

Dated

9 April 2024

ISOTOMA LIMITED

(1)

[REDACTED]

(2)

SYSTEM SUBSCRIPTION AGREEMENT

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This Agreement is dated

PARTIES

- (1) ISOTOMA LIMITED incorporated and registered in England and Wales with company number 05171172 whose registered office is at Suite 1d Swinegate Court East Swinegate York YO1 8AJ (**Supplier**)
- (2) [REDACTED] (**Client**)

BACKGROUND

- (A) The Supplier has developed for ICL (defined below) certain software applications and platforms which it has a licence from ICL to make available to its clients for the purposes of improving management of a Client's curriculums and presentation of those curriculums to its students.
- (B) The Client wishes to use the Supplier's Services and System (defined below) in its curriculum and academic operations.
- (C) The Supplier has agreed to provide and the Client has agreed to take and pay for the Supplier's Services and access to the System subject to the terms and conditions of this agreement.

AGREED TERMS

1. Interpretation

- 1.1 The definitions and rules of interpretation in this clause apply in this agreement.

Authorised Users: those academic staff and/or students of the Client from time to time who are authorised by the Client to use the System, as further described in clause 2.2.

Business Day: a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

Change of Control: shall be as defined in section 1124 of the Corporation Tax Act 2010, and the expression **change of control** shall be construed accordingly.

Client Data: the data inputted by the Client and the Authorised Users for the purpose of using the System.

Commencement Date: the date set out in Schedule 2 part (b).

Completion Date: the date set out in Schedule 2 part (b).

Confidential Information: information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in clause 11.6 or clause 11.7.

Data Protection Legislation: any Applicable Law which applies to each Party in any territory in which they Process Personal Data and which relates to the protection of individuals with regards to the Processing of Personal Data and privacy rights, including without limitation the GDPR and the e-Privacy Directive and relevant member state laws in the European Economic Area and in relation to the United Kingdom the Data Protection Act 2018 and the Privacy and Electronic Communications Regulations 2003 (amended by SI 2011 no. 6) and the GDPR (as incorporated into UK law under the UK European Union (Withdrawal) Act 2018) as the same are amended in accordance with the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (as amended by SI 2020 no. 1586). As amended to be referred to as PECR, DPA 2018 and the UK GDPR respectively, as the same are amended, consolidated, modified, re-enacted or replaced from time to time.

Effective Date: the date of this agreement.

ICL: Imperial College London.

Normal Business Hours: 9.00 am to 5.30 pm local UK time, Monday to Friday, excluding all Bank Holidays in England and the period between and including 25th December and 1st January of each year.

Party: one of the Client and the Supplier (together the **Parties**)

Services: those services described in clause 4.1 and Schedule 2 part (a).

Services Period: the period from the Commencement Date up to the Completion Date.

System: the system operated through the System Software.

System Software: the online system software applications provided by the Supplier known as Sofia.

Subscription Fees: the subscription fees payable by the Client to the Supplier for the User Subscriptions, as set out in paragraph 1 of Schedule 1.

Subscription Term: has the meaning given in clause 14.1.

User Subscriptions: the user subscriptions purchased by the Client pursuant to clause 9.1 which entitle Authorised Users to be provided with the Services and given access and use of the System in accordance with this agreement.

Virus: any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or

adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.3 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.
- 1.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 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.
- 1.8 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.
- 1.9 A reference to writing or written excludes faxes.
- 1.10 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.

2. User Subscriptions

- 2.1 Subject to the Client purchasing the User Subscriptions in accordance with clause 3.3 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 Client a non-exclusive, non-transferable right, without the right to grant sublicences, to permit the Authorised Users to use the System during the Subscription Term solely for the Client's academic purposes and operations.
- 2.2 In relation to the Authorised Users, the Client undertakes that:

- (a) the maximum number of Authorised Users that it authorises to access and use the System shall not exceed the number of User Subscriptions it has purchased from time to time; and
- (b) it will not allow or suffer any User Subscription to be used by more than one individual Authorised User unless it has been reassigned in its entirety to another individual Authorised User, in which case the prior Authorised User shall no longer have any right to access or use the System.

2.3 The Client shall not access, store, distribute or transmit any Viruses, or any material during the course of its use of the System that:

- (a) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
- (b) facilitates illegal activity;
- (c) depicts sexually explicit images;
- (d) promotes unlawful violence;
- (e) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
- (f) 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 Client, to disable the Client's access to any material that breaches the provisions of this clause.

2.4 The Client shall not:

- (a) except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under this agreement:
 - (i) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the System Software in any form or media or by any means; or
 - (ii) attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the System Software; or
- (b) access all or any part of the System in order to build a product or service which competes with the System; or
- (c) use the System and/or the Services to provide services to third parties; or
- (d) subject to clause 22.1, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the

System and/or the Services available to any third party except the Authorised Users, or

(e) attempt to obtain, or assist third parties in obtaining, access to the System.

2.5 The Client shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the System 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 Client only, and shall not be considered granted to any person connected to the Client in any capacity whatsoever.

3. Additional User Subscriptions

3.1 Subject to clause 3.2 and clause 3.3, the Client may, from time to time during any Subscription Term, alter the number of User Subscriptions set out in paragraph 1 of Schedule 1 and the Supplier shall grant access to the System to such additional Authorised Users, or limit the access to the reduced number, in accordance with the provisions of this agreement.

3.2 If the Client wishes to purchase additional User Subscriptions, the Client shall notify the Supplier in writing. The Supplier shall evaluate such request for additional User Subscriptions and respond to the Client with approval or rejection of the request (such approval not to be unreasonably withheld). Where the Supplier approves the request, the Supplier shall activate the additional User Subscriptions within 5 Business Days of its approval of the Client's request.

3.3 If the Supplier approves the Client's request to purchase additional User Subscriptions, the Client shall, within 30 days of the date of the Supplier's invoice, pay to the Supplier the relevant fees for such additional User Subscriptions as set out in paragraph 2 of Schedule 1 and, if such additional User Subscriptions are purchased by the Client part way through a period when the Client has issued notice to the Supplier to terminate the agreement, such fees shall be pro-rated from the date of activation by the Supplier for the remainder of the Subscription Term.

4. Services

4.1 The Supplier shall use reasonable endeavours during the Services Period to provide the Services to the Client or procure that the Services are provided to the Client.

4.2 The Supplier acknowledges and agrees that the Commencement Date and the Completion Date are estimates and that such dates may need to be altered from time to time but only in so far as such changes do not materially affect commencement of use of

the System within the academic year when it is proposed by the Client to begin operating the System.

5. System

- 5.1 The Supplier shall, during the Subscription Term, make the System available to the Client on and subject to the terms of this agreement.
- 5.2 The Supplier shall use commercially reasonable endeavours to make the System available 24 hours a day, seven days a week, except for:
- (a) reasonable planned maintenance carried out during times which do not materially affect term-time use of the System;
 - (b) unscheduled maintenance performed outside Normal Business Hours, provided that the Supplier has used reasonable endeavours to give the Client at least 72 hours' notice in advance; and
 - (c) times when the unavailability of the System is due to an IT failure of the Client.
- 5.3 The Supplier will, as part of the System, provide the Client with the Supplier's standard client support services during Normal Business Hours in accordance with the Supplier's Support Service described at <https://isotoma.atlassian.net/servicedesk/customer/portal/1> and in effect at the time that the Client is given access to the System. The Supplier may amend the Support Services Policy in its sole and absolute discretion from time to time.

6. Client Data

- 6.1 The Client shall own all right, title and interest in and to all of the Client Data that is not personal data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of all such Client Data.
- 6.2 The Supplier shall follow its archiving procedures for Client Data as set out in its Back-Up Policy defined in the architecture document available at <https://www.sofiacurriculum.com/assets/downloads/sofia-architecture.pdf> or such other website address as may be notified to the Client from time to time, as such document may be amended by the Supplier in its sole discretion from time to time. In the event of any loss or damage to Client Data, the Client's sole and exclusive remedy against the Supplier shall be for the Supplier to use reasonable commercial endeavours to restore the lost or damaged Client Data from the latest back-up of such Client 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 Client Data caused by any third party (except those third parties sub-contracted by the Supplier to perform services related to Client Data maintenance and back-up for which it shall remain fully liable under clause 6.9).

- 6.3 The Supplier shall, in providing the System, comply with its Privacy and Security Policy relating to the privacy and security of the Client Data defined in the architecture document available at <https://www.sofiacurriculum.com/assets/downloads/sofia-architecture.pdf> or such other website address as may be notified to the Client from time to time, as such document may be amended from time to time by the Supplier in its sole discretion.
- 6.4 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 6 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.
- 6.5 The parties acknowledge that:
- (a) if the Supplier processes any personal data on the Client's behalf when performing its obligations under this agreement, the Client is the data controller and the Supplier is the data processor for the purposes of the Data Protection Legislation (where **Data Controller** and **Data Processor** have the meanings as defined in the Data Protection Legislation).
 - (b) Schedule 3 sets out the scope, nature and purpose of processing by the Supplier, the duration of the processing and the types of personal data (as defined in the Data Protection Legislation, **Personal Data**) and categories of Data Subject.
 - (c) the personal data may be transferred or stored outside the EEA or the country where the Client and the Authorised Users are located in order to carry out the Services and the Supplier's other obligations under this agreement.
- 6.6 Without prejudice to the generality of clause 6.4, the Client will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Supplier for the duration and purposes of this agreement so that the Supplier may lawfully use, process and transfer the Personal Data in accordance with this agreement on the Client's behalf.
- 6.7 Without prejudice to the generality of clause 6.4, the Supplier shall, in relation to any Personal Data processed in connection with the performance by the Supplier of its obligations under this agreement:
- (a) process that Personal Data only on the written instructions of the Client unless the Supplier is required by the laws of any member of the European Union or by the laws of the European Union applicable to the Supplier to process Personal Data (**Applicable Laws**). Where the Supplier is relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, the Supplier shall promptly notify the Client of this before

performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Supplier from so notifying the Client;

- (b) not transfer any Personal Data outside of the European Economic Area and the United Kingdom unless the following conditions are fulfilled:
 - (i) the Client or the Supplier has provided appropriate safeguards in relation to the transfer;
 - (ii) the data subject has enforceable rights and effective legal remedies;
 - (iii) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
 - (iv) the Supplier complies with reasonable instructions notified to it in advance by the Client with respect to the processing of the Personal Data;
- (c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential;
- (d) assist the Client, at the Client's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (e) notify the Client without undue delay on becoming aware of a Personal Data breach;
- (f) at the written direction of the Client, delete or return Personal Data and copies thereof to the Client on termination of the agreement unless required by Applicable Law to store the Personal Data;
- (g) maintain complete and accurate records and information to demonstrate its compliance with this clause 6 and assist the Client, at the Client's cost, in audits of such records by the Client or the Client's designated auditor; and
- (h) immediately notify the Client if, in the Supplier's opinion, any instruction by the Client under this agreement infringes the Data Protection Legislation.

6.8 Each party shall ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the other party, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring

confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it).

- 6.9 The Client does not consent to the Supplier appointing any third party processor of Personal Data under this agreement without the prior written consent of the Client. As between the Client and the Supplier, the Supplier shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 6.
- 6.10 Either party may, at any time on not less than 30 days' notice, revise this clause 6 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this agreement).

7. Supplier's Obligations

- 7.1 The Supplier undertakes that it shall procure that the System performs in the manner for which it was developed and in reasonable compliance with the various functions demonstrated to the Client prior to the date of this agreement.
- 7.2 The undertaking at clause 7.1 shall not apply to the extent of any non-conformance which is caused by use of the System contrary to the Supplier's instructions, or modification or alteration of the System 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, Supplier will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Client with an alternative means of accomplishing the desired performance. Should the Supplier not make such correction or substitution available to the Client within 30 days of the Client's written report of non-conformance the Client may terminate this agreement by giving 60 days written notice of termination. Such termination will be governed by clause 14.4 of this agreement. This clause 7.2 constitutes the Client's sole and exclusive remedy for any breach of the undertaking set out in clause 7.1. Notwithstanding the foregoing, the Supplier:
- (a) does not warrant that the Client's use of the System will be uninterrupted or error-free; or that the System will meet the Client's requirements; and
 - (b) 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 Client acknowledges that the System may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

7.3 This agreement shall not prevent the Supplier from entering into similar agreements with third parties, or from independently developing, using, selling or licensing systems and/or services which are similar to those provided under this agreement.

7.4 The Supplier warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this agreement.

8. Client's Obligations

The Client shall:

- (a) 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 required by the Supplier;in order to provide the System, including but not limited to Client Data, security access information and configuration services;
- (b) without affecting its other obligations under this agreement, comply with all applicable laws and regulations with respect to its activities under this agreement;
- (c) carry out all other Client responsibilities set out in this agreement in a timely and efficient manner. In the event of any delays in the Client's provision of such assistance as agreed by the parties, the Supplier may adjust any agreed timetable or delivery schedule as reasonably necessary;
- (d) ensure that the Authorised Users use the System in accordance with the terms and conditions of this agreement and shall be responsible for any Authorised User's breach of this agreement;
- (e) 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 without limitation the System;
- (f) ensure that its network and systems comply with the relevant specifications provided by the Supplier from time to time; and
- (g) 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 Client's network connections or telecommunications links or caused by the internet.

9. Charges and Payment

- 9.1 The Client shall pay the Subscription Fees to the Supplier for the User Subscriptions in accordance with this clause 9 and Schedule 1 as soon as the Services have been provided and access to the System is available to the Client.
- 9.2 If the Supplier has not received payment within 30 days after the due date, and without prejudice to any other rights and remedies of the Supplier:
- (a) the Supplier may, without liability to the Client, disable the Client's password, account and access to all or part of the System and the Supplier shall be under no obligation to provide access to the System and any of the Services within the System while the invoice(s) concerned remain unpaid; and
 - (b) interest shall accrue on a daily basis on such due amounts at an annual rate equal to 3% over the then current base lending rate of HSBC Bank plc in the UK from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.
- 9.3 All amounts and fees stated or referred to in this agreement:
- (a) shall be payable in pounds sterling;
 - (b) are, subject to clause 13.3(b), non-cancellable and non-refundable;
 - (c) are exclusive of value added tax, which shall be added to the Supplier's invoice(s) at the appropriate rate.
- 9.4 The Supplier shall be entitled to increase the Subscription Fees, the fees payable in respect of the additional User Subscriptions purchased pursuant to clause 3.3, at the start of each anniversary of this agreement upon 9 months' prior written notice to the Client and Schedule 1 shall be deemed to have been amended accordingly.

10. Proprietary Rights

- 10.1 The Client acknowledges and agrees that the Supplier and/or its licensors own all intellectual property rights in the Services and the System. Except as expressly stated herein, this agreement does not grant the Client any rights to, under or in, any patents, copyright, database right, trade secrets, trade names, trademarks (whether registered or unregistered), or any other rights or licences in respect of the Services or the System.
- 10.2 The Supplier confirms that it has all the rights in relation to the Services and the System 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:
- (a) is or becomes publicly known other than through any act or omission of the receiving party;
 - (b) was in the other party's lawful possession before the disclosure;
 - (c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or
 - (d) is independently developed by the receiving party, which independent development can be shown by written evidence.
- 11.2 Subject to clause 11.4, each party shall hold the other's Confidential Information in confidence and 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 A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction, provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 11.4, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.
- 11.5 Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.
- 11.6 The Client acknowledges that details of the Services and the System, and the results of any performance tests of the System, constitute the Supplier's Confidential Information.
- 11.7 The Supplier acknowledges that the Client Data is the Confidential Information of the Client.
- 11.8 The Client shall not make, or permit any person to make, any public announcement concerning this agreement without the prior written consent of the Supplier, except as

required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.

- 11.9 The above provisions of this clause 11 shall survive termination of this agreement, however arising.

12. Indemnity

- 12.1 The Client shall defend, indemnify and hold harmless the Supplier against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Client's use of the System and reliance on the Services, provided that:
- (a) the Client is given prompt notice of any such claim;
 - (b) the Supplier provides reasonable co-operation to the Client in the defence and settlement of such claim, at the Client's expense; and
 - (c) the Client is given sole authority to defend or settle the claim.
- 12.2 The Supplier shall defend the Client, its officers, directors and employees against any claim that the Services or the System infringes any United Kingdom copyright, trade mark, database right or right of confidentiality, and shall indemnify the Client for any amounts awarded against the Client in judgment or settlement of such claims, provided that:
- (a) the Supplier is given prompt notice of any such claim;
 - (b) the Client provides reasonable co-operation to the Supplier in the defence and settlement of such claim, at the Supplier's expense; and
 - (c) the Supplier is given sole authority to defend or settle the claim.
- 12.3 In the defence or settlement of any claim, the Supplier may procure the right for the Client to continue using the System, replace or modify the System so that they become non-infringing or, if such remedies are not reasonably available, terminate this agreement on 2 Business Days' notice to the Client without any additional liability or obligation to pay liquidated damages or other additional costs to the Client.
- 12.4 In no event shall the Supplier, its employees, agents and sub-contractors be liable to the Client to the extent that the alleged infringement is based on:
- (a) a modification of the System by anyone other than the Supplier; or
 - (b) the Client's use of the System in a manner contrary to the instructions given to the Client by the Supplier; or
 - (c) the Client's use of the System after notice of the alleged or actual infringement from the Supplier or any appropriate authority.

- 12.5 The foregoing and clause 13.3(b) state the Client'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 copyright, trade mark, database right or right of confidentiality.

13. Limitation of Liability

- 13.1 Except as expressly and specifically provided in this agreement:

- (a) the Client assumes sole responsibility for results obtained from the use of the Services and the System by the Client, 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 Client in connection with the Services, or any actions taken by the Supplier at the Client's direction;
- (b) 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
- (c) the System is provided to the Client on an "as is" basis.

- 13.2 Nothing in this agreement excludes the liability of the Supplier:

- (a) for death or personal injury caused by the Supplier's negligence; or
- (b) for fraud or fraudulent misrepresentation.

- 13.3 Subject to clause 13.1 and clause 13.2:

- (a) the Supplier shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this agreement; and
- (b) the Supplier's total aggregate liability in contract (excluding in respect of the indemnity at clause 12.2), tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this agreement shall be limited to the total Subscription Fees paid for the User Subscriptions 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 thereafter (**Subscription Term**).

- 14.2 Without affecting any other right or remedy available to it, either party may terminate this agreement by serving at least 9 calendar months notice in writing on the other party such notice ending at the end of any whole year of the Subscription Term.
- 14.3 Unless ICL is able and willing to undertake the obligations on the Supplier under this agreement and has notified this intent to the Client in writing within 7 days of ICL receiving notification from the Client that one of the grounds in (a) to (l) below has occurred then 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:
- (a) the other party fails to pay any amount due under this agreement on the due date for payment and remains in default not less than 7 days after being notified in writing to make such payment;
 - (b) 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 14 days after being notified in writing to do so;
 - (c) 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;
 - (d) 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, as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the Insolvency Act 1986;
 - (e) 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;
 - (f) 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;
 - (g) 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;
 - (h) 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;

- (i) 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;
- (j) 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;
- (k) 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 14.3(d) to clause 14.3(j) (inclusive); or
- (l) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business or operations.

14.4 On termination of this agreement for any reason:

- (a) all licences granted under this agreement shall immediately terminate and the Client shall immediately cease all use of the System;
- (b) the Supplier may destroy or otherwise dispose of any of the Client Data in its possession in accordance with clause 6.7(c), unless the Supplier receives, no later than ten days after the effective date of the termination of this agreement, a written request for the delivery to the Client of the then most recent back-up of the Client Data. The Supplier shall use reasonable commercial endeavours to deliver the back-up to the Client within 30 days of its receipt of such a written request, provided that the Client has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The Client shall pay all reasonable expenses incurred by the Supplier in returning or disposing of Client Data; and
- (c) 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

The Supplier shall have no liability to the Client 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, without limitation, 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 Client 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.

16.2 If and only if procurement has been carried out under the UK Government G-Cloud procurement framework and this agreement is referred to from a valid, current and signed G-Cloud Call-Off contract that G-Cloud Call-Off contract shall prevail in any inconsistencies between this agreement, the Schedules and the G-Cloud Call-Off contract.

17. Variation

No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

18. Waiver

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

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-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement.

20.2 If any provision or part-provision of this agreement is deemed deleted under clause 20.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

21. Entire Agreement

- 21.1 This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 21.2 Each party acknowledges that in entering into this agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement.
- 21.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.
- 21.4 Nothing in this clause shall limit or exclude any liability for fraud.

22. Assignment

- 22.1 The Client shall not, without the prior written consent of the Supplier, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this agreement.
- 22.2 The Supplier may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this agreement.

23. No Partnership or Agency

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, but not limited to, 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

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 delivered by hand or 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.

- 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.

26. Governing Law

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 and Wales.

27. Jurisdiction

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.

Schedule 1 Subscription Fees

1. Set up and consultancy fees

The setup and consultancy fees shall amount to a total of £16,500 exclusive of VAT for staff only access, plus a subsequent £12,000 exclusive of VAT for student facing access.

2. Subscription Fees

The Subscription Fees shall amount to a total of £[], based on £12,000 exclusive of VAT per annum base price plus [] User Subscriptions at £1,250 per 100 or part thereof student users exclusive of VAT. The Subscription Fees shall be due on the Completion Date and each anniversary thereafter.

3. Additional User Subscription Fees

Additional User Subscriptions may be purchased by the Client in accordance with clause 3 at £1,250 exclusive of VAT per 100 or part thereof student users.

Schedule 2 Services

(a) :

- (i) Provide consultancy services to the Client to assist the Client in improving the quality of its recording of its learning objectives from its current curriculum;
- (ii) Provide consultancy services to the Client to assist it in:
 - i) developing and/or improving its curriculum in terms of its learning objectives in order that the curriculum is in a form which is usable within the System Software and maximises the benefit to the Client of the System Software; and
 - ii) organising its curriculum into an electronic format so that the curriculum can be understood within the System Software;
- (iii) After (a) and (b) have been achieved, providing further consultancy services to the Client to review the curriculum further and its operation within the System Software and make further recommendations to improve the Client's curriculum and its value to the student cohort.

(b) Commencement Date: [REDACTED].

Completion Date: [REDACTED].

Schedule 3 Processing, Personal Data and Data Subjects

1. Processing by the Supplier

- 1.1 Scope:** The Sofia curriculum mapping application and the data stored within that application;
- 1.2 Nature:** In accordance with the provision of services defined this agreement and any related Work Orders including but not limited to the storage of the data;
- 1.3 Purpose of processing:** In accordance with the provision of services defined in this agreement and any related Work Orders;
- 1.4 Duration of the processing:** The duration of this agreement;

2. Types of Personal Data

- 2.1 In accordance with the provision of services defined in this agreement and any related Work Orders;

3. Categories of Data Subject

- 3.1 Client students and staff members;

Signed by Andy Theyers
for and on behalf of
ISOTOMA LIMITED

.....
Director

Signed by [redacted]
for and on behalf of
[redacted]

.....
Authorised Signatory