

**Nautilus Education Ltd**  
**Terms and Conditions of Service**  
**September 2020 version**

**1. Introduction**

1.1. When these terms and conditions apply

This Agreement sets out the contractual terms and conditions in relation to the purchase of the Services by a school ('**School**').

These terms and conditions are between

- The School; and
- Nautilus Education Ltd, a company registered in England with company number 12398927 ('**Provider**')

**2. The Agreement Between the Parties**

Each party agrees as follows

2.1. Appointment and acceptance

By entering into this Agreement

- The School appoints the Provider to provide the Services.
- The Provider accepts that appointment.

2.2. What comprises the Agreement between the School and the Provider in relation to a particular order for Services

Only the following (in order of priority if there is any inconsistency):

- The relevant Order Request Form; and
- The relevant Order Confirmation; and
- These terms and conditions.

No other document, statement or other communication forms part of the Agreement.

2.3. When this Agreement becomes legally binding

There are two steps to the process, as follows:

- **Step 1:** the School submits a completed Order Request Form
- **Step 2:** the Provider sends the School an Order Confirmation email at which point the Agreement is in place.

In all cases the School accepts these terms and conditions if it uses the Services irrespective of whether the above process has taken place.

**3. Description of the Services**

3.1. Description of the Services which the Provider must provide the School under this Agreement

Online tablet learning walks, observation tools and surveys for school leaders as more particularly detailed at <http://nautilus.education> or as contained in any other materials which the Provider may publicise about the Services from time to time.

3.2. How the School accesses the Services

- The Services are cloud based and an internet connection will be required.
- The School will need to create an account by first signing up online using a work email and password.
- The individual who first sets up the account will be the Account Administrator.

3.3. User rights	<ul style="list-style-type: none"> <li>The Account Administrator may assign multiple users to act as Observers who in turn will be able to log into the School's account using their work email address and by creating their own password. It is recommended that the Account Administrator is a member of the School's senior leadership team (e.g. the headteacher)</li> <li>The number of Observers the Account Administrator may add is unlimited and Observers can be added or removed by the Account Administrator as frequently as required.</li> </ul>
3.4. Acceptable use of the Services	<ul style="list-style-type: none"> <li>The School must not use the Services in a way which will be a breach of any relevant Law.</li> <li>The School must use any information that is generated as a result of using the Services for personal, non-commercial use.</li> </ul>
3.5. Training / customer support available to the School	<ul style="list-style-type: none"> <li>'How to' video guides are available by clicking <a href="#">here</a>.</li> <li>Should the School require any additional support it should raise an enquiry by clicking <a href="#">here</a>.</li> </ul>
3.6. Any guarantees on the availability of the Services	<ul style="list-style-type: none"> <li>The Provider provides no guarantee as to the uptime of the Services.</li> <li>The Provider will use reasonable endeavours to schedule any planned maintenance which may affect the accessibility of the Services at times which would be considered outside of normal teaching hours.</li> </ul>
3.7. How the School purchases any additional features after the commencement of the Services including any rights to remove additional features once purchased	<ul style="list-style-type: none"> <li>The Account Administrator will have the option to purchase additional features when logged into the School's account.</li> <li>The cost of any additional features added after the commencement of the Services will be calculated on a pro rata basis equivalent to the time remaining until the expiry date of the Agreement (e.g. an additional feature purchased with 6 months remaining until the expiry date of a 12 month agreement would be billed at 50% of the total cost).</li> <li>Prior to the expiry date of the Agreement the School will have no right to cancel or remove any additional features which have been purchased.</li> </ul>
3.8. Free trial period	<p>The Provider may at its discretion offer a free trial period to the School which will:</p> <ul style="list-style-type: none"> <li>Entitle the School to access the Services free of charge;</li> <li>For such period as communicated by the Provider at the outset of the trial period; and</li> <li>Without any obligation on the School to purchase the Services at the expiry of the trial period.</li> </ul> <p>The Provider may at its discretion withdraw or modify the free trial period at any time without notice to the School.</p>

**Duty of care issues**

**4. Third Party Beneficiaries**

4.1. Persons in addition to the School to whom the Provider owes a contractual duty of care under this Agreement in providing the Services.

None.

**5. General standards**

5.1. The Provider must carry out its obligations under this Agreement according to at least each of the following standards

If there is any inconsistency between any of these, the most stringent requirement applies

(a) Reasonable skill, care

According to the standards of reasonable skill and care required under the Supply of Goods and Services Act 1982.

(b) Law

- In any case, in compliance with the standards and other requirements of relevant Law applying to the relevant activities.
- This is a paramount obligation and overrides anything to the contrary elsewhere in this Agreement.

5.2. Whether the provision of the Services by the Provider constitutes professional advice

No.

## Duration

### 6. Commencement of the Services

6.1. When the Provider must give the School access to the Services under this Agreement

At the point the Order Confirmation is sent to the School ('**Commencement Date**').

### 7. Expiry

7.1. Expiry date of this Agreement

12 months after the Commencement Date ('**Term**') this being subject to item 7.2.

7.2. Automatic renewal

The Services will automatically renew for subsequent periods of the same length as the Term unless the School gives the Provider written notice of its intention to end the Agreement no less than 30 days prior to the expiry date of the applicable Term.

(a) How the notice referred to in item 7.2 should be given by the School

Strictly in accordance with item 24.

(b) How the Charges will be applied on renewal of the Services under a new Term

- The School will be sent an Order Confirmation on or around the commencement of the new Term.
- The Order Confirmation will provide an Invoice which will include Charges encompassing the Services that the School had purchased during the previous Term with such Charges being applied in line with the Provider's current pricing for the relevant Services (i.e. the Charges may increase for any subsequent Term).

## Financial arrangements

### 8. Calculation of Charges

#### The Charges

8.1. Amount or calculation of the current Charges which the School is liable to pay the Provider in consideration for the Provider carrying out its obligations under this Agreement  
To be subject to the rest of this Agreement

As indicated in the invoice attached to the Order Confirmation.

- Excluding VAT or anything similar, unless otherwise clearly indicated.
- Otherwise all-inclusive of the Provider's costs in providing the Services, except to the extent otherwise agreed in writing by the School at its discretion.

#### Changes to the Charges over time

8.2. Routine changes to the Charges over time

The Provider may increase or decrease the Charges at any time.

8.3. Rules in relation to any increase or decrease in the Charges described in item 8.2

Any changes to the Charges will only take effect on commencement of a new Term.

## Claiming and making payments

### 9. Invoicing by the Provider

9.1. When the Provider may issue invoices to the School

- Accompanied with an Order Confirmation on the Commencement Date or on commencement of a new Term; otherwise
- At any time after commencement of the Agreement or a new Term.

9.2. How and to where the Provider will send its invoices

- By email to the Account Administrator; otherwise
- As directed by the School, acting reasonably.

## 10. Disputing invoices

10.1. If the School wishes to dispute any Charges contained in any invoice issued by the Provider according to section 9

(a) How the School must raise the dispute	In writing by giving notice strictly in accordance with item 24.
(b) Deadline by which the School must give the notice described in item (a)	Within <b>7 days</b> after the invoice was issued by the Provider.
(c) How the dispute is to be resolved	In accordance with the procedure detailed at item 25.

## 11. Payment of Charges

11.1. Due date by which the School must pay the Provider the Charges as indicated in an invoice

**14 days** from the submission of the invoice by the Provider.

11.2. Consequences if part of an invoice is subject to a genuine dispute, but other parts of it are not in dispute

The dispute shall not in itself affect the School's liability to pay the undisputed part.

11.3. How the School must make payments of Charges to the Provider

- By BACS into the Provider's bank account as it communicates in writing to the School from time to time; or
- By cheque made out to Nautilus Education Limited; or
- As communicated by the Provider in writing to the School from time to time.

## 12. Late payment

12.1. Interest which accrues on overdue liabilities owed between the School and the Provider

- In connection with this Agreement
- Whether arising in tort, contract or otherwise
- Regardless of which of them is the debtor or creditor
- Unless otherwise indicated elsewhere in this Agreement

- The relevant debtor shall be liable to pay interest to the relevant creditor according to the Late Payment of Commercial Debts (Interest) Act 1998.
- **Exception:** to the extent and for as long as the liability is subject to a genuine dispute which the debtor is using reasonable and genuine efforts to attempt to resolve.

12.2. Right of the Provider to suspend access to the Services for late payment

- This being without prejudice to the Provider's right to claim interest for late payment under item 12.1

- The Provider may do so if a properly submitted invoice is not paid **14 days** after the point it became due.
- **Exception:** to the extent and for as long as the invoice is subject to a genuine dispute which the School is using reasonable and genuine efforts to attempt to resolve.

## 13. No set off

13.1. Whether either party has any right of set off, counterclaim, deduction (or anything similar to any of these) against the other party in connection with this Agreement

- No.
- All such rights of the parties (whether arising in law, equity or otherwise) are waived to the fullest extent permitted by Law.

## Intellectual Property

### 14. Intellectual Property – general statement

14.1. General statement regarding Intellectual Property

Except to the extent

- Clearly indicated elsewhere in this Agreement; or
- Otherwise separately agreed between the parties in writing

A party to this Agreement and/or its Affiliate shall not (as a result of entering and/or exercising any rights and/or carrying out any obligations under this Agreement) acquire any right or interest in the separately acquired or separately developed Intellectual Property of the other party to this Agreement and/or its Affiliates or their respective third party licensors.

14.2. Licence for the benefit of the School

The Provider grants the School a licence to use

- Any and all relevant background Intellectual Property of the Provider (and/or of its third party contractors, licensors or anything similar) over which any Intellectual Property arising from the Services (whether belonging to the Provider or the School) depends.

It shall be a non-exclusive, worldwide, perpetual, royalty-free licence.

### 15. Confidentiality

#### What is 'Confidential Information'

15.1. What is Confidential Information of the School and/or its Affiliates respectively as a 'Discloser'

Each of the following, to be read independently

(a) Operational activities

Information relevant to the Discloser's operational activities generally, including for example

- The Discloser's Personnel and human resources activities generally
- The Discloser's data, including personal data in relation to which it is the data controller or data processor for the purposes of the Data Protection Legislation
- Details relating to the Discloser's pupils, their parents/guardians or anything similar
- Information relating to any other person to whom the Recipient knows (or reasonably ought to know) the Discloser owes a duty of confidentiality (whether under contract, by Law or otherwise)

(b) Dispute resolution

Disclosures made by the Discloser in the course of any dispute resolution procedure described in section 25.

15.2. What is Confidential Information of the Provider as a 'Discloser'

Each of the following, to be read independently

(a) Charges

The Provider's Charges but only to the extent the Charges have been uniquely determined by the Provider or privately negotiated between the parties for the purposes of this Agreement (e.g. they are not publicly-available etc.).

(b) Intellectual Property

The Discloser's Intellectual Property

- Which it has separately developed; and
- Which is not in the public domain at the time (other than as a result of a breach by the School).

(c) Subcontractor, Personnel

Any information relating to

- Any subcontractor appointed directly or indirectly by the Discloser in connection with the Services; and/or
- Any Personnel of the Provider or its subcontractors;

To which either of the following apply:

- The Provider and/or its agents have disclosed that information in writing to the School and/or its other agents in connection with the Services.

(d) Dispute resolution

Disclosures made by the Discloser in the course of any dispute resolution procedure described in section 25.

15.3. Rules regarding how the information must be disclosed etc. to be considered a relevant Discloser's Confidential Information

(a) How the information must be disclosed or made or available to the relevant Recipient

- In any manner or in any medium (e.g. in writing, verbally, by observation at the relevant Discloser's premises, contained in any device or material etc.).
- But only in activities reasonably connected with the Services.

(b) Whether the information must be labelled as 'confidential' (yes/no)

No.

(c) By whom must the information be disclosed or made available (according to this item 15.3)

It may be disclosed or made available by or on behalf of the relevant Discloser to the relevant Recipient (and/or anyone else acting on its behalf).

15.4. A piece of information of a relevant Discloser is not in any case Confidential Information of a relevant Discloser if any of the following applies to that piece of information at the time

(a) Public domain

- The piece of information is in the public domain at the time.
- **Exception:** if it has first entered the public domain as a result of any breach of a duty of confidentiality owed by the relevant Recipient under this Agreement.

(b) Independently developed

The relevant Recipient can reasonably prove it (or its Affiliates and/or their Personnel) had developed that information independently of the Recipient's association with the Discloser.

(c) Independently acquired

- The relevant Recipient and/or its Affiliate and/or their respective Personnel receives that information in good faith from a third party in circumstances unconnected with this Agreement.
- **Exception:** where the Recipient knows or has reasonable grounds to suspect that the third party is in breach of confidentiality obligations owed to the Discloser and/or its Affiliate.

(d) Trivial

The information is of a trivial nature.

### Confidentiality obligations

15.5. The relevant Recipient must comply with all of the following obligations in relation to each piece of Confidential Information of the relevant Discloser in the possession of the Recipient from time to time

These obligations continue for the period indicated in item 15.6

(a) Non-disclosure (except to the extent permitted in in item 15.7)

The Recipient

- Must keep that Confidential Information strictly in confidence, and
- Must not disclose it or make it available to third parties.

(b) Not to copy, use

- The Recipient must not copy, modify, reverse engineer or otherwise use that Confidential Information for any purpose other than for legitimate purposes connected with the relevant parts of the Services.
- As examples of the above, the Recipient must not use that Confidential Information to conduct any venture (whether for profit or otherwise) independently of the Discloser.

(c) **Storage:** the Recipient (where it is the Provider) must store the Confidential Information as follows:

- (i) Reasonable standard
- (ii) Comparable

To a reasonable standard of security.

In any case, not to a lower standard of security the Recipient uses to store its own information of comparable confidentiality.

(d) Not to direct others

- The Recipient must not direct or assist any person to do any act that would breach this section 15 if the Recipient did that act itself.
- If any Personnel or Affiliate of the Provider (as Recipient) does such act: the onus will lie with the Provider to prove the act was not done with the Provider's direction and/or assistance.

15.6. Period of the Recipient's obligations in item 15.5 in relation to each piece of the Discloser's Confidential Information

- **3 years** from the Contract End of this Agreement; or
- Such longer or shorter period required by Law in relation to that piece of Confidential Information.

#### Exceptions to obligations

15.7. **Permitted disclosures:** the Recipient is permitted to disclose or make available any Confidential Information of the Discloser

- Only in at least one of the following circumstances
- Regardless of item 15.5(a)

(a) Consent

With the prior written consent of the Discloser, subject to the Recipient's compliance with any conditions attached to that consent.

(b) Disclosures to any of the following  
Subject to item 15.8

- (i) Personnel
- (ii) Advisors etc.
- (iii) Public body
- (iv) Assignment, novation
- (v) Relevant Disputes

To the genuine existing or prospective Personnel of the Recipient and/or its Affiliates.

To the Recipient's genuine existing or prospective advisers, contractors, consultants, agents, insurers, funders, shareholders or other investors, or purchasers of the business of, and/or shares in, the Recipient, auditors and banks.

Any public body authorised to review this Agreement.

Any person to whom the Recipient wishes to make a genuine novation and/or assignment of any part of this Agreement.

Relevant third parties engaged for the purpose of resolving Relevant Disputes under section 25,

(c) Required by Law  
Subject to item 15.9

To the extent the Recipient is required to disclose or make available the Confidential Information by Law to any of the following (for example):

- A court or anything similar body.
- A regulatory body.
- A law enforcement body.

15.8. All of the following rules apply to the Recipient disclosing (or making available) any Confidential Information of the Discloser to any person under item 15.7(b)

(a) Need to know

The Recipient may only disclose (or make available) that Confidential Information to that person

- In good faith; and
- Only on a strict 'need to know' basis.

(b) Treating unauthorised disclosures etc.

- Any unauthorised disclosure or other misuse of such Confidential Information by any such person shall be regarded as if it were the Recipient's own act.
- This does not in itself limit the Discloser's rights against that person.

15.9. The Recipient must comply with all of the following if it is compelled by Law to disclose or make available any Confidential Information of the Discloser for the purposes of item 15.7(c)

(a) Inform

The Recipient must inform the Discloser of the circumstances

- With sufficient detail and accuracy and
- Promptly on becoming aware of the obligation to make the compelled disclosure.

(b) Make person aware

The Recipient must make the person compelling the disclosures aware of the duty of confidentiality owed to the Discloser in relation to the relevant information.

(c) Assist the Discloser to challenge

- The Recipient must provide the Discloser with reasonable and timely assistance on the Discloser's request if the Discloser wishes to challenge the compelled disclosure.
- The Discloser must reimburse the Recipient for the Recipient's reasonable and sufficiently evidenced costs in providing that assistance.

(d) Keep to minimum

The Recipient must keep such disclosures to the minimum it is compelled to disclose or make available.

15.10. Reporting to police etc.

Nothing in this Agreement prevents any person disclosing any Confidential Information of a relevant Discloser in connection with the genuine reporting of any breach of the Law of any person (including the Discloser) to the police and/or or to other relevant law enforcement bodies.

15.11. Providing references

Nothing in this Agreement prevents the School disclosing (fairly, in good faith and with material accuracy) any information relating to the performance of the Provider in connection with the Services in connection with any genuine request for a reference by another prospective or existing customer or client of the Provider.

## 16. Data Processing

16.1. Definitions

- Some definitions and interpretation
- (unless the context otherwise indicates)

(a) Data Loss Event

Any event that causes (or creates an unreasonable risk of causing) any of the following:

- Unauthorised access to any Processed Personal Data then in the possession or control of the Relevant Processor or its Sub-processors in connection with this Agreement.
- Loss or destruction of Processed Personal Data
- Which puts the Relevant Processor in breach of this Agreement and/or in breach of the Data Protection Legislation.



(b)	Data Protection Impact Assessment	An assessment by a Relevant Controller of the impact of the processing of the Processed Personal Data in connection with this Agreement on the protection of that Processed Personal Data.
(c)	Protective Measures	Technical and organisational measures for the purposes of this section 16, particularly item 16.12.
(d)	Processed Personal Data	In relation to a Relevant Controller, any personal data if and for as long as all of the following apply to that personal data <ul style="list-style-type: none"> <li>• A Relevant Controller is a controller according to the Data Protection Legislation.</li> <li>• The Relevant Processor and/or its Sub-processor is a processor in connection with this Agreement according to the Data Protection Legislation.</li> </ul>
(e)	Relevant Controller	The School
(f)	Relevant Processor	The Provider
(g)	Sub-processor	Any third party (including any subcontractor of the Relevant Processor) appointed by the Relevant Processor to process any Processed Personal Data in connection with this Agreement.
(h)	Interpretation	The definitions in the Data Protection Act 2018 apply to this section 16 and to this Agreement, unless otherwise indicated in this Agreement.

### Roles of the parties

16.2. Roles of the Relevant Controller and the Relevant Processor (for the purposes of the Data Protection Legislation) in relation to any Processed Personal Data which the Relevant Processor is to process in connection with this Agreement	The Relevant Controller is the controller and the Relevant Processor is the processor in relation to the Processed Personal Data.
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### About the processing

16.3. Brief description of relevant Processed Personal Data which the Relevant Processor is to process in connection with this Agreement  E.g. types, subject matter of the relevant Processed Personal Data	Personal Data consisting of: <ul style="list-style-type: none"> <li>• First Name</li> <li>• Surname</li> <li>• Job Title</li> <li>• Email address</li> </ul> And any other data relating to Personnel at the School which the Relevant Controller instructs the Relevant Processor to process in connection with the Services. For more information see the Provider's privacy notice by clicking <a href="#">here</a> .
16.4. <b>Duration:</b> for how long the Relevant Processor is to process the relevant Processed Personal Data in connection with this Agreement	For the duration of the Agreement and in any event for as long as the Provider retains any of the Processed Personal Data in its possession or control.
16.5. <b>About the data subjects:</b> the categories of the data subjects in relation to whom the relevant Processed Personal Data relates in connection with this Agreement	Personnel at the School, ordinarily teaching staff.
16.6. The nature, scope and purpose of the processing of the relevant Processed Personal Data by the Relevant Processor in connection with this Agreement	The processing will consist of data relating to teacher performance and behaviour; appraisals, continuous improvement, feedback, coaching, mentoring, career and pay progression.  The purpose being for the Relevant Controller to achieve efficiencies and improvements in its management of the above.

### Relevant Controller's obligations

16.7. General obligations of the Relevant Controller	The Relevant Controller must comply with the Law, particularly the Data Protection Legislation, in its role as controller in relation to the relevant Processed Personal Data.
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**General issues with processing**

16.8. Paramount obligation of the Relevant Controller and the Relevant Processor in relation to Processed Personal Data of the Relevant Controller

- Each of them must comply with their respective obligations under the Law, particularly the Data Protection Legislation in relation to Processed Personal Data of the Relevant Controller.
- This overrides anything to the contrary elsewhere in this Agreement.

16.9. Purposes for which the Relevant Processor and/or its Sub-processors are authorised to process any Processed Personal Data under this Agreement

- Only for at least one of the following purposes to the extent consistent with the Law (particularly the Data Protection Legislation (and for no other purposes):
- To enable the Relevant Processor and/or a relevant Sub-processor to meet its obligations:
    - Under this Agreement; and
    - According to Law (particularly the Data Protection Legislation) in relation to the processing of that Processed Personal Data in connection with this Agreement.
  - For any other purpose permitted in writing by the Relevant Controller.
  - For any other purpose for which the relevant data subject to whom the relevant Processed Personal Data relates has given written consent (subject to the requirements of the Data Protection Legislation relating to the giving of that consent).

16.10. The Relevant Processor must comply with all of the following if and for as long as it (or its Sub-processor) processes any Processed Personal Data in connection with this Agreement  
(whichever imposes the highest standard on the Relevant Processor)

- (a) The Relevant Controller's written instructions
- (b) Relevant Processor's policies
- (c) Law

- All lawful obligations and instructions from the Relevant Controller to process the Processed Personal Data.
- The Relevant Processor's own relevant policies in place while processing the Processed Personal Data.
- In any case, relevant Law, particularly the Data Protection Legislation, including where relevant all of the data protection principles indicated in the Data Protection Legislation.
  - This overrides any other obligation elsewhere in this Agreement to the extent of any inconsistency. This overrides any other obligation elsewhere in this Agreement to the extent of any inconsistency.

16.11. If the Relevant Processor believes (with reasonable grounds) that any part of its compliance with item 16.9 and/or item 16.10 would result in the Provider and/or the Relevant Controller being in breach of relevant Law (particularly any Data Protection Legislation)

- The Relevant Processor shall not be required to comply with the relevant part of item 16.9 and/or item 16.10.
- The Relevant Processor must communicate the matter to appropriate Personnel of the Relevant Controller in writing indicating the reasons for why it believes the relevant part of item 16.9 and/or item 16.10 would result in it and/or the Relevant Controller being in breach of relevant Law (particularly any Data Protection Legislation) .

**Protective Measures**

16.12. Obligations of the Relevant Processor in relation to Protective Measures

- The Relevant Processor must have Protective Measures in place to process the Processed Personal Data in connection with this Agreement which are appropriate to the processing of Processed Personal Data by the Relevant Processor or its Sub-processor.
- Those Protective Measures must be appropriate having regard to reasonably relevant matters including the following where relevant:
  - The nature of the Processed Personal Data being processed.
  - The risks to that processing of any serious adverse consequences to the relevant Processed Personal Data, including unlawful access, unlawful processing, accidental loss, modification or destruction.
  - The state of technological development
  - The cost of implementing the Protective Measures.

16.13. Examples of Protective Measures for the purposes of item 16.12 (where relevant to the processing)

- Encrypting and pseudonymising the Processed Personal Data including cryptographic protocols to encrypt data in transit.
- Ensuring confidentiality, integrity, availability and resilience of systems and services including all data being held in an encrypted database which cannot be accessed from outside of the Relevant Processor's cloud network.
- Ensuring that availability of and access to the Processed Personal Data can be restored in a timely manner after an incident.
- Regularly testing and evaluating the effectiveness of such measures.

**Obligations to inform**

16.14. The Relevant Processor must inform the Relevant Controller of any of the following events or circumstances in relation to any Processed Personal Data which the Relevant Processor is the Processor of in connection with this Agreement

- The Relevant Processor must do so promptly on first becoming aware of the event or circumstance
- But only to the extent it is lawful for the Relevant Processor to do so

- (a) Requests, complaints or other communication
- (b) Unauthorised access
- (c) Data Loss Event
- (d) Breach

	As indicated in item 16.21 in relation to certain requests, complaints and other communications.
(b) Unauthorised access	Any incident of unauthorised access to that Processed Personal Data.
(c) Data Loss Event	A Data Loss Event in relation to the relevant Processed Personal Data.
(d) Breach	Any incident of processing of that Processed Personal Data that results in any of the following: <ul style="list-style-type: none"> <li>• A Material Breach of this Agreement; and/or</li> <li>• In any case, a serious breach of the Data Protection Legislation.</li> </ul>

16.15. In relation to the Relevant Processor's obligation to inform the Relevant Controller about any event or circumstance described in item 16.14 (other than item 16.14(a)) if it occurs or arises

- (a) Deadline by which the Relevant Processor must inform the Relevant Controller

- The earliest of the following:
- **If there is any deadline on the Relevant Processor to inform the Relevant Controller according to Law (particularly the Data Protection Legislation):** by that deadline.
  - **If there is any deadline on the Relevant Controller to respond to the relevant event of circumstance according to Law (particularly the Data Protection Legislation):** no later than **2 Business Days** before the Relevant Controller's deadline (or if the Relevant Controller's deadline according to Law is less than that, in any case promptly).
  - **Otherwise:** promptly (and in any case not more than **2 Business Days**) after the Relevant Processor first becomes aware of the event or circumstance.

(b) Information the Relevant Processor must provide the Relevant Controller

All of the following to the extent relevant  
 A reasonable description of the relevant event or circumstance.

- The number of data subjects affected.
- How the Relevant Controller can obtain further information (e.g. a contact person within the organisation of the Relevant Processor or the Sub-processor).
- The likely consequences of the relevant event or circumstance
- The measures the Relevant Processor or the Sub-processor has taken (and/or proposes to take) in response to the event or circumstance to mitigate the harm to the Processed Personal Data and/or to the relevant data subjects and/or to the Relevant Controller.

**Obligation to assist**

16.16. Assistance which the Relevant Processor must give the Relevant Controller in relation to the Processed Personal Data

The Relevant Processor must give the Relevant Controller reasonable assistance to for any of the following purposes

- To enable the Relevant Controller to meet its obligations in relation to the Processed Personal Data under Law, particularly the Data Protection Legislation.
- To enable the Relevant Controller to respond to any request, complaint or other communication received by the Relevant Controller and/or the Relevant Processor relating to the processing of the Processed Personal Data by the Relevant Processor and/or its Sub-processor. This request, complaint or other communication may come from
  - The relevant data subject; and/or
  - The Information Commissioner or other regulatory or law enforcement body; and/or
  - Any person not described above who is entitled by Law to a response to its request, complaint or other communication.

16.17. When the Relevant Processor must give the Relevant Controller the assistance described in item 16.16

- In a timely manner on the Relevant Controller's reasonable request having regard to the circumstances (e.g. any deadlines imposed on the Relevant Controller by Law).
- The Relevant Processor is only required to provide that assistance if the Relevant Controller has made the request for at least one of the purposes indicated in item 16.16.

16.18. How the Relevant Processor's costs in providing the assistance described in item 16.16 are to be met

The Relevant Controller must reimburse the Relevant Processor for the Relevant Processor's reasonable and sufficiently evidenced costs in providing that assistance.

16.19. Examples of assistance which the Relevant Processor must provide for the purposes of item 16.16

- Each of the following, where relevant
- Not an exhaustive list of the assistance which the Relevant Processor must provide for the purposes of item 16.16

(a) Supplying Processed Personal Data

Supplying the Relevant Controller, at its request, with any of the relevant Processed Personal Data.

(b) Requests, complaints or other communication

As indicated in item 16.21 in relation to cooperation required in relation to any requests, complaints, communications etc.

(c) Protective Measures

Providing the Relevant Controller with the information regarding Protective Measures according to item 16.

(d) Assessment of operations

Providing the Relevant Controller an assessment of the necessity and proportionality of the processing operations in relation to the Processed Personal Data.

(e) Risk assessment

Providing a risk assessment in relation to the rights and freedoms of data subjects.

(f) Data Loss Event

Providing the Relevant Controller with reasonable assistance following any Data Loss Event relating to the Processed Personal Data.

(g) Information Commissioner

Providing the Relevant Controller with reasonable assistance as requested by the Relevant Controller with respect to any of the following insofar as it relates to the Processed Personal Data:

- Any request from the Information Commissioner (or other regulatory body exercising its functions as such)
- Any consultation by the Relevant Controller with the Information Commissioner (or other regulatory body exercising its functions as such).

### Assisting with Data Protection Impact Assessments

16.20. Obligation of the Relevant Processor to assist the Relevant Controller in preparing any Data Protection Impact Assessment

- The Relevant Processor must provide the Relevant Controller with reasonable assistance when the Relevant Controller prepares any Data Protection Impact Assessment prior to the Relevant Processor (or its Sub-processor) commencing any processing of any Processed Personal Data in connection with this Agreement.
- But only in relation to those parts of the Data Protection Impact Assessment relevant to that processing.

### Requests, complaints, communications

16.21. The Relevant Processor must comply with all of the following obligations in relation to any request complaint or other communication which the Relevant Processor or its Sub-processor receives in connection with any Processed Personal Data

- Whether relating to the obligations of the Relevant Controller, the Relevant Processor and/or the Sub-processor
- Including those from any of the following
- A data subject (e.g. an access request, a request to rectify)
- The Information Commissioner and/or any other regulatory or law enforcement body.
- Any other person entitled to a response by Law

(a) Obligation to inform

The Relevant Processor must (to the extent not in breach of any relevant Law) inform the Relevant Controller of the request complaint or other communication relevant matter in a prompt manner, and in any case no later than 5 Business Days (or any shorter deadline as required by the Data Protection Legislation) after the Relevant Processor first receives the relevant request, complaint or other communication.

(b) Obligation to cooperate

The Relevant Processor must provide the Relevant Controller with reasonable and timely cooperation in relation to the request, complaint or other communication relating to any Processed Personal Data.

(c) Providing copies

The Relevant Processor must provide the Relevant Controller with full copies of the relevant request, complaint or other communication.

(d) If it is an access request

The Relevant Processor must either:

- Comply with the access request according to deadlines required by Law; or
- Assist the Relevant Controller to do so

As requested in writing by the Relevant Controller.

(e) Instructions

The Relevant Processor must comply with reasonable and relevant instructions of authorised representatives of the Relevant Controller in responding to the relevant request, complaint or other communication.

(f) Supply the Processed Personal Data

If requested by the Relevant Controller, the Relevant Processor must supply the Relevant Controller with relevant Processed Personal Data to which the request, complaint or other communication relates, to enable the Relevant Controller to respond to the relevant request, complaint or other communication.

16.22. Liability of the Relevant Controller to make any additional payment to the Relevant Processor in return for the Relevant Processor carrying out its obligations in item 16.21

The Relevant Controller must reimburse the Relevant Processor for the Relevant Processor's reasonable and sufficiently evidenced costs in carrying out its obligations in item 16.21.

### Transferring Processed Personal Data

16.23. Obligations of the Relevant Processor in transferring any Processed Personal Data

The Relevant Processor must not host or otherwise transfer any Processed Personal Data outside of the European Economic Area (or the area comprising the United Kingdom and the European Economic Area, if the United Kingdom is not in the European Economic Area at the time) unless both of the following apply:

- The Relevant Processor has the written consent of the Relevant Controller, not to be unreasonably withheld.
- All of the conditions in item 16.24 are met.

16.24. All of the following conditions must be met for the purposes of item 16.23

(a) Safeguards

The Relevant Controller and/or the Relevant Processor and/or its Sub-processor has provided appropriate safeguards in relation to the transfer as decided by the Relevant Controller, whether in accordance with General Data Protection Regulation Article 46 or Article 37 of Law Enforcement Directive (Directive (EU) 2016/680) (if these are applicable in the UK) or any other applicable Data Protection Legislation.

(b) Obligations under the Data Protection Legislation

The Relevant Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Processed Personal Data that is hosted or otherwise transferred.

(c) Rights of the data subject

The data subject has enforceable rights and effective legal remedies which are enforceable and effective in relation to the Processed Personal Data which is hosted or otherwise transferred.

(d) Standard clauses

If requested by the Relevant Controller in writing, the Relevant Processor (or Sub-processor where relevant) has become legally bound (in favour of the Relevant Controller and its Affiliates) to

- The standard contractual clauses applicable to the hosting or other transfer of Personal Data between Controllers and Processors as set out in the European Commission decision of February 5, 2010 (C (2010) 593), as amended; or
- Such other contractual clauses approved by the Relevant Controller (such approval not to be unreasonably withheld where these other contractual clauses provide at least equivalent protection to the Processed Personal Data.

### Data protection officer

16.25. Data protection officer

The Relevant Processor must have in place a designated data protection officer if it is required to do so by the Data Protection Legislation. Otherwise it may do so at its discretion.

**About the Relevant Processor’s Personnel**

16.26. The Relevant Processor must comply with all of the following obligations in relation to each of its (and/or its Sub-processor’s) Personnel In relation to the individual’s access to, or his/her involvement in, the processing of, any Processed Personal Data in connection with this Agreement

(a) Level of access	The Relevant Processor may only give the relevant individual access to the Processed Personal Data if he/she has a genuine ‘need to know’ for the purposes of carrying out his/her duties.
(b) How they process	The Relevant Processor must ensure the relevant individual does not do anything to cause the Relevant Processor to breach this Agreement and/or (in any case) the Law.
(c) Understanding of obligations	The Relevant Processor must use reasonable endeavours to ensure the individual understands and complies with the Relevant Processor’s obligations under this Agreement and under the Law in relation to the processing of the Processed Personal Data.
(d) Training	The Relevant Processor must ensure that the individual has undertaken adequate training in the requirements of the Law and the Relevant Processor’s policies and procedures in the processing of the relevant Processed Personal Data.
(e) Confidentiality undertakings	The Relevant Processor must ensure the individual has given legally binding confidentiality obligations to the Relevant Processor or relevant Sub-processor, as relevant (e.g. under his/her contract of employment) which are sufficient to protect the confidentiality of the Processed Personal Data.

**Audit and inspection**

16.27. Main obligation of the Relevant Processor in relation to audits

The Relevant Processor must conduct an information security audit as follows <ul style="list-style-type: none"> <li>• Annually; and</li> <li>• At such other times as requested in writing by the Relevant Controller. The Relevant Controller may not make this request less than 12 months after the previous audit unless the Relevant Controller has serious and reasonable concerns about the Relevant Processor’s systems for processing the Processed Personal Data.</li> </ul>
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16.28. Fix deficiencies

The Relevant Processor must demonstrate to the Relevant Controller (promptly on the Relevant Controller’s reasonable request) the steps the Relevant Processor has taken to fix any deficiencies identified as a result of each audit which the Relevant Processor has carried out under item 16.27.
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16.29. Inspection and audit rights and obligations of the Relevant Controller and the Relevant Processor In relation to the processing of any Processed Personal Data in connection with this Agreement

(a) Main obligations of the Relevant Processor	It must do all of the following for the purposes indicated in item (c): <ul style="list-style-type: none"> <li>• Give the Relevant Controller and/or its Personnel and/or other agents appropriate access to relevant premises, records, systems, and equipment (and the like of any these).</li> <li>• Direct the Relevant Processor’s relevant Personnel to give the Relevant Controller and/or its authorised agents materially sufficient and materially accurate explanations of the relevant premises, records, systems, and equipment (and the like of any these) under inspection.</li> </ul>
(b) When the Relevant Processor must comply with its obligations in item (a)	Promptly on the Relevant Controller’s written request.

(c) Purposes for item (a)

To enable the Relevant Controller to verify the Relevant Processor's compliance with the following in relation to its processing of the Processed Personal Data:

- With the Data Protection Legislation and the Law generally; and
- With this Agreement, particularly this section 16.

(d) Confidentiality

- The Relevant Processor may delay carrying out its obligations under item (a) in relation to a particular inspection and audit until it has been given legally binding written confidentiality undertakings (on reasonable terms and in favour of the Relevant Processor and its Affiliates) by relevant representatives of the Relevant Controller engaged in that inspection and audit.
- This does not in itself limit the Relevant Controller's obligations (if any) in relation to the Confidential Information of the Relevant Processor under section 15.

### Sub-processors

16.30. The Relevant Processor must comply with all of the following if any Sub-processor processes any relevant Processed Personal Data in connection with this Agreement

(not to limit the Relevant Processor's obligations in relation to such Sub-processor generally)

(a) Notify

The Relevant Processor must provide a list of direct or indirect Sub-processors for the Relevant Controller promptly upon being requested to do so.

(b) Ensure compliance

The Relevant Processor must ensure the Sub-processor's compliance with relevant obligations under this section 16 in connection with the Sub-processor's processing of the relevant Processed Personal Data.

(c) Rules relating to subcontractors

- A Sub-processor of the Provider is considered a subcontractor of the Provider for the purposes of this Agreement.
- By entering this Agreement the School is providing its authorisation for the Provider's use of Sub-processors except to the extent otherwise clearly indicated.

### Delete or return

16.31. The Relevant Processor must do any of the following in relation to any particular Processed Personal Data in relation to which the Relevant Processor or its Sub-processor is the processor in connection with this Agreement

Any of the following as the Relevant Controller instructs.

- Delete it; or
- Return it (including copies) to the Relevant Controller; or
- Give it to a third party nominated by the Relevant Controller
- Exception: this obligation does not apply to the extent the Relevant Processor or its Sub-processor is required by Law to retain the relevant Processed Personal Data.

16.32. When the Relevant Controller must carry out its obligations in item 16.31

- Promptly on the Relevant Controller's request (to be made when the Relevant Processor has no further need to retain that Processed Personal Data for the purpose of this Agreement); or
- In any case promptly on the final discontinuation of the Services under this Agreement unless similar activities are to continue under a new contract.

### Modifying Processed Personal Data

16.33. Restrictions on the right of the Relevant Processor to modify any of the Processed Personal Data

The Relevant Processor must not modify any of the Processed Personal Data except to the extent any of the following applies:

- The Relevant Processor is required by Law to do so.
- The Relevant Processor is permitted or required elsewhere in this Agreement to do so.
- The Relevant Controller permits or requires the Relevant Processor to do so.



## Suspension of processing

16.34. Obligation to suspend processing

- The Relevant Processor must promptly suspend (and must require its Sub-processor to promptly suspend, where relevant) the processing of any Processed Personal Data if the Relevant Controller requests the Relevant Processor to do so in writing.
- The Relevant Controller may only make that request if the Relevant Controller has reasonable grounds to believe there is a substantial risk of the Relevant Processor and/or its Sub-processor processing any of the Processed Personal Data in breach of this Agreement, and in any case, in breach of the Data Protection Legislation and/or the Law generally.

## Factual promises given by the Relevant Controller

16.35. Factual promises given by the Relevant Controller in relation to its Processed Personal Data

That to the best of the Relevant Controller's knowledge (having made reasonably necessary checks), it is permitted by Law to allow the Relevant Processor and its permitted Sub-processors to process the Processed Personal Data in connection with this Agreement.

## Miscellaneous issues

16.36. Whether this section 16 limits the confidentiality obligations (if any) of either party under this Agreement (see especially, section 15)

No.

16.37. Duration of the rights and obligations (or anything similar to any of these) of the Relevant Controller and the Relevant Processor under this section 16

Those rights and obligations (or anything similar to any of these) continue for as long as the Relevant Processor and/or Its Sub-processor continues to process any Processed Personal Data of the Relevant Controller in connection with the Services, even if after the Contract End

## 17. Uncontrollable Circumstances

### Definition of 'Uncontrollable Circumstances'

17.1. Definition of 'Uncontrollable Circumstance' (effectively 'force majeure' events)

Any event or circumstance to which all of the following apply:

- It is outside the Provider's reasonable control; and
- It prevents the Provider from carrying out its obligations in relation to this Agreement.

### Uncontrollable Circumstances – suspension of activity

17.2. Whether the Provider is permitted to suspend the Services as a result of relevant Uncontrollable Circumstances

The Provider is so permitted but only to the extent the relevant Uncontrollable Circumstance substantially disrupts the Provider from providing the Services.

17.3. When the Provider must resume the Services

Promptly after the Services are no longer substantially disrupted by any Uncontrollable Circumstance.

### Rights of the Parties if Uncontrollable Circumstances continue

17.4. Termination rights of the parties if the Services are suspended for a continuous period due to any Uncontrollable Circumstances

None.

17.5. Effect on the Charges if the Services are suspended for a continuous period due to any Uncontrollable Circumstances

None.

**Liability issues**

**18. Caps and exclusions of liability**

**Caps on the liability of the Provider**

18.1. Maximum liability of the Provider (whether in tort, contract or otherwise) in connection with the provision of the Services under this Agreement

<p>The Provider's maximum liability is:</p> <ul style="list-style-type: none"> <li>To the level of the proceeds paid under insurance cover which is relevant to the particular liability; or</li> <li>To the level of the Charges which the School has paid the Provider in respect of the current Term.</li> </ul>
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**Exclusions of liability**

18.2. The liability of the Provider in connection with the use of any output supplied in connection with the Services is excluded to the extent any of the following applies

(a) Use by others

To the extent that output is used or relied upon by any person other than the School.
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(b) Actions by the School

To the extent the output has been based on inaccurate and/or incomplete instructions given by or on behalf of the School.
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(c) Alterations

<p>The output has been materially altered</p> <ul style="list-style-type: none"> <li>By any person other than the Provider or a person acting on the Provider's behalf; and</li> <li>Without the Provider's clear written consent.</li> </ul>
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(d) Nature of use

The output has been used in a manner that a reasonable person would not expect it to be used.
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18.3. Liability of the Provider in connection with this Agreement is excluded for all of the following

(a) Indirect, consequential

Special, indirect or consequential loss or damage is excluded.
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(b) Profits

Loss of actual or anticipated profits
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(c) Revenue

Loss of revenue.
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(d) Opportunity

Loss of opportunity.
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(e) Business

Loss of business.
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(f) Savings

Loss of anticipated savings.
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(g) Reputation etc.

Loss of reputation or goodwill
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**Where caps and exclusions of liability DO NOT apply**

18.4. If and to the extent any of the following applies to a particular liability:

- The caps and exclusions of the Provider's liability indicated elsewhere in this Agreement (especially those in this section 18) do not apply to;
- Each of these are to be read independently

(a) Death etc.

Death or personal injury caused by the negligence of the Provider.
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(b) Fraudulent misrepresentation

The Provider's fraudulent misrepresentation.
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(c) Not permitted by Law

Anything else to the extent liability cannot be capped and/or excluded by Law.
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## Early termination

### 19. Provider Termination Default Events

Each of the following is a Termination Default Event of the Provider

- To be read independently
- For as long as the relevant circumstances continue to apply to the Provider

### General breaches

19.1. Material Breach not capable of being remedied

The Provider is in Material Breach of this Agreement which is not (on a reasonable view) capable of being remedied by the Provider.

19.2. Material Breach capable of being remedied

All of the following must apply

- The Provider is in Material Breach of this Agreement which is (on a reasonable view) capable of being remedied by the Provider for as long as the Provider has still not remedied the Material Breach
  - To the reasonable satisfaction of the School
  - At the Provider's cost
  - More than **30 days** after the School has requested the Provider to do so.
- The School must have issued its request by notice given strictly according to section 24.
- The School must not unreasonably refuse consent to a written request by the Provider to an extension of the above deadline if there are delays to the Provider remedying the Material Breach which are significantly due to factors outside the reasonable control of the Provider.

## About the Provider

19.3. Certain appointments

The Provider is subject to

- A court order (or equivalent) or
- A resolution or similar decision

Requiring the appointment of a liquidator, provisional liquidator, trustee, administrator, controller, receiver or receiver and manager (or any equivalent of any of these in another relevant jurisdiction) in relation to the Provider and/or its assets.

19.4. Winding up

- The Provider is subject to
  - A court order (or equivalent) or
  - A resolution or similar decision
- Requiring the Provider to be dissolved and/or wound up.
- Exception: in relation to a genuine solvent reconstruction where
  - The replacement entity agrees in writing to become legally bound to the obligations of the Provider under this Agreement; and
  - The replacement entity accepts in writing liability for the liabilities of the Provider in connection with this Agreement; and
  - The replacement entity (and/or any third party guarantor it wishes to propose at the time) has at least equivalent financial standing as that which the Provider had at the date of this Agreement; and
  - The replacement entity has the same underlying majority controlling ownership as the Provider.

**20. School Termination Default Events**

Each of the following is a Termination Default Event of the School

- To be read independently
- For as long as the relevant circumstances continue to apply to the School

**20.1. Non-payment by the School**

If and for as long as all of the following apply

(a) Overdue liability

Any liability owed by the School to the Provider in connection with this Agreement is overdue (this is without prejudice to the Provider’s right to suspend the Services under item 12.2).

(b) Not disputed

The relevant liability is not subject to a genuine dispute which the School is using reasonable and genuine efforts to attempt to resolve.

(c) No right to delay etc.

The School has no contractual or other right to refuse and/or to delay payment of the relevant liability.

(d) Overdue

The liability (or any part of it) must still be overdue more than **30 days** after the Provider has issued a further demand for payment.

**21. Early termination due to a Termination Default Event**

**General**

21.1. Termination rights of a party (**‘Terminating Party’**) if and for as long as a Termination Default Event applies to the other party (**‘Defaulting Party’**) under this Agreement

The Terminating Party may terminate this Agreement if and for as long as a Termination Default Event applies to the Defaulting Party, subject to the rest of this section 21.

**Partial termination**

21.2. Whether the Terminating Party may terminate only part of this Agreement under this section 21 if the Terminating Party wishes to do so

No.

**Termination procedure**

21.3. How a Terminating Party terminates this Agreement under this section 21

By giving the Defaulting Party a notice as follows:

- Strictly according to section 24.
- Setting out in reasonable detail a description of the Termination Default Event of the Defaulting Party.

21.4. Interpretation

A Termination Default Event applies to a Defaulting Party; and

- That Termination Default Event is expressed to continue if and for as long as particular circumstances apply, and
- Those circumstances cease to apply (e.g. the Defaulting Party has remedied the Termination Default Event); and
- The Terminating Party has not yet given the Defaulting Party the notice described in item 21.3 in relation to that Termination Default Event

Then the Terminating Party is no longer entitled to give that notice to the Defaulting Party in relation to that particular Termination Default Event.

**Consequences of the termination notice**

21.5. Effective date on which this Agreement is terminated if a notice is given by the Terminating Party under item 21.3

- On the date the relevant notice is given, or
- On any later date indicated in that notice (not to be later than the expiry date of this Agreement).

21.6. Consequences of the termination of this Agreement under this section 21 on the School's liability to pay Charges to the Provider under section 8 after the effective termination date in item 21.5

- The Provider shall be entitled to the Charges for the Services provided up to the effective termination date.
- This does not limit the Provider's rights and remedies where the Provider is the Terminating Party.

**22. No early termination by either party without Termination Default Event**

22.1. Whether either party may terminate this Agreement early without any Termination Default Event of the other party

No.

**23. About the 'Contract End'**

23.1. The Contract End of this Agreement is the earlier of the following:

- (a) The expiry
- (b) Earlier termination

- The relevant expiry date of this Agreement.
- The earlier termination of this Agreement according to these terms and conditions.

23.2. Consequences of a Contract End

- The rights, powers, obligations, liabilities, prohibitions and restrictions (or anything similar to any of these) of the parties in connection with this Agreement (as relevant, to which the Contract End relates) shall discontinue.
- **Exception:** to the extent indicated in item 23.3.

23.3. **Continuing** rights, obligations etc.: the following rights, powers, obligations, liabilities, prohibitions and restrictions (or anything similar to any of these) of the parties to this Agreement (and/or those of any third parties with rights under this Agreement) shall continue until they are completed, until they expire, or indefinitely, as relevant according to this Agreement

- Even if after the relevant Contract End
- These are to be read independently

- (a) Already arisen, accrued
- (b) Relating to certain events or circumstances
- (c) Interest
- (d) Continuing nature

- Those in connection with this Agreement which had already arisen or accrued on or before the Contract End.
- Those which relate to events or circumstances
  - Which are connected with this Agreement; and
  - Which occurred on or before the date of the Contract End.
- Any interest accruing on any liabilities in connection with this Agreement which relate to events or circumstances which had already occurred or arisen on or before the date of the Contract End.
- Those in connection with this Agreement which are expressed (or which are reasonably implied) in this Agreement to continue after the date of the Contract End.

**Miscellaneous**

**24. Notices**

24.1. To what this section 24 applies

It applies to all of the following (each of them is a **'Formal Communication'**):

- Communications between the parties described as 'notices' in this Agreement (regardless of whether compliance with this section 24 is cross-referenced).
- Any other communications between the parties which (according to this Agreement) must be sent according to this section 24.

The requirements in this section 24 do not apply to other communications between the parties.

24.2. To whose attention any Formal Communication must be addressed

To be valid, that communication must be addressed to the recipient's Representative.

24.3. **Methods:** a Formal Communication has only been validly sent by the relevant sender to the relevant recipient if it has been sent or given to the receiver in at least one of the following ways

The Formal Communication is deemed to have been given as indicated below, even if it has actually been given earlier or later than as indicated below

Method	When notice is deemed to have been given
(a) Hand delivery to the recipient's Representative	On the date it is given to him/her.
(b) By registered mail or courier to the recipient's last known address (addressed to the recipient's Representative unless otherwise indicated elsewhere in this Agreement in relation to a particular type of communication)	The earlier of the following: <ul style="list-style-type: none"> <li>• The date of actual receipt of the notice, as sufficiently evidenced by Royal Mail (or another equivalent postal carrier if delivered outside the UK) or the courier.</li> <li>• <b>2 Business Days</b> after the day it was sent (as evidenced by the post mark, despatch notice or other relevant evidence), unless it is returned as undelivered.</li> </ul>
(c) By e-mail issued as follows:	<ul style="list-style-type: none"> <li>• <b>If the relevant communication is given to the School:</b> to an e-mail address as nominated by the School to the Provider from time to time for such communication.</li> <li>• <b>If the relevant communication is given to the Provider:</b> to the usual e-mail address of the Provider or such additional or replacement e-mail address as nominated by the Provider to the School from time to time for such communication.</li> <li>• <b>In any case:</b> with the sender being able to reasonably prove the relevant e-mail was sent to the relevant e-mail address.</li> <li>• On the date and at the time the e-mail is received by the recipient (as the recipient can reasonably prove) subject to the following                             <ul style="list-style-type: none"> <li>- If that date and time is before 9 am on a Business Day: it is deemed to have been received at 9 am on that Business Day.</li> <li>- If that date and time is after 5 pm on a Business Day or at any time on a day that is not a Business Day: it is deemed to have been received at 9 am on the next Business Day.</li> </ul> </li> </ul>

**25. Resolving disputes**

25.1. Purpose of this section 25

- To set out arrangements for the resolution of any dispute between the School and the Provider in connection with this Agreement (each such dispute is a **'Relevant Dispute'**).
- These arrangements apply to the Relevant Dispute except to the extent the parties otherwise agree in writing.

**Internal resolution**

25.2. First step: resolution by Representatives

- The parties shall direct their Representatives to use their reasonable endeavours to resolve the Relevant Dispute in a timely manner and in good faith.
- The parties shall bear their own costs in doing so.

25.3. **Next step:** if the parties' Representatives cannot resolve the Relevant Dispute after more than **30 days** after they have commenced the previous step

- The parties shall escalate the matter to their respective Escalated Persons.
- The parties must direct their Escalated Persons to use their reasonable endeavours to resolve the Relevant Dispute in a timely manner and in good faith.
- The parties shall bear their own costs in doing so.

**Mediation**

25.4. **Next step:** if parties have the Relevant Dispute has not been resolved more than **60 days** after they have commenced the previous step the parties must attempt to resolve the Relevant Dispute by mediation, according to all of the following

(a) How the parties are to commence the mediation

- By either party giving the other party a notice (strictly according to section 24) requesting mediation.
- The party giving that notice must summarise in that notice in sufficient detail the Relevant Dispute (as understood in good faith by the party giving that notice).

(b) Mediation procedure the parties are to use

The Model Mediation Procedure of the Centre for Effective Dispute Resolution or the comparable rules of any successor body.

(c) How the parties must appoint the mediator

- By agreement of the parties (acting promptly and in good faith).
- They must appoint a suitably qualified, independent mediator.
- **If they cannot agree on a mediator after more than 7 days after the relevant party gives the notice in item (a):** the parties must request the Centre for Effective Dispute Resolution to recommend a mediator. The parties must accept the person who is recommended unless there are genuine and serious concerns about that person's independence.

(d) The parties must comply with all of the following in connection with the mediation

(i) Good faith

The parties must act generally in good faith in attempting to resolve the Relevant Dispute.

(ii) Cooperation

The parties must co-operate fully and promptly with the mediator, including promptly doing such acts (including signing a document substantially in the form of the Centre for Effective Dispute Resolution's model agreement in force from time to time) as the mediator reasonably requires.

(iii) Directions to Personnel

The parties must direct their respective Personnel to attend and cooperate with the mediation properly and in good faith, as reasonably necessary.

(iv) Confidentiality

- Section 15 applies to information disclosed by a party in the course of the mediation.
- A party shall not be regarded as having breached its confidentiality obligations in section 15 if that party or its Affiliate or their respective Personnel or other agent makes disclosures of Confidential Information of the relevant Discloser for purposes connected with the mediation.

(v) Without prejudice

Anything said or done by a party in the course of the mediation shall not in itself prejudice its rights in any later proceedings between it and the other party in relation to the Relevant Dispute and/or in relation to any other dispute between them.

(vi) Engagement

The parties must not separately engage (in connection with further proceedings involving the Relevant Dispute or any other dispute) the mediator as an advisor and/or to call him/her as a witness (except if he/she is a witness in a capacity other than as a mediator in relation to the Relevant Dispute).

(e) How mediation costs are to be borne

- The parties shall share equally the costs of engaging the mediator.
- The parties shall otherwise bear their own costs in connection with the mediation.

(f) Right of a party to commence legal proceedings in relation to the Relevant Dispute

A party may do so if the Relevant Dispute is not resolved by mediation after at least **90 days** after the commencement of mediation.

### Resolving disputes - general

25.5. Various remedies

Nothing in this Agreement (including this section 25) prevents a party from seeking specific performance or injunctions or other remedies of a similar nature in relation to matters relevant to this Agreement.

25.6. In relation to any disputes between an Affiliate of the School and the Provider in connection with this Agreement

- The parties shall treat that dispute as a Relevant Dispute to be resolved under this section 25.
- The School must use its powers to ensure the Affiliate complies with this section 25 in relation to that dispute.
- **If any 2 or more of the School and/or any of its Affiliates are together parties to the same Relevant Dispute:** for the purpose of allocating any costs under this section 25, they shall be considered together one party to the Relevant Dispute.

## 26. Other topics

### Relationship between the parties

26.1. Relationship between the parties created by this Agreement

The relationship of customer and independent service provider. However, this Agreement does not create any of the following relationships between the parties and/or their Affiliates

- A partnership between them
- A principal-agent relationship

### Assignment, novation

26.2. Assignment, novation

If a party wishes to

- Assign its rights, entitlements, benefits, powers or anything similar to any of these in connection with this Agreement; and/or
- Novate this Agreement.

That party may not do so without the prior written consent of the other party, not to be unreasonably withheld.

### Entire agreement

26.3. About this Agreement

The terms and conditions of this Agreement as detailed under item 2.2 comprise the entire agreement between the parties. No other material forms part of it.

26.4. Status of any previous agreements entered between the parties on the subject matter of this Agreement

They are fully extinguished immediately when this Agreement is entered.

26.5. Liability of a party in relation to any statement, warranty, representation, opinion or prediction of the future which that party may have made which is not described or clearly cross-referenced in this Agreement

To the fullest extent permitted by Law:

- These are excluded from this Agreement.
- That party's liability in relation to any of these is excluded.

This does not exclude any party's liability for fraudulent misrepresentation.



### Third party rights

26.6. Rights of third parties with rights under this Agreement for the purposes of the Contracts (Rights of Third Parties) Act 1999

All rights of third parties under the Act are excluded to the fullest extent permitted by Law.

### Amendment

26.7. How this Agreement may be amended

- The Provider may amend these terms and conditions at any time by publicising the amendment on the Provider's website and/or in any other appropriate manner.
- If the School does not wish to accept that amendment, it must (no later than 14 days after the relevant amendment is first publicised by the Provider) terminate the Agreement by giving the Provider notice in writing. In such circumstances, the Provider must pay the School a pro-rated refund of the Charges for the unused portion of the Term, less a reasonable non-refundable administration fee.

### Remedies

26.8. Consequences if this Agreement refers to particular remedy in a particular circumstance

It does not in itself exclude the availability of any other remedy (whether arising under this Agreement or otherwise) in that circumstance (unless otherwise clearly indicated).

26.9. Consequence if a party pursues a particular remedy in a particular circumstance in connection with this Agreement

That shall not in itself constitute a waiver of that person's right to pursue other available remedies in those circumstances (whether under common law, equity, statute or otherwise).

26.10. Rights of a party to seek remedies other than damages against the other party in connection with this Agreement

- The parties acknowledge that damages may not always be an adequate remedy of that person in particular circumstances.
- Therefore, that person may (without being required to prove special damage) obtain other remedies available to that person (whether arising under common law, equity, statute or otherwise), including for example, injunctions and/or specific performance.

### Severance

26.11. Where any part of this Agreement is held by any court (or equivalent body) to be invalid or unenforceable for any reason:

- **First step:** if possible, the relevant provision shall be modified by removing or altering those parts of that provision that create the invalidity or unenforceability. Such removal or alteration shall be to the minimum extent necessary to allow the provision to be held to be valid and enforceable, having regard to the purpose of the relevant provision.
- Second step (if the above step is not reasonably possible): the entire provision shall be severed from this Agreement unless it alters the fundamental nature of this Agreement or is otherwise against public policy.
- The rest of this Agreement remains binding.

### Waivers

26.12. Strict requirements for a waiver of a party's rights or powers in connection with this Agreement to be binding on that party  
Only if all of the following apply to the waiver (and not otherwise):

- It is clearly indicated to be a waiver of the relevant right or power.
- It is in writing.
- It is authorised by a person who has (or it is reasonable for the other party to believe, without making further checks, that the relevant person has) appropriate authority to give the waiver on behalf of that party.

26.13. Other issues in relation to the waiver of a party's rights or powers in connection with this Agreement

- A waiver of that right or power on one occasion does not (except to the extent otherwise indicated in that waiver) in itself constitute a waiver of the same right or power on a later occasion and does not affect any other right or power.
- Delay or failure to exercise that right or power shall not in itself be a valid waiver of it

## Governing law and jurisdiction

26.14. The law under which this Agreement is to be interpreted and generally governed

English law.

26.15. Jurisdiction to exclusively apply to disputes arising in connection with this Agreement  
This is subject to the dispute resolution arrangements in section 25

English courts.

## Definitions and interpretation

### 27. Definitions

Except to the extent the context otherwise requires (and except to the extent otherwise indicated elsewhere in this Agreement, the following capitalised words or expressions shall have the following meaning when used in this Agreement

(a word or expression not defined below shall be defined according to 1) if there is a common meaning according to industry or trade, it shall have that meaning, or otherwise 2) it shall have the meaning given in the Oxford English Dictionary)

Defined term	Definition
<b>Account Administrator</b>	The primary account holder from the School whose login credentials for the Services grants additional permissions to: <ul style="list-style-type: none"> <li>- manage the School's account;</li> <li>- add and remove Observers; and</li> <li>- purchase additional features.</li> </ul>
<b>Affiliate</b>	In relation to a person, any other entity which Controls that person, is Controlled by that person or is under the same common underlying Control as of that person.
<b>Business Day</b>	Any day except a Saturday, Sunday or any official bank or public holiday in England.
<b>Charges</b>	The charges which the School is liable to pay the Provider according to this Agreement, especially section 8.
<b>Confidential Information</b>	The information described as such in section 15 in relation to a particular Discloser.
<b>Contract End</b>	See item 23.1.
<b>Data Loss Event</b>	See item 16.1(a).
<b>Data Protection Impact Assessment</b>	See item 16.1(b).
<b>Data Protection Legislation</b>	Each of the following to the extent relevant <ul style="list-style-type: none"> <li>• The General Data Protection Regulation (if applicable in the UK at the time).</li> <li>• The Law Enforcement Directive (Directive (EU) 2016/680) (if applicable in the UK at the time).</li> <li>• The Data Protection Act 2018</li> <li>• Any additional or replacement Law from time to time relating to the processing and protection of personal data or anything similar of individuals and privacy.</li> </ul>
<b>Defaulting Party</b>	See item 21.1.
<b>Discloser</b>	A person in relation to that person's Confidential Information according to section 15.
<b>Escalated Person</b>	<ul style="list-style-type: none"> <li>• <b>For the School:</b> the relevant director responsible for this contract at the time, or his/her delegate.</li> <li>• <b>For the Provider:</b> the most senior executive located in the UK at the time, or his/her delegate.</li> </ul>
<b>Formal Communication</b>	Each communication described as such in item 24.1.

<b>Intellectual Property</b>	Copyright, trademarks (whether registered or otherwise), service marks (whether registered or otherwise), patents, design rights (whether capable of registration or otherwise), registered designs, domain names, know how rights, rights in relation to databases, trade secrets, information of a confidential nature, rights to take action for passing off, and all other relevant intellectual property rights as ordinarily recognised as such throughout and in any parts of the world, and in relation to the questions so listed in this definition, all registrations, pending registrations, reversions, extensions and renewals of such rights.
<b>Law</b>	<p>Any of the following applicable to a party from time to time (to be read independently)</p> <ul style="list-style-type: none"> <li>• Any statute, regulation, by-law, order, subordinate legislation or anything similar to any of these.</li> <li>• Any directive or other European instrument (to the extent it is binding on the party)</li> <li>• Any treaty</li> <li>• Any judgement, rule of common law or equity</li> <li>• Any order of a competent court, tribunal, arbitrator or anything similar to any of these</li> <li>• Any permit, permission (e.g. planning permission) consent, licence, statutory agreement and authorisation (or anything similar to any of these) required by law and affecting the relevant person and its activities in connection with this Agreement from time to time.</li> <li>• Any guidance or anything similar issued by authorised government bodies (whether legally binding or not)</li> <li>• Anything else imposed by any governmental body (in its capacity as such) having a legally binding effect at the time on the respective activities of any party in connection with this Agreement.</li> </ul>
<b>Material Breach</b>	<ul style="list-style-type: none"> <li>• A breach of this Agreement by a party ('X') which has significant (and not trivial) consequences for the other party ('Y').</li> <li>• This includes for example an anticipatory breach or anything similar of this Agreement by X and any breach of any factual promise given by X under this Agreement, but only to the extent any of these has significant (and not trivial) consequences for Y.</li> </ul>
<b>Observers</b>	Individual users added by the Account Administrator who are able to utilise the primary functionality of the Services (e.g. carry out lesson observations).
<b>Order Confirmation</b>	<p>A document (including any attachments, schedules, appendices or the like to that document) to which all of the following apply</p> <ul style="list-style-type: none"> <li>• It is in a form (whether electronic or otherwise) <ul style="list-style-type: none"> <li>– Substantially similar to the template produced by the Provider from time to time; or</li> <li>– As that template is amended from time to time by the Provider; or</li> <li>– As otherwise agreed between the School and the Provider for the purposes the Agreement.</li> </ul> </li> <li>• It indicates with sufficient clarity the Services which the School has purchased; and</li> <li>• Which, when sent by the Provider to the School, completes the Agreement.</li> </ul>
<b>Order Request Form</b>	<p>A document (including any attachments, schedules, appendices or the like to that document) to which all of the following apply</p> <ul style="list-style-type: none"> <li>• It is in a form (whether electronic, online or otherwise) <ul style="list-style-type: none"> <li>– Substantially similar to the template produced by the Provider from time to time; or</li> <li>– As that template is amended from time to time by the Provider; or</li> <li>– As otherwise agreed between the School and the Provider for the purposes the Agreement.</li> </ul> </li> <li>• It indicates with sufficient clarity the Services which the Provider must provide.</li> </ul>
<b>Personnel</b>	<ul style="list-style-type: none"> <li>• In relation to a party or its contractors or other agents: any individual genuinely appointed or otherwise engaged by that firm or other organisation as an officer, employee, worker, consultant, trustee, member of any partnership, agent, intern, seconded person, volunteer, adviser or contractor (or anything similar to these).</li> </ul>
<b>Processed Personal Data</b>	See item 16.1(d).
<b>Protective Measures</b>	See item 16.1(c).
<b>Recipient</b>	A party in relation to the Confidential Information of a relevant Discloser for the purposes of section 15.
<b>Relevant Controller</b>	See item 16.1(e).

<b>Relevant Dispute</b>	See item 25.1.
<b>Relevant Processor</b>	See item 16.1(f).
<b>Representative</b>	In relation to a party, the individual (and if more than one, each of them individually) who from time to time holds that role as that party's representative in connection with this Agreement: <ul style="list-style-type: none"> <li>• If and as indicated in this Agreement, or</li> <li>• As otherwise communicated by that party to the other party in writing from time to time including <ul style="list-style-type: none"> <li>• If the relevant individual is absent from time to time: any other individual deputising for him/her, as decided by the relevant party.</li> <li>• Where the position is vacant from time to time: the Escalated Person of the relevant party.</li> </ul> </li> </ul>
<b>Services</b>	The services which the Provider must provide under this Agreement as described in section 3.
<b>Sub-processor</b>	See item 16.1(g).
<b>Terminating Party</b>	See item 21.1.
<b>Termination Default Event</b>	<ul style="list-style-type: none"> <li>• <b>In relation to the Provider:</b> each event or circumstance described in section 19.</li> <li>• <b>In relation to the School:</b> each event or circumstance described in section 20.</li> </ul>
<b>Uncontrollable Circumstance</b>	Each event or circumstance described as such in section 0.

## 28. Interpretation

The parties agree to interpret this Agreement as follows

Except to the extent

- The context otherwise requires; and/or
- The parties otherwise agree in writing; and/or
- Otherwise indicated elsewhere in this Agreement

28.1. Headings

Headings do not affect the interpretation of this Agreement.

28.2. Reference to a party

- Reference to any party is a reference to a party to this Agreement.
- It includes reference to that party's successors in title and any person to whom that party assigns any of its rights, powers, benefits (or similar) under this Agreement.

28.3. Consents, approvals

- Where consent, approval, permission or anything similar of a person is not to be unreasonably refused, also cannot be unreasonably delayed or subject to unreasonable conditions.
- Where consent, approval, permission or anything similar of a person is to be at that person's discretion, that person
  - Shall not be obliged to respond to a request for it; and
  - Shall not be obliged to give reasons for its decision (including any decision not to respond); and
  - Excludes (to the fullest extent permitted by Law) that person's liability to any person for any reason given for that decision (including any decision not to respond).

28.4. Deadlines not falling on a Business Day

If a deadline or event is expressed in this Agreement to fall or occur on a day that is not a Business Day, the deadline or that event shall be extended until the next Business Day.

28.5. When due on a particular day

If an act is required to be done (including the giving of notice) in connection with this Agreement by a particular date, it is required to be done by 5.00pm in the United Kingdom.

28.6. Definitions

If a word or phrase is defined in this Agreement, its other grammatical forms have a corresponding meaning.

28.7. Statutes, codes etc.	Reference in this Agreement to any statute, code or anything similar includes reference to any amending, replacing, modifying or consolidating statute, code or anything similar on substantially similar subject matter.
28.8. If any obligation of a party is indicated in this Agreement to be a 'reasonable endeavours' obligation	<p>That party will be considered to have discharged that obligation if all of the following applies</p> <ul style="list-style-type: none"> <li>• That party has chosen at least one path to carry out that obligation.</li> <li>• At least one such path is reasonable in the circumstances (including any reasonable views of the other party expressed on the matter in good faith).</li> <li>• That party has used reasonable efforts to carry out the obligation using at least one such path, regardless of whether the outcome necessarily met the requirements of this Agreement.</li> </ul>
28.9. 'In writing'	<ul style="list-style-type: none"> <li>• Use of the expression 'in writing' (or a similar word) in this Agreement includes (but is not limited to) an e-mail or facsimile message or any other methods of representing words in a visible form.</li> <li>• It does not include communication by telephone text messages or communication via a social media site (or anything similar to any of these).</li> </ul>
28.10. 'Including'	<ul style="list-style-type: none"> <li>• Use of the word 'including', 'in particular', 'for example' (or a similar words or expressions) in this Agreement at the commencement of a list to illustrate a particular concept does not limit that concept in any way.</li> <li>• Use of the abbreviation 'etc.' at the end of a list in this Agreement to illustrate a particular concept does not limit that concept in any way.</li> </ul>
28.11. Other references in this Agreement	<ul style="list-style-type: none"> <li>• Reference to items, sections, schedules, appendices or annexures is reference to those in this Agreement.</li> <li>• Reference to one gender refers to all genders.</li> <li>• Reference to the singular includes the plural and vice versa.</li> <li>• Reference to any particular type of body, firm or other entity includes reference to any other type of body, firm or other entity.</li> </ul>