabilities of the parties existing at expiry or termination.
- 18.5 Any provision of this Agreement which expressly or by implication is intended to come into or continue in force on or after the expiry or termination of this Agreement, shall remain in full force and effect after this Agreement expires or terminates.

19. **LIMITATIONS ON LIABILITY**

19.1 Nothing in this Agreement shall limit or exclude the liability or remedy of either party or any other person:-

- 19.1.1 for death or personal injury caused by its negligence, or that of its employees, agents or subcontractors;
- 19.1.2 for fraud or fraudulent misrepresentation;
- 19.1.3 for any act, omission or matter, liability for which may not be excluded or limited under any Applicable Law.

19.2 Subject to Clause 19.1, the Supplier's total aggregate liability arising under or in connection with this Agreement, whether arising in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise howsoever, for any event or series of connected events shall be limited to an amount equal to 100% of the Charges paid or payable under this Agreement.

19.3 Subject to Clause 19.1 and except as expressly provided to the contrary in this Agreement, the Supplier will not be liable to the Client for any:-

- 19.3.1 loss of profits or business revenue;
- 19.3.2 loss of goodwill or reputation;
- 19.3.3 loss of, or corruption to, data; or
- 19.3.4 indirect, special or consequential loss or damage.

20. **DISPUTE RESOLUTION**

20.1 The parties shall procure that the Account Manager and the Client Contact shall meet and use their reasonable endeavours to resolve any Dispute. If the Dispute is not resolved between the Account Manager and the Client Contact within 10 Business Days of receipt of a written request from either party ("**Dispute Notice**"), the Dispute shall be referred to a senior executive from each of the parties. If the Dispute is not resolved within 15 Business Days from the date of receipt of the Dispute Notice, either party may, in its sole discretion commence legal proceedings as contemplated by Clause 21.10.2.

20.2 For the avoidance of doubt, nothing in this Clause 20 shall prevent or restrict the parties from commencing or continuing court proceedings or from seeking injunctive relief at any time.

21. **GENERAL**

21.1 **Assignment.** The Client may not assign, transfer, charge, create a trust over or otherwise deal in this Agreement or any of its rights or obligations under this Agreement (or purport to do so) without the prior written consent of the Supplier.

21.2 **Rights of Third Parties.** A person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the provisions of this Agreement.

21.3 **Entire Agreement**

21.3.1 This Agreement constitutes the entire agreement and understanding of the parties and supersedes and extinguishes all previous drafts, agreements and understandings between them, whether oral or in writing, relating to its subject matter.

21.3.2 Each party acknowledges and agrees that in entering into this Agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance, warranty or understanding made by or on behalf of a party (whether made innocently or negligently) which is not expressly set out in this Agreement.

21.4 **Notices**

21.4.1 Any notice or similar communication given under or in connection with this Agreement shall be in writing and shall be delivered:-

- (a) by hand;
- (b) sent by pre-paid post providing for next Business Day delivery (or pre-paid air mail if overseas) providing proof of postage; or
- (c) by email,

to the recipient party at the address or email address, and for the attention of the persons, set out in the Order Form (being the Account Manager or the Client Contact, as appropriate) or such other address or email address or persons (not exceeding 2 persons) as that party may specify by notice to the other party.

21.4.2 Notices and similar communications shall be deemed to have been received:-

- (a) if delivered by hand, at the time of delivery to the address;
- (b) if sent by pre-paid post, at 9.00am on the second Business Day after posting;
- (c) if sent by pre-paid air mail, at 9.00am on the fifth Business Day after posting; and
- (d) if sent by email, at 9.00am on the next Business Day after sending.

21.4.3 Faxes and electronic communications other than email are not valid notices under this Agreement.

21.5 **Relationship**

21.5.1 This Agreement does not constitute, establish or imply any partnership, joint venture, agency, employment or fiduciary relationship between the parties.

21.5.2 Neither party shall have, nor represent that it has, any authority to make or enter into any commitments on the other's behalf or otherwise bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability or the exercise of any right or power).

21.6 **Counterparts**

21.6.1 This Agreement may be executed in counterparts or duplicates, each of which, when executed, shall constitute an original of this Agreement and such counterparts or duplicates together shall constitute one and the same instrument.

21.6.2 No counterpart or duplicate shall be effective until each party has executed at least one counterpart or duplicate.

21.7 **Remedies**

21.7.1 Except as expressly provided in this Agreement, the rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

21.7.2 Any right or remedy expressly included in any provision of this Agreement (or the exercise of them) shall not be considered as limiting a party's rights or remedies under any other provision of this Agreement (or the exercise of them).

21.8 **Severance.** If any provision, or part of a provision, of this Agreement is found by any court or administrative body of competent jurisdiction to be invalid, illegal or unenforceable such invalidity, illegality or unenforceability shall not affect the other provisions of this Agreement, which shall remain in full force and effect.

21.9 **Waiver**

21.9.1 A failure to exercise, or delay in exercising, a right, power or remedy provided by this Agreement or by law shall not constitute a waiver of that, or any other, right, power or remedy and shall not, and nor shall any single or partial exercise of any such right, power or remedy, preclude the further exercise of that, or any other, right, power or remedy.

21.9.2 Any waiver of any right under this Agreement is only effective if it is in writing and it shall only apply to the party to whom the waiver is addressed and to the circumstances for which it is given.

21.10 **Governing Law and Jurisdiction**

21.10.1 This Agreement and any Dispute shall be governed by and construed in accordance with the law of England and Wales.

21.10.2 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any Dispute.

SCHEDULE 1

SOFTWARE LICENCE

1. LICENCE

- 1.1 Subject to the terms and conditions of this Agreement and in consideration of the payment of the Charges, the Supplier grants to the Client a non-transferable, non-exclusive licence to permit Authorised Users to use the Software for the operation of the Licensed Schools (as defined in the Order Form) subject to the provisions of this Agreement ("**Licence**").
- 1.2 The Licence may include a sub-licence to use any Third Party Software. In such cases Client agrees to be bound by and comply with any and all additional terms that the Supplier is required by the proprietor of the Third Party Software to impose on sub-licensees, copies of which shall be provided by the Supplier to the Client on request. The Client shall indemnify the Supplier against any Liabilities suffered or incurred by or awarded against the Supplier arising from the Client failing to comply with any such additional terms.

2. LICENCE DURATION

The type of licence is indicated in the Order Form. The Licence shall commence on the Contract Commencement Date, shall continue for the Initial Term and any Extended Term.

3. LICENCE RESTRICTIONS

3.1 The Client shall not:-

- 3.1.1 make any part of the Software available to, or use the Software for the benefit of, any person other than the Authorised Users;
- 3.1.2 sell, resell, license, sub-license, distribute, rent or lease any of the Software or include any of the Software in a service bureau or outsourced service offering;
- 3.1.3 permit use of the Software which circumvents a usage limit set out in this Agreement; or
- 3.1.4 use the Software or the Supplier's Confidential Information in order to develop a competing service.

3.2 The Client shall have no right to copy, adapt, reverse engineer, decompile, disassemble or modify the Software in whole or in part except:-

- 3.2.1 to the extent contemplated by sections 50B and 50C of the Copyright, Designs and Patents Act 1988;
- 3.2.2 to make sufficient back up copies of the Licensed Software for disaster recovery purposes. The Client shall record the number and location of all copies of the Software and take steps to prevent unauthorised copying; and
- 3.2.3 to the extent that such action is legitimately required for the purposes of integrating the operation of the Licensed Software with the operation of other software or systems used by the Client, in circumstances where the Supplier is not prepared to carry out such action at a reasonable commercial fee.

3.3 The Client shall not, and shall procure that the Authorised Users shall not introduce any software virus or other malware (including any bugs, worms, logic bombs, trojan horses or any other self propagating or other such program) that may infect or cause damage to the Services or the Supplier's systems or otherwise disrupt the provision of the Services.

3.4 The Client shall not be permitted to frame or mirror any part of the Services other than as permitted by the Documentation or with the Supplier's express written consent.

- 3.5 The Supplier reserves the right to monitor usage by all Authorised Users (by way of audits or otherwise) during the term of this Agreement for the purpose of (among others) ensuring compliance with the terms of this Agreement. Any audit may be carried out by the Supplier or a third party authorised by the Supplier. If any audit reveals that any password has been provided to an individual that is not an Authorised User, the Client shall, without delay, disable any such passwords and notify the Supplier immediately.
- 3.6 The Client shall notify the Supplier in writing as soon as it becomes aware of any actual or suspected unauthorised installation or use of the Software (including any installation or use in excess of the usage restrictions or otherwise in breach of this Agreement).
- 3.7 In the event of unauthorised use of the Services by the Client or Authorised Users, the Supplier reserves the right to deny the Client or Authorised Users access to the Services without prior notification.

4. **WARRANTIES**

- 4.1 The Supplier warrants that it has the right, power and authority to grant this Licence and supply the Services.
- 4.2 The Supplier does not warrant or represent that the Software will be free from errors and interruptions.
- 4.3 The Supplier will not be liable under this clause or be required to remedy any problem or delay arising from or caused by:
- 4.3.1 the Client's use of the Software in a manner other than as directed by the Supplier;
 - 4.3.2 the Client's failure or delay to comply with any of the obligations set out in this Agreement;
or
 - 4.3.3 failure of any third party service provider to provide any necessary services to the Supplier.
- 4.4 The Client acknowledges and agrees that:
- 4.4.1 the Supplier is not and cannot be aware of the extent of any potential loss resulting from any failure by the Supplier to discharge its obligations under this Agreement;
 - 4.4.2 the Software has not been designed to meet the Client's individual requirements and can not be tested in every operating environment; and
 - 4.4.3 it is the Client's responsibility to ensure the facilities and functions of the Software meets the Client's requirements and will not cause any error or interruption in the Client's own software or systems.
- 4.5 The Supplier shall not be liable for any defect in or failure of the Software and Documentation and the warranties shall not apply in respect of defects or failures to the extent that they are attributable to:
- 4.5.1 any modification of the Software by persons other than the Supplier or those expressly authorised by it;
 - 4.5.2 defects or failures in hardware, operating systems or other software or data with which the Software operates or their incorrect configuration;
 - 4.5.3 defects or failures resulting from the incorrect installation of the Software except where this is caused directly by the Supplier's default or force majeure.