SUBSCRIPTION TERMS

The following terms and conditions will govern the provision and use of the Services.

1. Definitions and Interpretation

1.1 In addition to any terms defined in the Order Form, the following definitions and rules of interpretation apply to this Agreement:

API means any application programming interface(s) operated or used by the Supplier for provision of the Services to the Customer.

App means any authentication application software made available to the Customer by the Supplier and through which the Services are delivered.

Authorised Users means those teachers, employees and independent contractors of the Customer who are authorised by the Customer to use the Software under and in accordance with this Agreement.

Business Day means a day other than a Saturday, Sunday, or public holiday in England.

Confidential Information means all confidential or proprietary information (however recorded or preserved) disclosed by one Party (the "**Disclosing Party**") or the Disclosing Party's employees, officers, subcontractors, representatives or professional advisers (together, the "**Representatives**") to the other Party (the "**Receiving Party**") and the Receiving Party's Representatives, including without limitation the terms of this Agreement, the business, affairs, customers, clients, suppliers, plans, intentions, market opportunities, operations, processes, products, services, data, know-how, or trade secrets of the Disclosing Party, and anything specified as being Confidential Information in clauses 10.4 and 10.5.

Course Licence means the individual subject courses which the Customer subscribes to as set out in the Order Form.

Course Licence Limit is the number of Course Licences included in the Fees (as set out in the Order Form).

Customer Data means any commercial or proprietary data which is uploaded or otherwise submitted to the Software directly by the Customer, its Authorised Users, its Student or by the Supplier on the Customer's behalf, including any data submitted into the Software indirectly via any third-party application used by the Customer, excluding any Derived Data.

Data Protection Legislation means all applicable privacy and data protection laws, including the GDPR, the Data Protection Act 2018, and any applicable national implementing laws, regulations and secondary legislation in England and Wales relating to the Processing of Personal Data and the privacy of electronic communications, as amended, replaced or updated from time to time, including the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2003/2426)).

Derived Data means any data which is derived from the Customer's, its Students and Authorised Users' use of the Services or the processing by the Supplier of Customer Data, which will include: (i) any data which is processed and stored as mathematical constructs; and (ii) statistical

or aggregated data, but will exclude any Protected Data.

Documentation means those printed or online instructions, manuals, screens, and diagrams distributed or otherwise provided by the Supplier that pertain to the Software.

Effective Date means the date identified as such on the applicable Order Form.

Fees means the VAT-exclusive fees payable in consideration of the provision of the Services set out in the Order Form.

Force Majeure Event has the meaning set out in clause 14.3.

GDPR means (as applicable): (i) the EU General Data Protection Regulation (Regulation 2016/679); or (ii) the UK GDPR as defined in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

Insolvency Event means, with respect to a Party: (a) entering into a composition or arrangement with its creditors other than for the sole purpose of a solvent reconstruction; (b) an inability to pay its debts as they become due; (c) a person becoming entitled to appoint or appointing a receiver or an administrative receiver over that Party's assets; (d) a creditor or encumbrancer attaching or taking possession of the whole or any part of that Party's assets which is not discharged within fourteen (14) calendar days; (e) applying to court for or obtaining a moratorium under Part A1 of the Insolvency Act 1986; or (f) the occurrence of any event or taking of any action in any jurisdiction that has an effect equivalent or similar to any of the events mentioned in (a) to (e) above.

Intellectual Property Rights means any and all patents, rights to inventions, copyright and neighbouring and related rights, trade marks, rights in get-up, database rights, databases, domain names, business names, rights in computer software, goodwill, and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Losses means any and all losses, liabilities, costs (including costs of investigation, litigation, settlement, and judgment), claims, damages, demands, disbursements, expenses (including legal costs on a solicitor and own-client basis), fees, interest, and penalties (including fines imposed by regulatory bodies or supervisory authorities), whether arising in contract, tort (including negligence), breach of statutory duty, misrepresentation, or otherwise.

Onboarding Services if included in the Order Form, means any onboarding services to be performed by the Supplier to configure the Software for use by the Customer in accordance with the Specification.

Order Form means a written request by the Customer (in terms agreed with the Supplier) for the provision by the Supplier of the Services in such form as the Supplier may require, which is executed by the Supplier and the Customer.

Outputs means any or all reports, data, information, works or materials obtained by the Students, the Customer or Authorised

Users (as appropriate) through use of the Services. For the avoidance of doubt, "Output" excludes Customer Data.

Party means a party to this Agreement, being either the Supplier or the Customer, and **Parties** means both of them.

Protected Data means any Personal Data contained in the Customer Data and which the Supplier receives from the Customer in connection with the performance of the Services under and pursuant to this Agreement.

Services means the provision by the Supplier of access to the Software to allow Students to access and use the Software, and any Onboarding Services to be provided to the Customer under this Agreement (in each case as applicable and given the context in which the term "**Services**" is used).

Software means the Supplier's software application known as the Up Learn platform (including any related API, App, or Website from time to time) to which the Customer will be granted remote access pursuant to the terms and conditions of this Agreement.

Specification means the functional specification for the Software as set out in the Documentation.

Student: means students of the Customer who are being provided access to the Software under and in accordance with this Agreement.

Sub-Processor means any natural or legal person, public authority, agency, or other body which Processes Personal Data on behalf of a Controller or a Processor.

Subscription Fees means the VAT-exclusive subscription fees detailed in the Order Form payable by the Customer to the Supplier for use of the Software (as amended from time to time in accordance with the terms and conditions of this Agreement).

Term means the Initial Term and all Renewal Terms (as set out in the Order Form).

VAT means United Kingdom value added tax (or any other tax imposed in substitution for it) or any other tax imposed of an equivalent or similar nature or function supplementary or complementary to it or any such substitute (and any equivalent or similar tax imposed outside the United Kingdom).

Virus means anything or device (including any software, code, file or program) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware, network, data, or the user experience, including worms, Trojan horses, viruses, and other similar things or devices.

Website means any website operated by Supplier through which the Software is delivered to or accessed by the Customer.

1.2 In this Agreement: (a) clause, Schedule and paragraph headings will not affect the interpretation of this Agreement; (b) unless the context otherwise requires, words in the singular will include the plural and in the plural will include the singular; (c) a reference to writing or written includes email; (d) references to **clauses** and **schedules** are respectively to the clauses of and schedules to this Agreement, and references to **paragraphs** are to paragraphs of the

relevant schedule; (e) any words following the expressions **including**, **include**, **in particular**, **for example** or any similar expression will be construed as illustrative and will not limit the sense of the words, description, definition, phrase or term preceding those expressions; (f) a reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, consolidation, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it; and (g) a reference to either Party will include such Party's successors and assigns (immediate or otherwise).

1.3 If there is any inconsistency or conflict between the provisions of this Agreement, such inconsistency or conflict will be resolved according to the following descending order of priority: (i) the provisions contained within the row entitled 'Special Conditions' (if any) in the Order Form; (ii) the remainder of the Order Form; (iii) the service level agreement (**SLA**); (iv) the data sharing agreement; (v) the main body of the Subscription Terms; and (vi) the remaining schedules.

2. Access to the Software and use of Outputs

2.1 Subject to the Customer paying the Subscription Fees and complying with the terms and conditions of this Agreement, the Supplier hereby grants to the Customer a non-exclusive, non-transferable, non-sublicensable, and revocable right to permit the Authorised Users and the Students to access and use the Software solely during the Term.

2.2 The Customer will not access, store, distribute or transmit any Viruses or any material during its use of the Software that is illicit, fraudulent, defamatory, libellous, threatening or harassing, obscene, indecent, seditious, threatening, liable to incite racial hatred or acts of terrorism, menacing, blasphemous, unlawful, harmful, infringing, offensive, or discriminatory, or which facilitates illegal activity or depicts sexually explicit images or causes damage or injury to any person or property. The Supplier reserves the right, without liability or prejudice to its other rights, to disable the Customer's, the Students and Authorised Users' access to any material that breaches the provisions of this clause 2.2.

2.3 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 this Agreement, the Customer will not, and will not attempt to, copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software in any form or media or by any means, or attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software (including its object code and source code).

2.4 The Customer will not, and will not attempt to: (a) access all or any part of the Software in order to build a product or service which competes with the Software; (b) make the Software or any of the Services available to any third party except to Students and Authorised

Users; or (c) attempt to obtain, or assist any third party in obtaining, access to the Software, other than as provided under this clause 2.

2.5 The Customer will use its best endeavours to prevent any unauthorised access to, or use of, the Software and, in the event of any such unauthorised access or use, promptly notify the Supplier in writing thereof.

2.6 The Customer shall not:

2.6.1 subject to clause 2.7, except to the extent required by applicable law or regulation (and solely for the purpose of that disclosure), redistribute, retransmit, or disseminate the Outputs; or

2.6.2 remove, or attempt to remove, Supplier's marks or other branding from the Outputs.

2.7 If the Supplier grants the Customer permission (using any reasonable means) to share an Outputs with another person the Customer may do so to the extent granted by such permission, subject to any restrictions or other conditions required by Supplier from time to time.

2.8 The Customer acknowledges and agrees that each Student and each Authorised User must keep a secure password for their use of the Software which must be kept at all times strictly confidential and secure against unauthorised access or use (including by any other Student and/or Authorised User). The Customer shall use all reasonable endeavours to notify the Supplier in writing as soon as it, or any Student and/or Authorised User, suspects that the confidentiality or security of any such password has been compromised in any way (and, in such circumstances, the Customer will ensure that the relevant Student or Authorised User(s) immediately disable and change the relevant compromised password(s)).

2.9 The rights provided under this clause 2 are granted to the Customer only and will not be considered granted to any affiliate, subsidiary, or holding company of the Customer.

3. Subscription Fees and Authorised Users

3.1 The Subscription Fees are linked to the number of Course Licences that the Customer has subscribed to, which is subject to the Course Licence Limit. The Customer acknowledges and agrees that the Supplier may monitor the Customer's use of the Software for compliance with the Course Licence Limit but that the Customer is responsible for notifying the Supplier to the extent that it wants to increase the Course Licence Limit during the Initial Term and/or Renewal Term (as applicable), subject to payment by the Customer to the Supplier of the corresponding Fees. The Customer may remove one individual as a Student user and replace them with another individual in accordance with the terms of this Agreement, but Student accounts may not be shared or used by more than one individual at the same time. The Customer acknowledges and agrees that decreasing its Course Licence Limit during the Initial Term and/or Renewal Term (as applicable) shall not reduce the amount of Subscription Fees payable during the Initial Term and/or the Renewal Term (as applicable).

3.2 Where the Supplier learns that the Customer's use of the Software is exceeding the Course Licence Limit, the

Supplier may (without prejudice to any other rights or remedies available to it) increase the Subscription Fees in line with the number of Course Licence's being accessed and backdated from the date on which the Course Licence Limit was exceeded, pro-rated for the remainder of the Initial Term or the current Renewal Term (as applicable).

4. Supplier's Obligations

4.1 The Supplier will (a) provide the Services to the Customer on and subject to the terms and conditions of this Agreement; and (b) use commercially reasonable endeavours to ensure that the Software conforms to the Specification in all material respects.

4.2 The Customer's use of the Software will be subject to the service level agreement (available here).

4.3 Notwithstanding clause 4.1, the Customer acknowledges that the Software may evolve over time and that functionality may be added or removed from time to time. The Supplier may, without limitation to the generality of this clause 4.2, establish new limits on the Services (or any part thereof), including limiting the volume of data which may be used, stored, or transmitted in connection with the Services, remove or restrict application programming interfaces, or make alterations to data retention periods, provided such changes are notified to the Customer in writing reasonably in advance.

4.4 Without prejudice to the generality of clause 11.5, the Supplier does not warrant that the Customer's use of the Software will be uninterrupted or error-free, or that the Software and/or the information or results obtained by the Customer through its use of the Software will meet the Customer's requirements. Subject to its obligations under Data Protection Legislation, the Supplier is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of Customer Data over communications networks and facilities, including the Internet, and the Customer acknowledges that the Software may be subject to limitations, delays, and other problems inherent in the use of such communications facilities.

4.5 The Supplier will not be liable for any breach of its obligation under clause 4.1(b) to the extent any non-conformance with the Specification is caused by the Customer's use of the Software contrary to the Supplier's instructions, or modification or alteration of the Software by any party other than the Supplier or the Supplier's duly authorised contractors or agents.

4.6 If the Software does not conform materially with the Specification, Supplier will, at its expense, use commercially reasonable endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the expected result or function stipulated in the Specification. Such correction or substitution constitutes the Customer's sole and exclusive remedy for such non-conformance.

4.7 This Agreement will not prevent Supplier from entering into similar agreements with third parties, or from independently developing, using, selling, or licensing documentation, products, and/or services

which are similar to those provided under this Agreement.

5. Customer's Obligations

5.1 The Customer will fully cooperate with the Supplier in all respects in relation to this Agreement, including granting to the Supplier all necessary access to information and Customer Data as may be required by the Supplier from time to time to fulfil its obligations under this Agreement, including without limitation granting to the Supplier full and unrestricted access to the Customer's account in order for the Supplier to provide support for, or to fix any errors in, the Software.

5.2 The Customer will be solely responsible for setting the access rights for each of its Students and Authorised Users and will ensure that all Students and Authorised Users' use of the Software is strictly in accordance with the terms and conditions of this Agreement. The Customer solely responsible and liable for (i) ensuring that its Students and Authorised Users use the Software appropriately and in accordance with the Customer's own internal policies relating to online student safety and education; and (ii) any Student's or Authorised User's breach of this Agreement.

5.3 The Customer will be solely responsible for obtaining the necessary consents from each Student's parents and/or guardians in relation to their use of the Software where necessary.

5.4 The Customer acknowledges and agrees that Authorised Users are responsible for adding Students and other Authorised Users to the Software (in line with the terms of this Agreement) and the Customer shall procure that each Authorised User shall (i) take care not to mistakenly add a Student to an Authorised User account; and (ii) label data that is shared with the Supplier correctly and accurately.

5.5 The Customer will be solely responsible for procuring and maintaining all network connections and telecommunications links from its systems to the Supplier's data centres. The Customer further acknowledges that the Services do not include any services, systems, or equipment required to access the Internet (and that the Customer is solely responsible for procuring access to the Internet and for all costs and expenses in connection with Internet access, communications, data transmission, and wireless or mobile charges incurred by it in connection with use of any of the Services) or any dedicated data back-up or disaster recovery facilities (and the Customer will ensure at all times that it maintains back-ups of all Customer Data).

5.6 The Customer will comply with all applicable laws and regulations in the exercise of its rights and the performance of its obligations pursuant to this Agreement.

5.7 The Customer agrees that the Supplier may publicise that the Customer is a customer of the Supplier and include the name and logo of the Customer on its Website.

6. Suspension of Service

6.1 The Supplier may suspend the access to or use of the Software by any or all of the Students and/or Authorised Users if:

6.1.1 the Supplier determines that the Customer's (or any Student and/or any Authorised User's) use of the Services is in breach of this Agreement, poses a security risk, or is adversely impacting or may adversely impact the Services or any service provided by the Supplier to a third party; or

6.1.2 it is in the legitimate interests of the Supplier to do so, including where there is a reasonable risk that the Customer may default in the payment of the Subscription Fees,

and the Supplier will use its reasonable endeavours to notify the Customer before the suspension takes effect or as soon as reasonably practicable thereafter.

6.2 Where the Supplier suspends access to or use of the Software under clause 6.1, the Customer remains responsible for all Subscription Fees.

7. Customer Data and Derived Data

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

7.2 The Customer warrants and represents that it has the authority, including all necessary rights, licences, and permissions, to upload and use, and to permit the Supplier to use and Process the Customer Data in accordance with this Agreement.

7.3 The Customer hereby grants to the Supplier a worldwide, non-exclusive, irrevocable, royalty-free and fully paid-up licence during the Term to use and access the Customer Data for the purpose of providing the Services.

7.4 The Customer acknowledges that the Supplier may use the Customer Data to improve the performance and functionality of the Software to develop improvements, updates, upgrades, modifications, or derivative works thereof which will constitute Improvements (as defined in clause 9.2).

7.5 The Supplier may track and analyse the Customer's, its Students and its Authorised Users' use of the Software for the purposes of security and to help the Supplier improve the Services, including the Software.

7.6 Each Party will comply with its obligations under the data sharing agreement (the **DSA**) (available here). The DSA is in addition to, and does not relieve, remove, or replace, the Parties' respective obligations or rights under the Data Protection Legislation.

7.7 The Customer will on first demand fully indemnify and hold harmless the Supplier (and keep the Supplier fully indemnified) from and against any and all Losses arising directly or indirectly out of, from, under, or in relation to any third-party claim that the Processing and use of the Customer Data in accordance with this Agreement infringes or misappropriates any third-party Intellectual Property Rights or breaches Data Protection Legislation.

8. Fees and Payment

8.1 The Customer will pay to the Supplier the Fees set out in the Order Form in accordance with this clause 8 and any payment terms specified in the Order

Form without set-off in respect of any liability of the Supplier.

8.2 The Subscription Fees are payable by the Customer to the Supplier on or before the Effective Date and annually thereafter for access to the Software.

8.3 The Customer will pay each invoice in full and cleared funds within [fifteen (15)] calendar days of the date of such invoice.

8.4 If the Supplier has not received payment by the due date, and without prejudice to any other rights and remedies of the Supplier, the Supplier may, without liability: (i) disable the Customer's (and any and all Students and Authorised Users') access to all or part of the Software until the invoice(s) concerned are paid in full; and/or (ii) charge the Customer interest on a daily basis on any overdue amounts at the statutory rate of interest prescribed by the Late Payment of Commercial Debts (Interest) Act 1998, commencing on the due date and continuing until fully paid, whether before or after judgment.

8.5 Fees are payable in the currency detailed in the Order Form and are non-cancellable and non-refundable. Fees are stated exclusive of VAT, which will be added to the Supplier's invoice(s) at the appropriate rate.

8.6 The Customer will make all payments under this Agreement without withholding or deduction of, or in respect of, any and all taxes, unless required by law. If any such withholding or deduction is required, the Customer will, when making the payment to which the withholding or deduction relates, pay to the Supplier such additional amount as will ensure that the Supplier receives the same total amount that it would have received if no such withholding or deduction had been required.

8.7 The Supplier will be entitled to increase the Fees at the start of each Renewal Term upon ninety (90) calendar days' prior written notice to the Customer.

9. Intellectual Property Rights

9.1 All Intellectual Property Rights in and to the Software, the Services, the Outputs and the Derived Data, will belong to and remain vested in (or automatically upon creation will vest in), the Supplier. Except for the licence granted to the Customer in clause 2.1, nothing in this Agreement grants to the Customer any rights to or in any Intellectual Property Rights in the Software or the Services.

9.2 Without prejudice to clause 2.4 or clause 9.1, to the extent that the Customer's, the Students' or any Authorised User's use of the Software results in any modifications, adaptations, developments, or any derivative works of or to the Software or the Services (**Improvements**), then notwithstanding any rights or remedies of Supplier under clause 2.4 above, any and all rights and title in and to such Improvements will immediately vest in and be owned absolutely by the Supplier (and, to the extent that, by operation of law or otherwise, the ownership of such rights do not vest in the Supplier, the Supplier will have all exclusive rights of use and exploitation in the Improvements unlimited as to time, territory, and exploitation method).

9.3 The Supplier may use and exploit any feedback and suggestions for improvement relating to the Services

provided by the Customer, any Student or any Authorised User (**Feedback**) without charge or limitation.

9.4 The Supplier makes no representation or warranty as to the validity or enforceability of the Intellectual Property Rights in the Software.

9.5 The Supplier will defend the Customer against any third-party claim that the Customer's use of the Software in accordance with this Agreement infringes any third-party Intellectual Property (an **IP Claim**) and, subject always to clauses 9.7, 9.8, and 11.8, will indemnify Customer from and against any damages suffered or incurred by Customer and which are finally awarded by a court of competent jurisdiction or required to be paid under the terms of a full and final settlement of any such IP Claim, provided that: (i) the Supplier is given prompt written notice of such IP Claim by the Customer, which notice will set forth all relevant details and particulars of such IP Claim in reasonably comprehensive detail; (ii) the Customer provides reasonable co-operation to the Supplier in the defence and settlement of such IP Claim, at the Supplier's reasonable expense; (iii) the Supplier is given sole authority to defend or settle such IP Claim; (iv) the Customer makes no admission of liability or fault itself or on behalf of the Supplier; (v) the Customer uses its best endeavours to mitigate any and all losses, liabilities, expenses, costs, and/or damages that it suffers or incurs under or in connection with such IP Claim; and (vi) in the event the Supplier undertakes any of the remedial actions described in clause 9.6 below, the Customer will (and will ensure that all its Students, personnel and Authorised Users will) immediately upon the Supplier taking such action cease to use any part of the Software or Services that are the subject of the relevant IP Claim.

9.6 In the defence or settlement of any IP Claim pursuant to clause 9.5 above, the Supplier may at its sole and absolute discretion (and the Supplier's own expense) either: (i) procure for the Customer the right to continue using the Software in the manner contemplated by this Agreement; (ii) replace or modify the Software so that it becomes non-infringing; or (iii) terminate this Agreement immediately by providing written notice to the Customer, without liability to the Customer.

9.7 The remedies set forth in clauses 9.5 and 10.6 constitute the Customer's sole and exclusive remedies (and the Supplier's sole and entire liabilities) in respect of any actual, alleged, or reasonably likely IP Claim.

9.8 The Supplier will not in any circumstances have any liability (including in respect of the indemnity provided under clause 9.5) if the IP Claim is based in whole or in part on: (i) any modification of the Software or any Services (or any part thereof) by anyone other than the Supplier; (ii) the Customer's, any Students or any Authorised User's use of the Software or the Services otherwise than in accordance with this Agreement or in a manner contrary to the instructions given to the Customer by the Supplier; (iii) the Customer's, any Students or any Authorised User's use of the Software or the Services after notice of the alleged or actual infringement from the Supplier or any appropriate authority; (iv) use or

combination of the Software with any other software or hardware, in circumstances where, but for such combination, no infringement would have occurred; (v) the Customer Data; or (vi) any breach of this Agreement by the Customer.

9.9 The Customer will defend the Supplier against, and fully indemnify the Supplier (and keep the Supplier fully indemnified) from and against any and all Losses incurred by the Supplier in respect of any third-party claim relating to the Customer's, any Students or any Authorised User's use of the Software otherwise than in accordance with this Agreement, provided that: (i) the Customer is given prompt notice of such claim; (ii) the Supplier provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and (iii) the Customer is given sole authority to defend or settle the claim; and (iv) the Supplier makes no admission of liability or fault itself or on behalf of the Customer.

10. Confidential Information

10.1 Each Receiving Party will keep confidential and not use for any purpose other than the performance of its obligations (and exercise of rights) under this Agreement, all Confidential Information of the Disclosing Party.

10.2 Each Receiving Party will only disclose or reveal any of the Disclosing Party's Confidential Information to: (i) those of its Representatives who are required in the course of their duties to receive it for the purpose for which it is supplied (provided that each Party will ensure that any such Representatives to whom the Receiving Party discloses the Disclosing Party's Confidential Information comply with this clause 10.2); and (ii) any court, governmental or administrative authority competent to require the same, or as required by any applicable law, regulation, or governmental or regulatory body which is lawfully entitled to require the disclosure (and in each such case, the Receiving Party will, if legally permissible, notify the Disclosing Party in writing of such requirement as soon as reasonably practicable and use commercially reasonable endeavours to discuss with the Disclosing Party and agree any possible limitations or restrictions on disclosure in advance to the extent permitted by law).

10.3 The provisions of clauses 10.1 and 10.2 will not apply to information that: (i) is or becomes generally available in the public domain otherwise than arising in connection with a breach of this clause by the recipient; (ii) is lawfully in the Receiving Party's possession free of any restrictions as to its use or disclosure at the time of disclosure by the Disclosing Party; (iii) is lawfully acquired from an independent third party who did not itself obtain it under an obligation of confidentiality; (iv) is independently developed without access or reference to any information disclosed by the Disclosing Party; or (v) is trivial or obvious.

10.4 The Customer acknowledges that the Software, including the way in which data, information, works, and materials are visualised when using, or are otherwise presented by, the Software and the results of any performance tests of the Software, constitute the Supplier's Confidential Information. The Customer

recognises that any breach or threatened breach by the Customer of this clause 10 may cause the Supplier irreparable harm for which damages may not be an adequate remedy. Accordingly, in addition to any other remedies and damages available to the Supplier, the Customer acknowledges and agrees that the Supplier is entitled to the remedies of specific performance, injunction, and other equitable relief without proof of special damages.

10.5 The Supplier acknowledges that the Customer Data is the Confidential Information of the Customer.

10.6 The provisions of this clause 10 will survive the termination or expiry of this Agreement (however arising) and continue in full force and effect.

11. Limitation of Liability

11.1 This clause 11 sets out the entire financial liability of the Supplier to the Customer arising under or in connection with this Agreement, including in respect of any use made by the Customer, its Students or its Authorised Users of the Software and the Services.

11.2 Except as expressly and specifically provided in this Agreement, the Customer assumes sole responsibility for the Outputs and any information or results obtained by Students and/or Authorised Users from use of the Software, and for conclusions drawn from such use. The Supplier will, subject to clause 11.6, have no liability for any damage caused by errors or omissions in any information or data, or any actions taken by the Supplier at the Customer's direction. No other party is entitled to rely on the output, information, or results produced by the Customer through its use of the Software for any purpose whatsoever.

11.3 The Customer hereby acknowledges that (i) the Outputs rely upon third party information and information which is dynamic in nature, and may fluctuate over time, including Customer Data and third-party data, and (ii) Supplier shall not be responsible, and (to the extent permitted by law) excludes all liability in relation to, all such information.

11.4 The Customer undertakes to Supplier that (as between the Parties) the Customer assumes all risk of loss incurred or sustained by the Customer arising from reliance on the Services and the Outputs including with respect to compliance with applicable law and regulations and acknowledges that the Outputs are provided "as is" with no warranty or guarantee as to accuracy or completeness. The Customer is solely responsible for ensuring the output of the Services or Software used for any reporting purposes are used and reported in accordance with all applicable laws and regulations.

11.5 Except as expressly and specifically provided in this Agreement, 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 this Agreement. The Customer acknowledges that the Software, the Services, Outputs and any information provided by or on behalf of the Supplier are provided to the Customer on an **as is** basis. Save as expressly stipulated in this Agreement, no assurance, warranty,

or representation is given hereunder by the Supplier that any of the Services (or any part thereof) will comply with or will satisfy any legal or regulatory obligation of any person.

11.6 Nothing in this Agreement excludes either Party's liability for death or personal injury caused by its negligence, fraud or fraudulent misrepresentation or for any liabilities that cannot be excluded under applicable law.

11.7 Subject to clause 11.6, the Supplier will not be liable for: (i) any consequential, indirect, special, incidental, punitive or exemplary Losses, whether foreseeable or unforeseeable; or (ii) any of the following Losses (in each case whether direct or indirect): loss of profit; loss of business opportunity or agreements in contracts; loss of or damage to goodwill or reputation; loss or corruption of data, software or information; wasted expenditure or charges; Losses arising from the lawful termination of this Agreement by the Supplier; Losses caused or contributed to by the Customer or any agent or Representative thereof; Losses caused as a result of the Software being unavailable as a result of planned downtime for the Software, as notified to the Customer from time to time; Losses arising from any failure of the Customer's infrastructure and/or utilities; Losses caused as a result of the Software being unavailable due to a Force Majeure Event; or Losses caused by the failure or delay of any third-party application or service or network.

11.8 Subject to clause 11.6, the Supplier's total liability (whether arising in contract, in tort (including negligence) or restitution, for breach of statutory duty or misrepresentation, or otherwise) arising directly or indirectly out of, under, due to, or in connection with this Agreement will in all circumstances be limited to the total Fees already paid by the Customer to the Supplier during the period of twelve (12) consecutive months immediately preceding the date of the first event giving rise to the Supplier's liability.

12. Term and Termination

12.1 This Agreement will commence on the Effective Date and continue for the Term, unless terminated in accordance with this Agreement.

12.2 If the Customer wishes to terminate this Agreement during a Renewal Term (or fails to give the requisite termination notice to the Supplier prior to the start of a new Renewal Term), the Fees due for the remainder of that Renewal Term will become immediately due and payable to the Supplier within thirty (30) Business Days.

12.3 Without affecting any other right or remedy available to it, either Party may terminate this Agreement with immediate effect by giving written notice to the other Party if: (i) the other Party fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than ten (10) Business Days after being notified in writing to make such payment; or (ii) if the other Party commits a material breach of any terms of this Agreement, which breach is irremediable or (if such breach is remediable) fails to remedy that breach within ten (10) Business Days after being notified in writing to do so; or (iii) the other Party suspends, ceases, or

threatens to suspend or cease carrying on its business or a substantial part thereof, or suffers an Insolvency Event.

12.4 Without prejudice to any other rights or remedies hereunder to which the Supplier may be entitled, if the Supplier knows or has reasonable grounds to suspect that the Customer is acting in breach of its obligations under this Agreement (including failure to pay the Fees), the Supplier may notify the Customer in writing accordingly and may suspend the Customer's and all Students, and Authorised Users' access to the Software until such breach can be remedied, or until the Supplier is satisfied, acting reasonably, that its suspicions are unfounded.

12.5 On termination or expiry of this Agreement for any reason: (a) all licences and rights granted by the Supplier under this Agreement will immediately terminate and cease to be valid; (b) all Fees which are outstanding on the date of termination will become immediately due and payable; (c) subject to the terms and conditions of this Agreement, each Receiving Party will return to the Disclosing Party (or, at such Disclosing Party's direction, destroy) and make no further use of any of the Disclosing Party's Confidential Information, and each party will make no further use of any equipment, property, and other items (and all copies of them) belonging to the other Party; 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 this Agreement which existed at or before the date of termination will not be affected or prejudiced.

13. General

13.1 Entire agreement. This Agreement constitutes the entire agreement between the Parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations, and understandings between them, whether written or oral, relating to its subject matter. The terms and conditions contained in this Agreement will be to the exclusion of all other terms and conditions relating to the same, including without limitation (to the fullest extent permitted by applicable laws) any terms or conditions implied by law, trade custom, practice, and/or course of dealing, and/or any terms or conditions that the Customer may purport to apply, impose, or incorporate under any offer, acknowledgement, correspondence, or any other document issued by the Customer. Accordingly, no terms or conditions endorsed on, delivered with, or contained in any purchase order, specification, or other document issued by the Customer will form part of this Agreement. Any terms or conditions of the Customer diverging from the provisions hereof will not be valid, even if the Supplier effects delivery or renders any part of the Services without reservation.

13.2 Assignment. The Customer will not assign, transfer, charge, sub-contract, or deal in any other manner with all or any of its rights or obligations under this Agreement without the prior written consent of the Supplier. The Supplier may at any time assign, transfer, charge, sub-contract, or deal in any other manner with all or any of its rights or obligations under this Agreement without requiring any additional consent

from the Customer.

13.3 **Force Majeure**. Neither Party is responsible for failing to fulfil its obligations (other than its payment obligations) under this Agreement due to causes beyond its reasonable control that directly or indirectly delay, hinder, or prevent timely performance ("Force Majeure Event"). Any dates or times by which each Party is required to render performance under this Agreement will be postponed automatically to the extent that the Party is delayed or prevented from meeting them by a Force Majeure Event. If the Force Majeure Event prevents, hinders, or delays the affected Party's performance of its obligations for a continuous period of more than thirty (30) calendar days, the affected Party may terminate this Agreement by giving thirty (30) calendar days' written notice to the other Party.

13.4 **Notices**. Any notice to be given under this Agreement will be in writing and delivered by hand (delivery by courier will be regarded as delivery by hand) or by tracked recorded-delivery post to the Party concerned at the relevant address shown at the top of this Agreement (or such other address as may be communicated by the relevant recipient Party to the other from time to time by way of a written notice given in accordance with this clause 14.4) and will take effect: (i) if delivered by hand, at the time of delivery; or (ii) if delivered by tracked recorded-delivery, at the time and date recorded by the relevant recorded-delivery service.

13.5 **Variation**. The Supplier may vary the terms of this Agreement from time to time by providing [two] weeks' prior written notice to the Customer of such variation, except that the Supplier shall not vary the terms of clause 7 (Customer Data and Derived Data), clause 9 (Intellectual Property), clause 10 (Confidentiality), clause 11 (Limitation of Liability) and clause 12(Term and Termination) of this Agreement, unless it is set forth in a written document that expressly refers to this Agreement and that is signed by the Parties (or their duly authorised Representatives).

13.6 **Waiver**. No failure or delay by a Party to exercise any right or remedy provided under this Agreement or by law will constitute a waiver of that or any other right or remedy, nor will it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy will prevent or restrict the further exercise of that or any other right or remedy.

13.7 **Severance**. If any provision or part-provision of this Agreement is or becomes invalid, illegal, or unenforceable, it will be deemed modified to the minimum extent necessary to make it valid, legal, and enforceable. If such modification is not possible, the relevant provision or part-provision will be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause will not affect the validity and enforceability of the rest of this Agreement.

13.8 **Relationship**. The relationship between the Parties is that of independent contractors and nothing in this Agreement will be construed to create a partnership, joint venture, employment, or agency relationship between the

Parties, nor authorise any Party to make or enter into any commitments for or on behalf of the other Party. Each Party confirms it is acting on its own behalf and not for the benefit of any other person. The Parties acknowledge that the arrangements between them are non-exclusive. Nothing contained in this Agreement will prohibit either of the Parties from conducting business activities with other third parties.

13.9 **Third-party rights**. A person who is not a Party to this Agreement will not have any right to enforce any term of this Agreement under the Contracts (Rights of Third Parties) Act 1999.

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

13.11 **Governing Law**. This Agreement, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, will be governed by, and construed in accordance with, English law.

13.12 **Jurisdiction**. Each Party irrevocably agrees that the courts of England and Wales will have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Agreement, its subject matter or formation.