



## SOFTWARE AS A SERVICE AGREEMENT

BETWEEN

(1) ONEFILE LTD

AND

(2) COMPANY

DATED

DATE

## Contents

1	Interpretation .....	3
2	Subscriptions.....	7
3	Additional subscriptions .....	8
4	Services .....	8
5	Customer Personal Data .....	9
6	Third-party providers.....	12
7	Supplier’s obligations.....	12
8	Customer’s obligations .....	13
9	Charges and payment .....	14
10	Proprietary rights .....	15
11	Confidentiality.....	15
12	Indemnity.....	16
13	Limitation of liability .....	16
14	Term and termination.....	18
15	Force majeure .....	19
16	Conflict .....	19
17	Variation.....	20
18	Waiver.....	20
19	Rights and remedies .....	20
20	Severance.....	20
21	Entire Agreement.....	20
22	Assignment .....	20
23	No partnership or agency .....	20
24	Third-party rights .....	21
25	Notices .....	21
26	Counterparts .....	21
27	Governing law .....	21
28	Jurisdiction .....	21
	Schedule 1.....	22
	Schedule 2.....	24
	Schedule 3.....	25
	Schedule 4.....	26

**THIS AGREEMENT** is made on **DATE** (the “**Agreement**”)  
**BETWEEN:**

- (1) **ONEFILE LTD** incorporated and registered in England and Wales with company number 4404879 whose registered office is at 6th Floor, Corner Block, Quay St, Manchester M3 3HN (the “**Supplier**”)
- (2) **COMPANY** incorporated and registered in England and Wales with company number **NUMBER** whose registered office is at **ADDRESS** (the “**Customer**”)

who together shall be known as the “**Parties**” or individually as a “**Party**”

**WHEREAS:**

- (A) The Supplier has developed certain software applications and platforms which it makes available to subscribers via the internet on a pay-per-use basis for the purpose of supplying the Services.
- (B) The Customer wishes to use the Supplier’s Services in its business operations.
- (C) The Supplier has agreed to provide, and the Customer has agreed to take and pay for the Supplier’s service subject to the terms and conditions of this Agreement.
- (D) The person signing this Agreement on behalf of the Customer warrants that they have the authority to bind the Customer to the terms and conditions of this Agreement.

**IT IS AGREED THAT:**

**1** **Interpretation**

1.0 The definitions and rules of interpretation in this clause apply in this Agreement.

“ <b>Additional Subscription Fee</b> ”	means the applicable fee defined in Schedule 1 that is paid by the Customer to the Supplier for each additional Subscription that is required;
“ <b>Authorised Users</b> ”	means those employees, agents and independent subcontractors of the Customer who are authorised by the Customer to use the Services and the Documentation, as further described in clause 2;
“ <b>Browser Policy</b> ”	means the Supplier’s policy for supporting which internet browsers can be used to access the Services;
“ <b>Business Day</b> ”	means a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business;
“ <b>Change of Control</b> ”	means any person, or group of connected persons not having control (as defined in sections 450 and 451 of the Corporation Tax Act 2010) of the Customer as at the date of this agreement acquiring control;
“ <b>Confidential Information</b> ”	means any and all information of whatever nature disclosed directly or indirectly (whether before or after the date of this Agreement and whether given in writing, verbally or by any other means) by a party to the other party, including any information relating to its business affairs, customers, clients, suppliers, operations, plans or intentions, Individual User Subscription Fee products and services including databases, software, internet and website products and services, technical information and data, financial information, business strategies, marketing and promotional information, analyses, documents, data, formulae, processes, designs, know-how, trade secrets and Intellectual Property Rights, which information is designated in writing to be confidential or proprietary, or which information would, under the

circumstances, appear to a reasonable person to be confidential or proprietary;

<b>“Contracted Subscriptions”</b>	means the Initial Subscriptions plus any additional Subscriptions that are created by the Customer during the entire Subscription Term;
<b>“Customer Data”</b>	means the data uploaded to, stored on, transmitted via or otherwise processed using the Software, by the Customer, Authorised Users, Learners, or the Supplier on the customer’s behalf, for the purpose of using the Services or facilitating the Customer’s use of the Services;
<b>“Customer Personal Data”</b>	means the personal data contained within the Customer Data;
<b>“Data Protection Legislation”</b>	means the GDPR, the UK Data Protection Act 2018 and any other national law which implements the GDPR in the United Kingdom; the Privacy and Electronic Communications (EC Directive) Regulations 2003, and all other applicable laws relating to the processing of personal data, privacy and the protection of personal data in electronic communications and direct marketing, including any applicable law or regulation which supersedes, replaces or implements any of the foregoing in the United Kingdom;
<b>“Data Protocol”</b>	means a protocol setting out the types of personal data which will be processed in connection with this Agreement, the subject matter and purposes of the processing and the duration of the processing, as set out in Schedule 3 to this Agreement and any further data protocol which is agreed by the parties from time to time (and which shall form part of and be incorporated into this Agreement);
<b>“Data Subject Request”</b>	means a request from a data subject to exercise the data subject’s rights under the Data Protection Legislation (including requests for access to personal data; rectification or erasure of personal data; restrictions of processing of personal data; and portability of personal data);
<b>“Documentation”</b>	means the document made available to the Customer by the Supplier online via <a href="http://www.onefile.co.uk">www.onefile.co.uk</a> or such other web address notified by the Supplier to the Customer from time to time which sets out a description of the Services and the user instructions for the Services;
<b>“Effective Date”</b>	means the date the Implementation Period commences as defined in Schedule 1;
<b>“Expert”</b>	means such independent expert as is a) agreed between the parties;  or in the absence of such agreement within 10 Business Days:  b) appointed by the National Computing Centre (or some other British, nationally recognised independent centre for expertise in the application of computer technology agreed by the Parties or, in default of agreement, appointed by the President for the time being of the Manchester Law Society);
<b>“Fair Use Policy”</b>	means a set of rules applied by the Supplier that restrict the ways in which the website may be used;
<b>“GDPR”</b>	means the General Data Protection Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (the "GDPR")

<b>“Implementation Period”</b>	means the period of time between the Effective Date and the Initial Subscription Term Start Date;
<b>“Implementation Fee”</b>	means the fee defined in Schedule 1 that is paid by the Customer to the Supplier in respect of the Implementation Period and in accordance with the Initial Fee Payment Terms;
<b>“Initial Subscription Fee”</b>	means the fee defined in Schedule 1 that is paid by the Customer to the Supplier in respect of the Initial Subscriptions and in accordance with the Initial Fee Payment Terms;
<b>“Initial Fee Payment Terms”</b>	means the payment terms relating to the Implementation Fee and Initial Subscription Fee defined in Schedule 1;
<b>“Initial Subscription Term”</b>	means the minimum length of time this Agreement will continue to run for as defined in Schedule 1;
<b>“Initial Subscription Term Start Date”</b>	means the start date of the Initial Subscription Term as defined in Schedule 1;
<b>“Initial Subscriptions”</b>	means the number of Subscriptions that the Customer is to purchase for the Initial Subscription Term as set out in Schedule 1;
<b>“Intellectual Property Rights”</b>	means any and all copyrights, moral rights, related rights, patents, supplementary protection certificates, petty patents, utility models, trademarks, trade names, service marks, design rights, database rights, website rights, semi-conductor topography rights, domain name rights, rights in undisclosed information or Confidential Information, rights in get up, goodwill or to sue for passing off, unfair competition rights, and other similar intellectual property rights (whether registered or not) and applications for any such rights as may exist anywhere in the world;
<b>“Learners”</b>	means the Learners who will occupy the subscriptions purchased by the Customer pursuant to clause 9.1 which entitle Learners to access and use the Services and the Documentation in accordance with this Agreement, as further described in clause 2;
<b>“Login”</b>	means the unique username and password that an Authorised User provides to gain access to the Software;
<b>“Normal Business Hours”</b>	means 9.00 am to 5.30 pm local UK time, each Business Day;
<b>“OneFile Enrol”, “OneFile Eportfolio”, “OneFile ILR”, “OneFile Learning Hub” “OneFile RPL Funding Calculator” “OneFile Tracker Enrol” “OneFile Tracker ILR”</b>	each means the particular software application that is described on the Supplier’s website at <a href="https://onefile.co.uk/description-of-services/">https://onefile.co.uk/description-of-services/</a> that may be provided to the Customer by the Supplier as part of the Software;
<b>“Professional Services Fee”</b>	means the fee defined in Schedule 1 that is paid by the Customer to the Supplier in accordance with the Initial Fee Payment Terms;
<b>“Professional Services”</b>	means the additional services purchased by the customer for a specific project;
<b>“Renewal Notification”</b>	means the electronic document that is sent to the Customer by the Supplier 90 days before the end of the Initial Subscription Term or any Renewal Period;

<b>“Renewal Period”</b>	means the period described in clause 14.1 that has its duration defined as Renewal Term in Schedule 1;
<b>“Renewal Term”</b>	means the duration of time as defined in Schedule 1;
<b>“Services”</b>	means the Software and any other services as provided by the Supplier to the Customer under this Agreement, as more particularly described in the Documentation;
<b>“Software”</b>	means any or all of the online software applications provided by the Supplier as part of the Services;
<b>“Standard Support Policy”</b>	means the Supplier’s policy for providing the Standard Support Services;
<b>“Standard Support Services”</b>	means the Supplier’s standard support services that are set out in Schedule 2;
<b>“Subscription Fees”</b>	means the fees payable by the Customer to the Supplier for the Subscriptions and Services, as set out in Schedule 1;
<b>“Subscriptions”</b>	means the subscriptions purchased by the Customer pursuant to clause 9.1 which entitle Learners to access and use the Services and the Documentation in accordance with this Agreement; and
<b>“Subscription Term”</b>	has the meaning given in clause 14.1 (being the Implementation Period and the Initial Subscription Term together with any subsequent Renewal Periods).

- 1.1 Clause, schedule and paragraph headings shall not affect the interpretation of this Agreement.
- 1.2 A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality) and that person’s legal and personal representatives, successors or permitted assigns.
- 1.3 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.4 Unless the context otherwise requires, words in the singular shall include the plural and, in the plural, shall include the singular.
- 1.5 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.6 A reference to a statute or statutory provision is a reference to it as it is in force as at the date of this Agreement.
- 1.7 A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of this Agreement under that statute or statutory provision.
- 1.8 References to clauses and schedules are to the clauses and schedules of this Agreement; references to paragraphs are to paragraphs of the relevant schedule to this Agreement.
- 1.9 References to **“include”**, **“includes”** and **“in particular”** or anything similar are illustrative only and none of them shall limit the sense of the words preceding or following them and each of them shall be deemed to incorporate the expression **“without limitation”**.
- 1.10 Unless the context requires otherwise, the terms **“personal data”**, **“data controller”**, **“data processor”**, **“processor”**, **“process”**, **“data subject”**, **“data protection impact assessment”** and **“personal data breach”** shall each have the applicable meaning set out in the Data Protection Legislation.

## 2 Subscriptions

2.1 Subject to the Customer purchasing the Subscriptions in accordance with clause 3 and clause 9.1, the restrictions set out in this clause 2 and the other terms and conditions of this Agreement, the Supplier hereby grants to the Customer a non-exclusive, non-transferable right to permit the Authorised Users and Learners to use the Services and the Documentation during the Subscription Term.

2.2 In relation to the Authorised Users and Learners, the Customer undertakes that:

- 2.2.1 when using OneFile Eportfolio, OneFile Learning Hub, OneFile ILR, or OneFile Tracker ILR, it will not allow or suffer any Subscription to be used by more than one individual Learner at the same time, though a single Subscription may be allocated to another Learner consecutively;
- 2.2.2 when using the OneFile Enrol, OneFile Tracker Enrol or OneFile RPL Funding Calculator, it will not allow or suffer any Subscription to be used more than once, so that only one Learner may ever use an individual Subscription;
- 2.2.3 each Authorised User and Learner shall keep a secure password for their account use of the Services and Documentation, and that each Authorised User and Learners shall keep his password confidential;
- 2.2.4 it shall permit the Supplier access to the list of Authorised Users and Learners it has created within the Software for the purpose of conducting audits to ensure compliance with these terms; and
- 2.2.5 if any of the audits referred to in clause 2.2.4 reveal that any login has been provided to any individual who is not an Authorised User or Learner, then without prejudice to the Supplier's other rights, the Customer shall promptly disable such passwords and the Supplier shall not issue any new passwords to any such individual;

2.3 The Customer shall not knowingly or negligently access, store, distribute or transmit any Viruses, or any material during the course of its use of the Services that:

- 2.3.1 is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
- 2.3.2 facilitates illegal activity;
- 2.3.3 depicts sexually explicit images;
- 2.3.4 promotes unlawful violence;
- 2.3.5 is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
- 2.3.6 in a manner that is otherwise illegal or causes damage or injury to any person or property;

and the Supplier reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's access to any material that breaches the provisions of this clause.

2.4 The Customer shall not:

- 2.4.1 except as may be allowed by any applicable law which is incapable of exclusion by Agreement between the parties:
  - (i) and except to the extent expressly permitted under this Agreement, attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or Documentation (as applicable) in any form or media or by any means; or
  - (ii) attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or

- 2.4.2 access all or any part of the Services and Documentation in order to build a product or service which competes with the Services and/or the Documentation; or
  - 2.4.3 subject to clause 22.1, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or Documentation available to any third-party except the Authorised Users; or
  - 2.4.4 attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation, other than as provided under this clause 2; and
- 2.5 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify the Supplier.
- 2.6 The rights provided under this clause 2 are granted to the Customer only and shall not be considered granted to any subsidiary or holding company of the Customer.

### **3 Additional subscriptions**

- 3.1 The Customer may from time to time during the entire Subscription Term, extend the Contracted Subscriptions at its own discretion, by creating additional Subscriptions and the Supplier shall grant access to the Services and the Documentation to such additional Learners in accordance with the provisions of this Agreement.
- 3.2 Pursuant to clause 3.1, the Supplier will charge the Customer for each additional Subscription created according to the applicable Additional Subscription Fee described in Schedule 1, and in addition if applicable, the entire duration of any subsequent Renewal Period if the additional Subscriptions were created after the Supplier has already invoiced the Customer for the subsequent Renewal Period.
- 3.3 In calculating the fees payable for additional Subscriptions when using OneFile Eportfolio, OneFile Learning Hub, OneFile ILR or OneFile Tracker ILR, a pro rata adjustment will be made for the remaining duration of the applicable Initial Subscription Term or Renewal Period.
- 3.4 In calculating the fees payable for additional Subscriptions when using OneFile Enrol, OneFile Tracker Enrol or OneFile RPL Funding Calculator, there will be no pro rata adjustment made.

### **4 Services**

- 4.1 The Supplier shall, during the Subscription Term, provide the Services and make available the Documentation to the Customer on and subject to the terms of this Agreement.
- 4.2 The Supplier shall use commercially reasonable endeavours to make the Software available 24 hours a day, seven days a week, except for:
- 4.2.1 planned maintenance performed during the maintenance window of 7.00 am to 7.30 am UK time, where the Supplier has provided at least 16 Normal Business Hours' notice in advance; and
  - 4.2.2 unscheduled maintenance performed outside Normal Business Hours, provided that the Supplier has used reasonable endeavours to give the Customer at least 4 Normal Business Hours' notice in advance.
- 4.3 The Supplier will, as part of the Services and at no additional cost to the Customer, provide the Customer with the Supplier's Standard Support Services as defined in Schedule 2, during Normal Business Hours and in accordance with the Supplier's Standard Support Policy that is available at [www.onefile.co.uk/policies/support](http://www.onefile.co.uk/policies/support) and updated from time to time subject to the Supplier providing no less than 30 days' written notice of such amendments to the Customer.

## **5 Customer Personal Data**

5.1 The parties acknowledge and agree that:

5.1.1 this clause 5 sets out the parties' respective obligations in respect of the processing of personal data under this Agreement;

5.1.2 to the extent that the Customer (including any Authorised Users or Learners) uploads, transmits, stores or otherwise communicates personal data to or via the Software, the Customer shall be the data controller in respect of such Customer Personal Data and the Supplier shall be acting as a data processor on behalf of the Customer.

5.2 The Supplier shall also process personal data in connection with the Agreement in its own capacity as a data controller (where the Supplier is to determine the purposes and means of the processing, including, for example, contact details for the representative of the Customer). Except where this clause 5 refers generally to personal data, the provisions of this clause 5 will not apply to such processing but the Supplier will undertake such processing in accordance with its legal obligations to data subjects under Data Protection Legislation.

5.3 Both parties shall comply with their respective obligations under Data Protection Legislation, the provisions of this clause 5 and any applicable Data Protocol in respect of all Customer Personal Data processed in connection with this Agreement.

### **The Customer's obligations**

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

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

5.6 The Customer shall always ensure that the Customer's instructions to the Supplier for the processing of Customer Personal Data under this Agreement comply with Data Protection Legislation and that compliance with such instructions would not cause the Supplier to breach the Data Protection Legislation.

5.7 The Customer shall be responsible for the provision of the corresponding fair processing information to relevant data subjects and for obtaining any consents that may be required (in each case to the extent necessary in order to comply with Data Protection Legislation) from that data subject. The Customer shall ensure that such fair processing notices are accurate and complete, and that any consents are sufficient in order for the Supplier to lawfully process the Customer Personal Data in the manner set out in this clause 5.

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

5.9 If the Customer has requested integration of the Software with any third-party applications, it shall be Customer's sole responsibility to ensure such third-party integration complies with Data Protection Legislation. Such third parties shall either be data controllers or data processors on behalf of the Customer and shall have no direct relationship with the Supplier. The Supplier shall not be responsible or liable for the way in which other data controllers and/or the Customer's other data processors process the Customer Personal Data.

### **The Supplier's obligations**

- 5.10 In respect of the Customer Personal Data processed by the Supplier as a data processor on behalf of the Customer, the Supplier shall:
- 5.10.1 only process Customer Personal Data on behalf of the Customer where and to the extent necessary to deliver the Services, and otherwise to perform the Supplier's obligations under this Agreement and applicable laws, and only in accordance with the terms of this clause 5, any applicable Data Protocol, and any additional reasonable instructions the Customer may issue from time to time (provided that such instructions are within the scope of the Supplier's obligations under this clause 5), unless otherwise required by law, regulation, court of competent jurisdiction or any other governmental or regulatory body;
  - 5.10.2 ensure that personnel who have access to and/or process the Customer Personal Data are obliged to keep the Customer Personal Data confidential;
  - 5.10.3 not transfer the Customer Personal Data outside of the United Kingdom or European Economic Area (EEA) without complying with the provisions of the Data Protection Legislation in respect of such transfer, save that if the Customer requires the Supplier to transfer any Customer Personal Data outside the United Kingdom or EEA pursuant to the Customer's instructions, it shall be the Customer's responsibility to ensure that any such transfer complies with the provisions of the Data Protection Legislation and to notify the Supplier of any specific instructions or restrictions in respect of the same;
  - 5.10.4 notify the Customer without undue delay if the Supplier becomes aware of any personal data breach or of any request or objection from a data subject pursuant to the Data Protection Legislation, in each case relating to the Customer Personal Data;
  - 5.10.5 to the extent that the Customer does not have the ability to address a Data Subject Request in respect of the Supplier's processing of Customer Personal Data, the Supplier shall, upon the Customer's request and insofar as is reasonably possible, provide commercially reasonable assistance, at the Customer's cost, to facilitate such Data Subject Request;
  - 5.10.6 reasonably assist the Customer, at the Customer's cost, in ensuring compliance with the Customer's obligations under the Data Protection Legislation with respect to consultations with supervisory authorities or regulators;
  - 5.10.7 provide the Customer with reasonable cooperation and assistance, at the Customer's cost, as may be required to fulfil the Customer's obligation under the GDPR to carry out a data protection impact assessment related to the Services, to the extent that the Customer does not otherwise have access to the relevant information and to the extent that such information is available to the Supplier;
  - 5.10.8 inform the Customer without undue delay after becoming aware of the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to Customer Personal Data transmitted, stored or otherwise processed by the Supplier in connection with this Agreement;
  - 5.10.9 maintain records and information regarding the Supplier's processing activities in respect of the Customer Personal Data to demonstrate the Supplier's compliance with this clause 5;
  - 5.10.10 allow for audits by the Customer or the Customer's designated auditor of the Supplier's systems and procedures relevant to the processing of Customer Personal Data, provided that in the case of any audit, the Customer shall:
    - (i) comply with any reasonable requirements or security restrictions that the Supplier may impose to safeguard the Supplier's systems, personal data the Supplier holds on behalf of other customers and clients and the Supplier's own confidential or commercially sensitive information and to avoid unreasonable disruption to the Supplier's business and operations;

- (ii) reimburse the Supplier for any time expended by the Supplier for any such audit, at the Supplier's then current professional services rates, which shall be made available to the Customer upon request, which costs shall be reasonable, taking into account the resources expended by the Supplier; and
- (iii) before the commencement of any audit, the parties shall mutually agree on the scope, timing, and duration of the audit.

#### Security measures

- 5.11 The Supplier shall implement appropriate technical and organisational measures, taking into account the nature and purposes of the processing (to the best of its knowledge), for the protection and security of the Customer Personal Data and to protect against the unauthorised or unlawful processing of the Customer Personal Data and against accidental loss or destruction of, or damage to, the Customer Personal Data (the **Security Measures**). The Security Measures shall be appropriate to the nature of the personal data to be protected to the best of the Supplier's knowledge, it being acknowledged that the Supplier may not have full oversight over the categories and types of Customer Personal Data subject to the processing (including where processing is automatic).
- 5.12 The Customer shall also implement its own appropriate technical and organisational measures, taking into account the nature and purposes of the processing, for the protection and security of the Customer Personal Data and to protect against the unauthorised or unlawful processing of the Customer Personal Data and against accidental loss or destruction of, or damage to, the Customer Personal Data, appropriate to the nature of the personal data to be protected.
- 5.13 A summary of the Security Measures currently adopted by the Supplier are set out in Schedule 4 to this Agreement, further details of which are available from the Supplier upon request and which the Customer has the opportunity to review and assess in accordance with the Customer's own obligations under Data Protection Legislation. The Customer shall be responsible for ensuring that it is satisfied with the level of security offered by the Supplier in respect of its processing of Customer Personal Data and that the same meet the Customer's requirements as a data controller of the Customer Personal Data.
- 5.14 The Supplier reserves the right to revise the Security Measures at any time:
  - 5.14.1 without notice, provided that such revisions will not materially reduce the overall security provided for the Customer Personal Data that the Supplier processes; or, in all other cases,
  - 5.14.2 by notifying the Customer of the same, provided that the Supplier considers such revised Security Measures are still sufficient to enable the Supplier to comply with its obligations under this clause 5 and the Data Protection Legislation, including in particular clause 5.11. Within a period of 30 days of the date of notification of such changes, the Customer may object to any such changes on reasonable grounds, in which event either party shall have the right to terminate this Agreement on giving the other party 30 days' written notice, without liability to the other party. If the Customer has not objected to any such changes within a period of 30 days of the date of the notification of the changes, the Customer shall be deemed to have accepted such changes.
- 5.15 If the Customer, acting reasonably, at any time considers that the Security Measures do not offer a sufficient level of security and protection for the processing of Customer Personal Data, having regard to the nature and purpose of the processing, the Customer shall immediately notify the Supplier, together with such additional security measures which the Customer requires to be implemented to offer sufficient protection. Any such measures shall be implemented at the Customer's sole cost and expense. If it is not possible or reasonably practicable for the Supplier to implement such additional security measures (having regard to the Supplier's wider business) and/or if the Customer does not agree to the additional costs associated with such security measures, either party may terminate this Agreement on 30 days' prior written notice.
- 5.16 From time to time, the Supplier may offer new or enhanced Security Measures to the Customer at additional cost (**Enhanced Security**). The Customer acknowledges that it is the Customer's decision whether or not to implement such Enhanced Security. If the Customer chooses not to implement such Enhanced Security, the Supplier shall not be liable for any loss, harm or damage which the Supplier can demonstrate was directly caused by or attributable to the Customer's failure to adopt such recommended measures (and which the Supplier can demonstrate would not have arisen if the Customer had implemented the recommended Enhanced Security).

For the avoidance of doubt, from time to time, the Supplier may also implement new or enhanced security measures free of charge, pursuant to clause 5.14.1.

## **Backup**

- 5.17 The Supplier shall follow its archiving procedures for Customer Data as set out in its Backup Policy available at <http://www.onefile.co.uk/policies/backup> or such other website address as may be notified to the Customer from time to time, as such document may be amended by the Supplier in its sole discretion subject to the Supplier providing no less than 30 days written notice of such amendments to the Customer. In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy shall be for the Supplier to use best efforts to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by the Supplier in accordance with the archiving procedure described in its Back-Up Policy. The Supplier shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third-party (except those third parties sub-contracted by the Supplier to perform services related to Customer Data maintenance and back-up). Unless caused by the negligence of the Supplier, the Supplier may charge the Customer a reasonable fee to restore the Customer Data. Such fee is at the absolute discretion of the Supplier.

## **Sub-processors**

- 5.18 The Supplier may use the following types of processors who may process Customer Personal Data in connection with hosting the Software and providing the Services:
- providers of cloud storage;
  - providers of hosted software;
  - data centres; and
  - telecommunication providers,

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

- 5.19 The Customer hereby consents to the Supplier appointing the processors set out in clause 5.18 above as processors of the Customer Personal Data under this Agreement. The Supplier shall have in place a written contract with such processors in respect of such processing of the Customer Personal Data to the extent required under Data Protection Legislation.
- 5.20 The Supplier shall inform the Customer of any intended changes, additions or replacements to the types of any such processors. Within a period of 30 days of the date of notification of such changes, the Customer may object to any such changes on reasonable grounds, in which event either party shall have the right to terminate this Agreement on giving the other party 30 days' written notice, without liability to the other party. If the Customer has not objected to any such changes within a period of 30 days of the date of the notification of the changes, the Customer shall be deemed to have accepted such changes.

## **6 Third-party providers**

- 6.1 The Customer acknowledges that the Services may enable or assist it to access the website content of, correspond with, and purchase products and services from, third parties via third-party websites and that it does so solely at its own risk. The Supplier makes no representation or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such third-party website, or any transactions completed, and any contract entered into by the Customer, with any such third-party. Any contract entered into and any transaction completed via any third-party website is between the Customer and the relevant third-party, and not the Supplier. The Supplier recommends that the Customer refers to the third-party's website terms and conditions and privacy policy prior to using the relevant third-party website. The Supplier does not endorse or approve any third-party website nor the content of any of the third-party website made available via the Services.

## **7 Supplier's obligations**

- 7.1 The Supplier undertakes that the Services will be performed substantially in accordance with the Documentation and with reasonable skill and care.

- 7.0 The undertaking at clause 0 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to the Supplier's instructions, or modification or alteration of the Services by any party other than the Supplier or the Supplier's duly authorised contractors or agents. If the Services do not conform with the foregoing undertaking, the Supplier will, at its expense, use all reasonable endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in clause 0. Notwithstanding the foregoing, the Supplier:
- 7.0.1 does not warrant that the Customer's use of the Services will be uninterrupted or error-free; or that the Services; Documentation and/or the information obtained by the Customer through the Services will meet the Customer's requirements; and
- 7.0.2 is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 7.1 This Agreement shall not prevent the 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.
- 7.2 Subject to those licences, consents and permissions that the Customer is to obtain and maintain in accordance with clause 8.1.5, the Supplier warrants that it has and will maintain all other necessary licences, consents, and permissions necessary for the performance of its obligations under this Agreement.

## **8 Customer's obligations**

- 8.1 The Customer shall:
- 8.1.1 provide the Supplier with:
- (i) all necessary co-operation in relation to this Agreement; and
  - (ii) all necessary access to such information as may be reasonably required by the Supplier;
- in order to provide the Services, including Customer Data, security access information and configuration services;
- 8.1.2 comply with all applicable laws and regulations with respect to its activities under this Agreement;
- 8.1.3 carry out all other Customer responsibilities set out in this Agreement in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, the Supplier may adjust any agreed timetable or delivery schedule as reasonably necessary;
- 8.1.4 ensure that the Authorised Users and Learners use the Services and the Documentation in accordance with the terms and conditions of this Agreement and shall be responsible for any Authorised User's and Learners breach of this Agreement;
- 8.1.5 obtain and shall maintain all necessary licences, consents, and permissions necessary for the Supplier, its contractors and agents to perform their obligations under this Agreement, including the Services;
- 8.1.6 ensure that its network and systems comply with the relevant specifications provided by the Supplier from time to time; and
- 8.1.7 be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to the Supplier's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.

8.1.8 Maintain compliance with the Supplier's Supported Browser Policy which is available at [www.onefile.co.uk/policies/browsers](http://www.onefile.co.uk/policies/browsers) and updated from time to time subject to the Supplier providing no less than 30 days' written notice of such amendments to the Customer.

## **9 Charges and payment**

9.1 The Customer shall pay the Subscription Fees to the Supplier for the Subscriptions and any other Services in accordance with this clause 9 and Schedule 1.

9.2 The Customer shall on the Effective Date provide to the Supplier, valid up-to-date and complete approved purchase order information acceptable to the Supplier and any other relevant valid, up-to-date and complete contract and billing details and, if the Customer provides such information to the Supplier, the Supplier shall be entitled to invoice the Customer:

- (i) on or after the Effective Date for the Implementation Fee and Initial Subscription Fee; and
- (ii) thereafter, subject to clause 14.1, at least 30 days before the commencement of any subsequent Renewal Period for those Subscription Fees that are payable in respect of such Renewal Period,

and the Customer shall pay each invoice within 30 days after the date of such invoice, unless otherwise agreed by the Supplier in writing.

9.3 The Supplier shall be entitled to raise its invoice for Subscription Fees if the Customer has created additional Subscriptions or upon any request or requirement of the Customer for the relevant Service to which the Subscription Fees relate. Such invoice shall be payable within 30 days of the date of the invoice, unless otherwise agreed by the Supplier in writing.

9.4 If the Supplier has not received undisputed payment within 30 days after the due date, and without prejudice to any other rights and remedies of the Supplier:

9.4.1 the Supplier may, without liability to the Customer, disable the Authorised Users' and Learners' login access to all or part of the Services and the Supplier shall be under no obligation to provide any or all of the Services while the undisputed invoice(s) concerned remain unpaid; and

9.4.2 interest shall accrue on a daily basis on such due amounts at an annual rate equal to 8% over the then current base lending rate of the Supplier's bankers in the UK from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.

9.5 The Supplier shall be entitled to raise its invoice for any Implementation Fees on the Effective Date.

9.6 All amounts and fees stated or referred to in this Agreement:

9.6.1 shall be payable in pounds sterling;

9.6.2 are, subject to clause 13.4.2, non-cancellable and non-refundable;

9.6.3 are exclusive of value added tax, which if applicable shall be added to the Supplier's invoice(s) at the appropriate rate.

9.7 Whilst using the Services, The Customer must abide by the Supplier's Fair Use Policy available at <http://www.onefile.co.uk/policies/fairuse> or such other website address as may be notified to the Customer from time to time, as such documents may be amended from time to time by the Supplier subject to the Supplier providing no less than 30 days' written notice of such amendments to the Customer.

9.8 The Supplier shall be entitled to increase the Subscription Fees, the fees payable in respect of the additional Subscriptions purchased pursuant to clause 3 and/or the excess storage fees payable pursuant to clause 9.7 at the start of each Renewal Period upon 90 days' prior notice to the Customer.

9.9 If the Customer disputes any invoice, the Customer shall immediately notify the Supplier in writing. The parties shall negotiate in good faith to attempt to resolve the dispute promptly. The parties shall provide all such

evidence as may be reasonably necessary to verify the disputed invoice. The parties' contract managers shall use their reasonable endeavours to meet, discuss and resolve the dispute. If the parties have not resolved the dispute within 30 days of the Customer giving notice to the Supplier, then either party may refer the dispute to an Expert, whose decision shall be final and binding on the parties. The parties shall each bear their own costs in relation to any reference made to the Expert and the fees and all other costs of the Expert shall be borne jointly in equal proportions by the parties, unless otherwise directed by the Expert. Where only part of an invoice is disputed, the undisputed amount shall be paid on the due date of the invoice.

## **10 Proprietary rights**

- 10.1 The Customer acknowledges and agrees that the Supplier and/or its licensors own all Intellectual Property Rights (including for the avoidance of doubt any improvement to the Software made at the request of the Customer) in the Software, Services and the Documentation. Except as expressly stated herein, this Agreement does not grant the Customer any rights to any Intellectual Property Rights in respect of the Software, Services or the Documentation.
- 10.2 The Supplier confirms that it has all the rights in relation to the Services and the Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this Agreement.

## **11 Confidentiality**

- 11.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under this Agreement. A party's Confidential Information shall not be deemed to include information that:
  - 11.1.1 is or becomes publicly known other than through any act or omission of the receiving party;
  - 11.1.2 was in the other party's lawful possession before the disclosure;
  - 11.1.3 is lawfully disclosed to the receiving party by a third-party without restriction on disclosure;
  - 11.1.4 is independently developed by the receiving party, which independent development can be shown by written evidence; or
  - 11.1.5 is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.
- 11.2 Each party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third-party or use the other's Confidential Information for any purpose other than the implementation of this Agreement.
- 11.3 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this Agreement.
- 11.4 The Customer acknowledges that details of the Services, and the results of any performance tests of the Services, constitute the Supplier's Confidential Information.
- 11.5 The Supplier acknowledges that the Customer Data is the Confidential Information of the Customer.
- 11.6 This clause 11 shall survive termination of this Agreement, however arising.
- 11.7 No party shall make, or permit any person to make, any public announcement concerning this Agreement without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, any relevant securities exchange), any court or other authority of competent jurisdiction. Where a party is required to disclose information in accordance with this clause 11, such party shall promptly notify the other party and use all reasonable endeavours to ensure that such disclosure is made subject to obligations of confidentiality which shall be no less onerous than the obligations specified in this Agreement.

## 12 Indemnity

- 12.1 The Supplier shall defend or at its sole option settle any claim or action brought against the Customer alleging the use of the Services or Documentation by the Customer in accordance with the terms of this Agreement infringes the Intellectual Property Rights of a third-party ("**Claim**") and shall be responsible for any damages and reasonable costs awarded against or payable by the Customer as a result of or in connection with such Claim, provided that:
- 12.1.1 the Supplier is given prompt notice of any such Claim;
  - 12.1.2 the Customer does not make any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of the Supplier;
  - 12.1.3 the Customer acts in accordance with the reasonable instructions of the Supplier and provides reasonable co-operation to the Supplier and its professional advisors, including access to and copies of any relevant documents, accounts and records of the Customer as required by the Supplier and/or its professional advisors in the defence and settlement of such Claim; and
  - 12.1.4 the Supplier is given sole authority to defend or settle the Claim.
- 12.2 In the defence or settlement of any Claim, the Supplier may procure the right for the Customer to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate this Agreement on 2 Business Days' notice to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer.
- 12.3 In no event shall the Supplier, its employees, agents and sub-contractors be liable to the Customer to the extent that the Claim is based on:
- 12.3.1 a modification of the Services or Documentation by anyone other than the Supplier;
  - 12.3.2 the Customer's use of the Services or Documentation in a manner contrary to the instructions given to the Customer by the Supplier;
  - 12.3.3 the Customer's use of the Services or Documentation other than in accordance with the terms of this Agreement; or
  - 12.3.4 the Customer's use of the Services or Documentation after notice of the alleged or actual infringement from the Supplier or any appropriate authority.
- 12.4 The foregoing and clause 13.4.2 states the Customer's sole and exclusive rights and remedies, and the Supplier's (including the Supplier's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trademark, database right or right of confidentiality.

## 13 Limitation of liability

- 13.1 This clause 13 sets out the entire financial liability of the Supplier (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer:
- 13.1.1 arising under or in connection with this Agreement;
  - 13.1.2 in respect of any use made by the Customer of the Services and Documentation or any part of them; and
  - 13.1.3 in respect of any representation, statement or tortious act or omission (including negligence) arising under or in connection with this Agreement;

and any act or omission on the part of the Supplier or its employees, agents and sub-contractors falling within this clause 13.1 shall for the purpose of this clause 13 be known as an "**Event of Default**".

- 13.2 Except as expressly and specifically provided in this Agreement:

- 13.2.1 the Customer assumes sole responsibility for results obtained from the use of the Services and the Documentation by the Customer, and for conclusions drawn from such use. The Supplier shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to the Supplier by the Customer in connection with the Services, or any actions taken by the Supplier at the Customer's direction;
  - 13.2.2 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; and
  - 13.2.3 the Services and the Documentation are provided to the Customer on an "as is" and "as available" basis.
- 13.3 Nothing in this Agreement excludes the liability of the Supplier:
- 13.3.1 for death or personal injury caused by the Supplier's negligence; or
  - 13.3.2 for fraud or fraudulent misrepresentation; or
  - 13.3.3 any other liability which cannot be excluded by law.
- 13.4 Except as expressly stated in clause 13.3:
- 13.4.1 the Supplier shall not in any circumstances have any liability for any losses or damages which may be suffered by the Customer (or any person claiming under or through the Customer), whether the same are suffered directly or indirectly, and whether the same arise in contract, tort (including negligence) or otherwise howsoever, which fall within any of the following categories:
    - (i) loss of profits;
    - (ii) loss of turnover;
    - (iii) loss of anticipated savings;
    - (iv) loss of business opportunity;
    - (v) loss of goodwill;
    - (vi) damage to reputation;
    - (vii) any indirect or consequential loss;provided that this clause 13.4.1 shall not prevent claims for loss of or damage to the Customer's tangible property that fall within the terms of clause 13.4.2 or any other claims for direct financial loss that are not excluded by any of categories (i) to (vii) inclusive of this clause 13.4; and
  - 13.4.2 the Supplier's total aggregate liability for any Event of Default shall be limited to 150% of the total fees paid by the Customer during the 12 months immediately preceding the date on which the claim arose.

## 14 Term and termination

14.1 This Agreement shall, unless otherwise terminated as provided in this clause 14, commence on the Effective Date and shall continue for the Initial Subscription Term and, thereafter, this Agreement shall be automatically renewed for successive periods of the Renewal Term as defined in Schedule 1 (each a “**Renewal Period**”), unless:

14.1.1 either party notifies the other party of termination, in writing, at least 60 days before the end of the Initial Subscription Term or any Renewal Period, in which case this Agreement shall terminate upon the expiry of the applicable Initial Subscription Term or Renewal Period; or

14.1.2 otherwise terminated in accordance with the provisions of this Agreement;

and the Implementation Period and Initial Subscription Term together with any subsequent Renewal Periods shall constitute the “**Subscription Term**”.

14.2 The Supplier shall send a Renewal Notification to the Customer at least 90 days before the beginning of any subsequent Renewal Period.

14.3 If the Customer wishes to renegotiate the number of Contracted Subscriptions for any subsequent Renewal Period then the Customer must notify the Supplier, in writing, at least 60 days before the end of the applicable Initial Subscription Term or Renewal Period. If the Customer does not do this then the Customer will be invoiced as described in clause 9.2.

14.4 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:

14.4.1 the other party fails to pay any undisputed amount due under this Agreement on the due date for payment and remains in default not less than fourteen (14) days after being notified in writing to make such payment;

14.4.2 the other party commits a material breach of any other term of this Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of fourteen (14) days after being notified in writing to do so;

14.4.3 the other party repeatedly breaches any of the terms of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement;

14.4.4 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;

14.4.5 the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

14.4.6 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

14.4.7 an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party;

14.4.8 the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;

- 14.4.9 a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
  - 14.4.10 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
  - 14.4.11 any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 14.4.4 to clause 14.4.10 (inclusive); or
  - 14.4.12 the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;
- 14.5 Without affecting any other right or remedy available to it, the Supplier may terminate the Agreement with immediate effect by giving written notice to the other party if there is a Change of Control of the Customer.
- 14.6 On termination of this Agreement for any reason:
- 14.6.1 all unbilled charges will be notified to the Customer and all outstanding fees and charges will become due and payable;
  - 14.6.2 all licences granted under this Agreement shall immediately terminate;
  - 14.6.3 each party shall return and make no further use of any equipment, property, Documentation and other items (and all copies of them) belonging to the other party;
  - 14.6.4 the Supplier will permit the Customer read-only access to a then current copy of the Customer Data hosted on the Software and available to the Supplier via [www.onefile.co.uk](http://www.onefile.co.uk) or any other website notified to the Customer by the Supplier for a period of 45 days after the effective date of termination of this Agreement, provided that the Customer has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination);
  - 14.6.5 the Customer shall pay all reasonable expenses incurred by the Supplier in returning or providing the Customer with access to any Customer Data;
  - 14.6.6 any backup copies of the Customer Data will remain with the Supplier for the duration of the data retention period as set out in its Backup Policy available at <http://www.onefile.co.uk/policies/backup> or such other website address as may be notified to the Customer from time to time; and
  - 14.6.7 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 the Agreement which existed at or before the date of termination shall not be affected or prejudiced.

## **15 Force majeure**

- 15.1 The Supplier shall have no liability to the Customer under this Agreement if it is prevented from or delayed in performing its obligations under this Agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors, provided that the Customer is notified of such an event and its expected duration.

## **16 Conflict**

- 16.1 If there is an inconsistency between any of the provisions in the main body of this Agreement and the Schedules, the provisions in the main body of this Agreement shall prevail.

## **17**     **Variation**

- 17.1     No variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 17.2     Notwithstanding clause 17.1 above, if there are any changes and/or updates to the Data Protection Legislation and/or codes of practice issued by the Information Commissioner's Office which require or make it desirable for any amendments to be made to this Agreement, in particular, clause 5 and/or Schedules 3 and 4, (as determined by the Supplier), the Supplier shall be entitled to vary this Agreement and shall confirm any changes in writing to the Customer.

## **18**     **Waiver**

- 18.1     No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall 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 shall prevent or restrict the further exercise of that or any other right or remedy.

## **19**     **Rights and remedies**

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

## **20**     **Severance**

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

## **21**     **Entire Agreement**

- 21.1     This Agreement, and any documents referred to in it, constitute the whole Agreement between the parties and supersede any previous arrangement, understanding or Agreement between them relating to the subject matter they cover.
- 21.2     The Customer acknowledges and agrees that in entering into this Agreement it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to this Agreement or not) relating to the subject matter of this Agreement, other than as expressly set out in this Agreement. The Customer waives any right or remedy it may have to claim damages or rescission for any misrepresentation in respect of any representation not contained in this Agreement or for breach of any warranty not contained in this Agreement and acknowledges that its only remedies against the Supplier is for breach of contract, provided always that nothing in this Clause 21.2 shall exclude or limit the liability of the Supplier to the Customer in respect of any fraudulent misrepresentation or warranty fraudulently given and upon which the Customer can prove it has placed reliance.

## **22**     **Assignment**

- 22.1     Neither party shall not, without the prior written consent of the other party, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.

## **23**     **No partnership or agency**

- 23.1     Nothing in this Agreement is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

**24**      **Third-party rights**

- 24.1      This Agreement does not confer any rights on any person or party (other than the parties to this Agreement and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

**25**      **Notices**

- 25.1      Any notice required to be given under this Agreement shall be in writing and shall be sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in this Agreement, or such other address as may have been notified by that party for such purposes, or sent by email (provided email shall not be sufficient for notices of termination or an indemnifiable claim).
- 25.2      A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9 am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice sent by email shall be deemed to have been received the first business day after sending by email.

**26**      **Counterparts**

- 26.1      This Agreement may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one Agreement.
- 26.2      Transmission of the executed signature page of a counterpart of this Agreement by e-mail (in PDF, JPEG or other agreed format) shall take effect as delivery of an executed counterpart of this Agreement. Without prejudice to the validity of the Agreement thus made, each party shall provide the others with the original of such counterpart as soon as reasonably possible thereafter.

**27**      **Governing law**

- 27.1      This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England.

**28**      **Jurisdiction**

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

This Agreement has been entered into on the date stated at the beginning of it

Signed by the authorised representative of: ONEFILE LTD

Name

Position

Date

The person signing this Agreement on behalf of the Customer warrants that they have the authority to bind the Customer to the terms and conditions of this Agreement. If you do not have such authority or if you do not agree to any of the terms and conditions of this Agreement, then you must not sign this Agreement and you may not use the Services.

Signed by the authorised representative of: **COMPANY NAME**

Name

Position

Date

## **Schedule 1**

Effective Date	The date the last party signs this Agreement
Initial Subscription Fee	£[0,000]
Implementation Fee	£[0,000] OR [Waived]
Professional Services Fee	£[0,000] <ul style="list-style-type: none"> <li>- Dev work</li> <li>- Learner transfers / migration</li> <li>- Prem services</li> <li>- Training</li> <li>- Quals</li> <li>- Audit/health check service</li> </ul>
Initial Fee Payment Terms	£[0,000] payable [on the Effective Date] OR [as follows]: 1. £[0,000] payable on the Effective Date
Initial Subscriptions	[00] for OneFile Eportfolio & OneFile Learning Hub; and [00] for OneFile Enrol; and [00] for OneFile Tracker Enrol; and [00] for OneFile ILR; and [00] for OneFile Tracker ILR; and [00] for OneFile RPL Funding Calculator
Professional Services	
Initial Subscription Term Start Date	The date the last party signs this Agreement
Initial Subscription Term	12 Months
Renewal Term	12 Months
Additional Subscription Fee	£[00] each for OneFile Eportfolio & OneFile Learning Hub; and £[00] each for OneFile Enrol; and £[00] each for OneFile Tracker Enrol; and £[00] each for OneFile ILR; and £[00] each for OneFile Tracker ILR; and £[00] each for OneFile RPL Funding Calculator

## **Schedule 2**

### **Standard Support Services**

#### **Telephone Support**

- Telephone support will be provided during Normal Business Hours to Centre Managers, Internal Verifiers (Quality Assurers) and Assessors only
- During busy periods, a message will be taken if a support advisor is unable to take the call and the call will be returned
- All telephone calls will be logged in our helpdesk software and issued with a unique ticket reference

#### **Email Support**

- Email support will be provided during Normal Business Hours to all Authorised Users and Learners
- All email enquiries will be logged in our helpdesk software and issued with a unique ticket reference

#### **Qualifications**

- If applicable, if there is no provision inside the Software for the Customer to input their own Qualification(s), such Qualification(s) will be input by the Supplier at an additional charge to the customer.

## **Schedule 3**

### **Data Protocol**

#### **Subject matter and purpose of processing**

Pursuant to this Agreement, the Customer is licensed to use the Software and will store Customer Personal Data using the Software. The Supplier shall process such Customer Personal Data for the purpose of hosting the Software and otherwise providing the Services to the Customer as outlined in this Agreement.

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

The Customer Personal Data uploaded or stored on the Software will be determined by the Customer, but is likely to include details such as:

- Name
- Contact details
- Date of birth
- Qualifications
- Course details (including start date and end date)
- National Insurance number
- Employer
- Job title
- Such other personal data as may be uploaded, inputted, stored, transmitted and/or otherwise communicated to or via the Software.

#### **Duration of the processing**

The Supplier shall not process the Customer Personal Data for any longer than is required for the purposes of providing the Services pursuant to this Agreement. Following expiry or termination of this Agreement, the Supplier shall, except to the extent that it needs to retain the Customer Personal Data for record keeping or legal reasons, delete all Customer Personal Data processed on behalf of the Customer which is held by the Supplier as at the date of termination of expiry. If the Supplier deletes the Customer Personal Data, the Supplier shall have no liability whatsoever to the Customer in respect of such deletion.

## **Schedule 4**

### **Security Measures**

#### **ISO27001**

Information Security is managed within our ISO27001 framework, and certification is actively maintained. Our statement of applicability is: "Management of Information Security in the provision of SaaS for education, training, learning and development of software, sales and support". Our ISO27001 includes an annual external inspection to ensure we are maintaining and working within the framework appropriately.

#### **Cyber Essentials & Cyber Essentials Plus**

OneFile holds both Cyber Essentials and Cyber Essentials Plus, the scope covers our whole organisation and includes all divisions and all people and devices that use business data. Our certification is assessed annually by an external body to ensure our security standards remain within the specified framework.

#### **OneFile Staff**

When recruiting, all staff are screened against Baseline Personnel Security Standard (BPSS) and receive information security awareness training during their induction. All staff receive continuous information security awareness through weekly internal updates, regular posts on the internal social network and a focus in team and company cascades.

Staff who may change their roles and responsibilities whilst in their employment at Onefile, may require access to different systems or different permissions within systems. Staff are given the minimum access to perform their role and all access is logged via our user access rights management process. Using this, we can track changes to, and requests for, access to systems as staff change roles and responsibilities, and these requests are reviewed and authorised before being fulfilled.

#### **Use of Third Parties**

To provide our Services, we engage with several subprocessors, details of which are available on request. When we engage with subprocessors, we design the solution and perform supplier evaluations to ensure confidentiality of Customer Data prior to implementation. Where these third parties have international operations, we ensure that we only receive support from their employees located within the United Kingdom or EEA to ensure that Customer Data is not accessed or otherwise processed outside this area.

#### **Information Security Within Our Services**

##### **User Accounts and Minimal Mandatory Fields**

When creating user account for Authorised Users or Learners, the minimum mandatory fields required are first name, last name and email address. Other fields can be populated too at the Customer's discretion.

User accounts can only be created by those Authorised Users that have been granted that security permission. When user accounts are created, an initial password is generated that must be changed the first time the Authorised User or Learner logs in.

##### **User Passwords**

Passwords are case sensitive and support any visible extended characters.

The Customer can configure:

- The minimum password length
- The required mixture of character types that Authorised Users and Learners must adhere to
- The password expiry interval

All passwords are encrypted in storage; hashed and salted with SHA2\_512.

Authorised Users and Learners may choose to authenticate via third parties (Facebook, Azure AD) by setting up a "OneFile Keychain". In these cases, a token provided by that third-party is stored to authenticate the Authorised User or Learner.

### **User Roles**

A single superuser account is initially created for the Customer to create the different accounts it requires for its Authorised Users and Learners. Some Authorised Users will have different roles to fulfil in the Software so these are designated when the user accounts are created. For more details on what the different roles are, what their functions, permissions and restrictions are, please consult the relevant Documentation for the Software that you have subscribed to.

### **Activity Trail**

Our Software keeps an audit trail of Authorised Users and Learners logging in and how they interact with certain functions. These audit trails can be accessed online and through reports.

### **Hosting Environment**

Our Software is hosted at two physically different data centres. The primary centre hosts the live, production Software that is used by everyone under normal circumstances. The secondary centre is used as a disaster recovery centre that constantly receives backups from the first centre, enabling us to elevate the second centre should the first centre become inoperable. Each centre uses a different Active Directory domain to keep them isolated from other networks. There is no Virtual Private Network (VPN) to the secondary centre, and multi-factor authentication is used by our administrators for management.

### **Business Continuity**

A business continuity plan is maintained that provides guidance on when and how to elevate our secondary centre. We currently work to a recovery point objective (RPO) of 30 minutes and a recovery time objective (RTO) of 30 minutes.

### **Server Images**

We use the standard virtual server images provided by Microsoft Azure and Amazon AWS.

### **Encryption**

All Customer Data is encrypted whilst in transit using TLS 1.2 and whilst at rest using AES-256. This includes the transmission of the backups to the secondary centre.

### **Patching**

The servers and equipment at the centres are patched on a regular basis after vendors' monthly patch cycles as well as when identified outside of these cycles through monitoring authoritative sources on emerging vulnerabilities that may impact our systems.

### **Antivirus**

To protect against viruses and malware, all servers and staff computers have ESET antivirus installed.

### **Penetration Testing**

Independent CREST-approved security companies are used to perform penetration testing against our systems annually. We also perform our own vulnerability testing throughout the year against our systems.

### **Monitoring**

The primary and secondary centres are monitored in real-time through several different systems so that we can react to emerging system issues as quickly as possible.

### **Change Management**

Change management is performed and includes testing changes prior to deployment and announcing releases prior to making changes. There are a limited number of designated staff able to deploy changes to the primary centre.