

Jisc learning analytics services

Terms and conditions

Version 1.0
13 November 2024

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement, unless the context otherwise requires, the following words shall have the following meanings:

Affiliate	in relation to each Party and Amazon Web Services, means and includes each parent undertaking and each subsidiary undertaking of such parent undertaking from time to time, in each case as the terms subsidiary undertaking and parent undertaking are defined in Section 1162 of the Companies Act 2006;
Agreement	means these Terms and Conditions together with the Order Form and any Schedules;
Amazon Web Services	means Amazon Web Services, Inc or its applicable Affiliate;
Applicable Law	means all applicable laws, statutes, regulations, decree directives, legislative enactments, orders, binding decisions of a competent Court or Tribunal, rule, regulatory policies, guidelines, codes, other binding restriction, regulatory permits and licences applicable under law which are in force from time to time during the term of this Agreement to which a Party and/or any Processing of Personal Data is subject from time to time;
Attendance Monitoring	means a service component of the learning analytics services which Jisc may provide as indicated on the Order Form, as further described in the Services Description;
Business Day	means any day which is not a Saturday, Sunday or a public holiday in England and Wales;
Charges	means the charges payable by the Institution to Jisc for the performance of the Learning Analytics Services. The Charges are set out in the Order Form and may be varied in accordance with Clause 4;
Claims	means claims, demands, proceedings or other actions;

Commencement Date	means the contract start date as set out in the Order Form;
Confidential Information	means all information in any form or medium concerning the business, affairs, technology, customers, suppliers, plans, strategy, pricing, Intellectual Property Rights, products or services of the disclosing Party or any of its Affiliates (or in the case of Jisc, any of its sub-contractors) together with all information in any form or medium designated as confidential by the disclosing Party but excluding the Institution Data;
Controller	has the meaning set out in the UK GDPR;
Data Protection Legislation	means (a) any law, statute, declaration, decree, directive, legislative enactment, order, ordinance, regulation, rule or other binding restriction which relates to the protection of individuals with regards to the Processing of Personal Data to which a Party is subject for the purposes of this Agreement, including the Data Protection Act 2018 and the General Data Protection Regulation 2016/679 (EU GDPR) as each is amended in accordance with the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (as amended by SI 2020 no. 1586) and incorporated into UK law under the UK European Union (Withdrawal) Act 2018, as amended to be referred to as DPA 2018 and the UK GDPR respectively; and (b) any code of practice or guidance published by the ICO or European Data Protection Board from time to time;
Data Protection Particulars	means, in relation to any Processing under this Agreement: (a) the subject matter and duration of the Processing; (b) the nature and purpose of the Processing; (c) the type of Personal Data being Processed; and (d) the categories of Data Subjects;
Data Quality Requirements	means those requirements set out in Article 5(1)(c) to (e) (inclusive) of the UK GDPR;
Data Subject	has the meaning set out in the UK GDPR;
Data Subject Request	means an actual or purported subject access request or notice or complaint from (or on behalf of) a Data Subject exercising his rights under the Data Protection Legislation;
Data Transfer	means transferring the Institution Data to, and / or accessing the Institution Data from and / or Processing the Institution Data within, a jurisdiction or territory that is not a Permitted Country;
First Expiry Date	means the initial term end date as set out in the Order Form;
Force Majeure Event	means any cause beyond a Party's reasonable control affecting the performance of its obligations under this Agreement;
Freedom of Information Laws	means the Freedom of Information Act 2000 (and any Scottish equivalent), the Environmental Information Regulations 2004 (and any Scottish equivalent) and any subordinate legislation made under such legislation from time to time together with any guidance and/or codes of practice issued by the UK Information Commissioner or relevant Government Department in relation to such legislation;
Good Industry Practice	means, at any time, the exercise of that degree of care, skill, diligence, prudence, efficiency, foresight and timeliness which would be reasonably expected at such time from a leading and expert supplier of similar services to the Learning Analytics Services to a customer like the Institution, such supplier seeking to comply with its contractual obligations in full and complying with all Applicable Laws (including the Data Protection Legislation);
ICO	means the means the UK Information Commissioner (including any successor or replacement);

Implementation, Integration and Trial	means a service component of the learning analytics services which Jisc may provide as indicated on the Order Form, as further described in the Services Description;
Initial Term	has the meaning set out in Clause 2;
Institution	means the customer as detailed in the Order Form;
Institution Data	means: (a) all data and information relating to any Student or Institution Staff (including Personal Data, as such Personal Data is further described in the Data Protection Particulars) which: (i) is supplied or made available by or on behalf of the Institution to Jisc; (ii) is collected by Jisc from the Institution, any Student or Institution Staff; or (iii) is transmitted to or through Jisc or any of its Affiliates by the Institution, any Student or Institution Staff, in each case in connection with the Learning Analytics Services; and (b) any other data or information (including Personal Data) which the Institution agrees to provide or make available to Jisc for transfer into Jisc's learning analytics infrastructure in connection with the performance of Learning Analytics Services;
Institution Staff	means any current or former member of staff or employee of the Institution;
Intellectual Property Rights	means any rights in or to intellectual property, including copyright (including rights in computer software and related rights), patents, database rights, designs, trademarks, know-how or confidential information and any other rights in respect of any other industrial or intellectual property, whether registrable or not and wherever existing in the world and including all rights to apply for any of the foregoing rights;
Interactions	means a service component of the learning analytics services which Jisc may provide as indicated on the Order Form, as further described in the Services Description;
Jisc	means the contracting entity designated as such on the Order Form;
Jisc Customer	means any customer from time to time of Jisc or any of Jisc's Affiliates;
Jisc Instruction Form	means the instruction form (in the format notified or otherwise made available to the Institution from time to time, and to contain such information, as Jisc may require from time to time) pursuant to which an Institution instructs Jisc to transfer Institution Data held by Jisc or any of its Affiliates to a third party supplier of the Institution in accordance with Clause 13;
Jisc Members	means those Jisc Customers that have been accepted by Jisc as a registered member of Jisc;
Jisc Site	means www.jisc.ac.uk/learning-analytics (and includes any successor site designated by Jisc), as may be updated by Jisc from time to time;
LA Community Site	means the "Learning Analytics Community" team on the Microsoft Teams application (and includes any successor site designated by Jisc), as may be updated by Jisc from time to time;
Learning Analytics	means a service component of the learning analytics services which Jisc may provide as indicated on the Order Form, as further described in the Services Description;
Learning Analytics Services	means each of the SaaS learning analytics services which Jisc will make available to the Institution as indicated on the Order Form or as otherwise agreed in writing by the Parties, and as further described in the Services Description;

Loss	means all losses, fines, liabilities, damages, costs, Claims, amounts paid in settlement and expenses (including legal fees, disbursements, costs of investigation, litigation, settlement, judgment, interest and penalties);
Order Form	means the order form in which these Terms and Conditions are referred to;
Parties	means the parties to this Agreement and Party shall be construed accordingly;
Permitted Country	means a country, territory or jurisdiction that is either: (a) within the UK or the European Economic Area; or (b) outside of the UK or European Economic Area but which is the subject of an adequacy determination by the UK Secretary of State or the European Commission (as applicable);
Personal Data	has the meaning set out in the UK GDPR and for the purposes of this Agreement includes Sensitive Personal Data;
Personal Data Breach	has the meaning set out in the UK GDPR (where the Personal Data directly affected by the breach of security is that described in the Data Protection Particulars) and, for the avoidance of doubt, includes a breach of Clause 9.1.3;
Personnel	means all persons engaged or employed from time to time by Jisc in connection with this Agreement, including employees, consultants, contractors and permitted agents;
Processing	has the meaning set out in the UK GDPR (and Process and Processed shall be construed accordingly);
Processor	has the meaning set out in the UK GDPR;
Regulator	means the ICO and any other independent public authority which has jurisdiction over a Party, including any regulator or supervisory authority which is responsible for the monitoring and application of the Data Protection Legislation;
Regulator Correspondence	means any correspondence from a Regulator in relation to the Processing of Institution Data under or in connection with this Agreement;
Renewal Term	is defined in Clause 2;
Request for Information	is defined in Clause 17;
SaaS	means software that is owned, delivered and managed remotely by one or more providers. The provider delivers software based on one set of common code and data definitions that is consumed in a one-to-many model by all contracted customers at any time on a subscription basis;
Security Requirements	means the requirements regarding the security of the Personal Data, as set out in the Data Protection Legislation (including, in particular, the measures set out in Article 32(1) of the UK GDPR (taking due account of the matters described in Article 32(2) of the UK GDPR));
Sensitive Personal Data	means Personal Data that reveals such categories of data as are listed in Article 9(1) of the UK GDPR and Personal Data relating to criminal convictions and offences;
Service Levels	means the service levels set out on the Jisc Site from time to time applicable to the Learning Analytics Services;
Services Description	means the description of the learning analytics services and service components set out on the Jisc Site from time to time;
Students	means any current or former student of the Institution;
Term	means the Initial Term and any extension to the same pursuant to Clause 2;
Terms and Conditions	means these terms and conditions;
Third Party Request	means a written request from any third party for disclosure of Institution Data where compliance with such request is required or purported to be required by law or regulation; and

Timetable and Additional Data Sources	means a service component of the learning analytics services which Jisc may provide as indicated on the Order Form, as further described in the Services Description;
Web App Terms and Conditions	means the learning analytics web app terms and conditions which are contained on the Jisc Site and/or hyperlinked within the web app;
Year	means each twelve (12) month period commencing on the Commencement Date or the anniversary of that date (in the case of subsequent Years).

1.2 In this Agreement, unless the context otherwise requires:

- 1.2.1** the singular shall include the plural and vice versa, and references to one gender shall include all genders;
- 1.2.2** references to a **person** include any individual, firm, body corporate (wherever incorporated), university, government, state or agency of a state or any joint venture, association, partnership, works council or employee representative body (whether or not having separate legal personality);
- 1.2.3** references to **Recitals, Clauses** and **Schedules** are to recitals, clauses and schedules of this Agreement;
- 1.2.4** references to a **Party** include that Party's personal representatives, successors, and permitted assignees and sub-licensees;
- 1.2.5** any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- 1.2.6** any reference to a statute, statutory provision or statutory instrument includes a reference to that statute, statutory provision or statutory instrument together with all the rules and regulations made under it as from time to time amended, consolidated or re-enacted.

1.3 In the case of conflict or ambiguity between any provision contained in this Agreement the order of precedence shall be as follows:

- 1.3.1** the Order Form;
- 1.3.2** the Terms and Conditions; and
- 1.3.3** any other document referred to in this Agreement.

2. TERM

- 2.1** This Agreement commences on the Commencement Date and, subject to earlier termination in accordance with this Agreement will continue in full force and effect until the First Expiry Date (the **Initial Term**).
- 2.2** Following expiry of the Initial Term this Agreement will, subject to earlier termination in accordance with this Agreement, automatically renew for successive 12-month periods (each a **Renewal Term**) unless and until terminated by either Party giving not less than 3 months' written notice of termination to the other, such termination to take effect only on expiry of the Initial Term or the then current Renewal Term, as applicable.

3. LEARNING ANALYTICS SERVICES

- 3.1** Jisc will provide the Learning Analytics Services in accordance with this Agreement, Good Industry Practice and using reasonable skill and care.

- 3.2** Jisc will use reasonable endeavours to provide the Learning Analytics Services in accordance with the Service Levels. Service Levels will not be applicable during the provision of Implementation, Integration and Trial.
- 3.3** Jisc may from time to time make changes to the Learning Analytics Services, Services Description and/or the Service Levels. Where changes are made to the Learning Analytics Services, Services Description and/or Service Levels, or where Jisc appoints a sub-contractor pursuant to Clause 12.1, details of those changes will be posted on the LA Community Site and/or email/electronic notification sent to the Institution at the address stated on the Order Form or the address reasonably assumed by Jisc to be the Institution's primary point of contact in relation to this Agreement. As such, the Institution should ensure that it checks the LA Community Site regularly for any changes.

4. CHARGES

- 4.1** In consideration of the provision of the Learning Analytics Services to the Institution, the Institution shall pay to Jisc the Charges specified in the Order Form.
- 4.2** Jisc will deliver invoices to the Institution and the Charges will be payable in advance for each period described in the Order Form. Subject to Clause 4.3, all due and valid invoices will be paid by the Institution within 30 days of its receipt.
- 4.3** Should the Institution wish to dispute an invoice, it will notify Jisc in writing of the nature and details of the dispute within 30 days of receipt of the invoice, provided that nothing in this Clause 4.3 will excuse the Institution from its payment obligations in respect of any undisputed part of the invoice.
- 4.4** If the Institution fails to pay any undisputed Charges by the due date, Jisc may, in its absolute discretion, charge the Institution interest on late payment from the due date up to the date of actual payment, after as well as before judgment, at the rate of 2% above the base lending rate of HSBC Bank then in force. Such interest will be payable by the Institution on demand and will accrue on a daily basis.
- 4.5** All Charges are stated exclusive of value added tax (and any other taxes), which if applicable, will be added by Jisc to its invoices at the prevailing rate as at the date of the applicable invoice and will be paid by the Institution accordingly.
- 4.6** The Institution shall pay all sums that it owes under this Agreement without any set-off, counterclaim, deduction or withholding of any kind, save as may be required by law.
- 4.7** Following expiry of the Initial Term, Jisc reserves the right to amend the Charges from time to time. Jisc will give a minimum of 3 months' notice of any amendment. If the Institution then wishes to terminate this Agreement it may do so by giving written notice of termination to Jisc within 2 months' of receiving Jisc's notice of amendment. Termination will then come into effect from the date on which the amended Charges would otherwise apply.

5. INSTITUTION DATA

- 5.1** The Institution shall provide the Institution Data to Jisc in order for Jisc to Process the Institution Data in connection with the performance of the Learning Analytics Services.
- 5.2** Where the Institution transfers the Institution Data to Jisc, it shall do so in the format as set out on the LA Community Site, or as otherwise agreed in writing between the Parties. The Institution Data may be transferred to Jisc by the Institution in more than one tranche, and the terms of this Agreement shall apply on each and every occasion that Institution Data is transferred.
- 5.3** If requested to do so in writing by the Institution, Jisc will acknowledge receipt of any Institution Data transferred to it by the Institution under this Agreement.

- 5.4 Jisc will not share aggregated data outputs or anonymised data sets with any other institutions for the purposes of benchmarking unless the Institution explicitly opts in to a benchmarking group or similar data sharing group by written agreement.
- 5.5 Further details on how Jisc will access and use the Institution Data in connection with the performance of the Learning Analytics Services can be found on the LA Community Site.
- 5.6 Jisc will use its reasonable endeavours to facilitate the smooth, efficient and timely transfer of Institution Data from source systems to Jisc. The Institution is responsible for ensuring that any third parties engaged by it comply with the Institution's written instruction to release the Institution Data to Jisc. Once Jisc has received the Institution Data from such third parties, Jisc will make such Institution Data available to the Institution as part of the Learning Analytics Services.

6. CUSTOMER OBLIGATIONS

- 6.1 The Institution acknowledges and agrees that in order for Jisc to perform the Learning Analytics Services, Jisc (or its sub-contractors) may from time to time need to access certain of the Institution's information technology environments and install plug-in software in those environments. Such access will be solely as required for performing the Learning Analytics Services and the Institution will co-operate with reasonable requests of Jisc to enable such access. Further details of the information technology environments that Jisc will require access to and the plug-in software that will need to be installed can be found on the LA Community Site.
- 6.2 Should the Institution plan substantial changes to its Virtual Learning Environment, such as a change of supplier, the Institution will provide Jisc with as much notice as is reasonably possible to ensure that Jisc is able to undertake any necessary configuration to the Learning Analytics Services prior to such change. Notifications to be sent to help@jisc.ac.uk and copied to da.businessoperations@jisc.ac.uk. Jisc shall be entitled to charge a fee to the Institution (on a time and materials basis and at such rate notified by Jisc to the Institution from time to time) in respect of undertaking such necessary configuration to the Learning Analytics Services.
- 6.3 The Institution will use reasonable endeavours to ensure that its Students, staff, users, affiliates, employees, officers, contractors and agents comply with the Web App Terms and Conditions.

7. DATA PROTECTION ARRANGEMENTS

- 7.1 The Parties shall each Process the Institution Data in accordance with the terms of this Agreement. The Parties acknowledge that the factual arrangement between them dictates the classification of each Party in respect of the Data Protection Legislation. Notwithstanding the foregoing, the Parties anticipate and agree that the Institution shall act as a Controller and Jisc shall act as a Processor, as follows:
 - 7.1.1 The Institution shall be a Controller where it is Processing the Institution Data in connection with its role as the employer of the Staff and/or the provider of higher education services to the Students; and
 - 7.1.2 Jisc shall be a Processor where it is Processing the Institution Data in connection with its provision of the Learning Analytics Services to the Institution.
- 7.2 The Institution warrants that the Data Protection Particulars table below sets out an accurate description of the Data Protection Particulars:

The subject matter and duration of the Processing	The Personal Data will be stored by Jisc and will only be Processed if the Institution (as Controller), requests in writing (and Jisc agrees to provide) Learning Analytics Services. If Learning Analytics Services are agreed, Personal Data will be analysed to provide learner level information, and combined to provide grouped information, for example at a course or module level. All such Processing will be for the duration of the Term. Aggregated data, which is Institution Data that does not contain Personal Data (Aggregated Data), will be analysed to provide grouped information, such as collective SharePoint access activity. All such Processing will be for the duration of the Term.
The nature and purpose of the Processing	Aggregated Data and Personal Data will be Processed in order to provide Learning Analytics Services ordered by the Institution.
The type of Personal Data being Processed	The following are all the possible data sources that Jisc may be requested to Process in order to deliver the Learning Analytics Services. The specific type of Personal Data being Processed under this Agreement will depend on the service options the Institution has selected and any data provided by the Institution in any free text data submission fields. On the 1st day of each month Jisc will make available a data sources report to confirm which data sources from the list below have been released by the Institution to Jisc. The report will be available as a data drop file in the Institution's SFTP folder. Access controls on this folder mean that the data drop file will only be accessible to named individual(s) at the Institution. Please note that Jisc will only act on instruction to add NEW data sources when provided in writing by the Institution's designated contact as set out in the Order Form. Personal Data about students: The Jisc Unified Data Definitions (UDD) • Demographic information about the data subject, as determined by the Institution, including, but not limited to, student id, data of birth, username, first name, last name, institutional email address, address, accommodation type, socio-economic group, parents' education background, gender; • Information about the course a data subject is taking, as determined by the Institution, including, but not limited to, course/module name, start and end date, course and module marks and outcome of the course; and • Information about the data subject's achievements, as determined by the Institution, including, but not limited to, assignment identifiers, initial and agreed marks.

	Learning activity data • Virtual Learning Environment (VLE) Information about the data subject's use of the VLE, as determined by the Institution, including, but not limited to, the type of activity, system, time, the module or course it relates to and the result of the activity. • Presence and attendance at learning events (please see https://www.jisc.ac.uk/website/privacy-notice/learning-analytics for clarification about the processing of geolocation data) Information about the data subject's attendance at timetabled events and non-timetabled events, as determined by the Institution, including, but not limited to, physical presence at an event, event title, start time, end time, and device used to record attendance (see Jisc Site for clarification). • Library items borrowed Information about the data subject's use of library items, as determined by the Institution, including, but not limited to, the type of library item borrowed, and subject area. • Turnitin data Information about the data subject's assignments, as determined by the Institution, including, but not limited to, submission characteristics, and originality score. • Reading lists Information about the data subject's use of reading lists, as determined by the Institution, including, but not limited to, the reading list viewed, the reading list item viewed and the external link followed to the reading list item. • Online lecture capture Information about the data subject's use of lecture capture platforms, as determined by the Institution, including, but not limited to, the online lecture viewed, number of views and number of minutes watched. Personal Data about staff including, but not limited to the following: first name, surname, system user identifier and Institution email address.
The type of Aggerated Data being Processed	Microsoft Teams • Information about the data subject's use of Team Chat, Private Chat and Call Count. • The data collected reflects aggregated totals only for each activity type, not the actual content for each activity.
The categories of Data Subjects	The Data Subjects are students and staff of the Institution.

8. CONTROLLER OBLIGATIONS

- 8.1** The Institution shall comply with its obligations under the Data Protection Legislation.
- 8.2** The Institution shall (as the Controller in respect of the Processing of Institution Data):
- 8.2.1** make due notification to the Regulator and shall comply at all times with the Data Protection Legislation;
 - 8.2.2** implement and maintain appropriate technical and organisational security measures to comply with at least the obligations imposed on a Controller by the Security Requirements;
 - 8.2.3** ensure it is not subject to any prohibition or restriction which would:

- (a) prevent or restrict it from disclosing or transferring the Institution Data to Jisc, as required under this Agreement; and
 - (b) prevent or restrict it from granting Jisc access to the Institution Data, as required under this Agreement;
 - (c) prevent or restrict Jisc from Processing the Institution Data, as required under this Agreement; or
 - (d) prevent or restrict Jisc from transferring or making available Institution Data to a third party supplier of the Institution where requested to do so in accordance with Clause 13;
- 8.2.4** ensure that all fair processing notices have been given (and/or, as applicable, consents obtained) and are sufficient in scope to enable Jisc to Process the Institution Data as required in order to obtain the benefit of its rights and to fulfil its obligations under this Agreement in accordance with the Data Protection Legislation;
- 8.2.5** implement appropriate systems and procedures (where relevant) to ensure that any Institution Data disclosed, transferred or made available to Jisc is: (i) adequate, relevant and not excessive; (ii) accurate, and, where necessary, kept up to date; and (iii) not retained for longer than is necessary (in each case as required by the Data Quality Requirements);
- 8.2.6** notify Jisc promptly (and in any event within forty-eight (48) hours) following its receipt of any Regulator Correspondence; and
- 8.2.7** ensure that it has identified lawful bases under articles 6 and 9 of the UK GDPR to ensure that Processing of Personal Data and Sensitive Personal Data is lawful.

9. PROCESSOR OBLIGATIONS

- 9.1** Jisc (as a Processor in relation to any Institution Data Processed by (or on behalf of) the Institution pursuant to this Agreement) undertakes to the Institution that it shall:
- 9.1.1** Process the Institution Data for and on behalf of the Institution in connection with the performance of the Learning Analytics Services only and for no other purpose in accordance with the terms of this Agreement and (without prejudice to Clause 12) any instructions from the Institution;
 - 9.1.2** unless prohibited by law, promptly notify the Institution (and in any event within forty-eight (48) hours of becoming aware of the same) if it considers, in its opinion (acting reasonably) that it is required by Applicable Law to act other than in accordance with the instructions of the Institution, including where it believes that any of the Institution's instructions under Clause 9.1.1 infringes any of the Data Protection Legislation;
 - 9.1.3** implement and maintain appropriate technical and organisational security measures to comply with at least the obligations imposed on a Controller by the Security Requirements. A description of the technical and organisational security measures that Jisc will implement and maintain from time to time is set out on the LA Community Site;
 - 9.1.4** take all reasonable steps to ensure the reliability and integrity of any of the Personnel who shall have access to the Institution Data, and ensure that each member of Personnel shall have entered into appropriate contractually-binding confidentiality undertakings;
 - 9.1.5** notify the Institution promptly, and in any event within forty-eight (48) hours, upon becoming aware of any actual or suspected, threatened or 'near miss' Personal Data Breach, and:
 - (a) implement any measures necessary to restore the security of compromised Institution Data;

- (b) assist the Institution to make any notifications to a relevant Regulator and affected Data Subjects;
- 9.1.6** notify the Institution promptly (and in any event within forty-eight (48) hours) following its receipt of any Data Subject Request or Regulator Correspondence and shall:
- (a) not disclose any Institution Data in response to any Data Subject Request or Regulator Correspondence without the Institution's prior written consent; and
 - (b) provide the Institution with all reasonable co-operation and assistance required by the Institution in relation to any such Data Subject Request or Regulator Correspondence;
- 9.1.7** not disclose Institution Data to a third party in any circumstances without the Institution's prior written consent, other than:
- (a) in relation to Third Party Requests where Jisc is required by law to make such a disclosure, in which case it shall use reasonable endeavours to advise the Institution in advance of such disclosure and in any event as soon as practicable thereafter, unless prohibited by law or regulation from notifying the Institution;
 - (b) to Jisc's employees, officers, representatives and advisers who need to know such information for the purposes of Jisc performing its obligations under this Agreement and in this respect Jisc shall ensure that its employees, officers, representatives and advisers to whom it discloses the Institution Data are made aware of their obligations with regard to the use and security of Institution Data under this Agreement;
 - (c) to a sub-contractor appointed in accordance with Clause 11; and
 - (d) to comply with a specific request from the Institution, in accordance with Clause 12.
- 9.1.8** not make (nor instruct or permit a third party to make) a Data Transfer without putting in place measures to ensure the Institution's compliance with Data Protection Legislation;
- 9.1.9** on the written request of the Institution, allow representatives of the Institution to audit Jisc in order to ascertain compliance with the terms of this Clause 9.1 and/ or to provide the Institution with reasonable information to demonstrate compliance with the requirements of this Clause 9.1, provided that:
- (a) the Institution shall only be permitted to exercise its rights under this Clause 9.1.9 no more frequently than once per Year (other than where an audit is being undertaken by an Institution in connection with an actual or 'near miss' Personal Data Breach, in which case, an additional audit may be undertaken each Year by the Institution within thirty (30) days of the Institution having been notified of actual or 'near miss' Personal Data Breach);
 - (b) each such audit shall be performed at the sole expense of the Institution;
 - (c) the Institution shall not, in its performance of each such audit, unreasonably disrupt the business operations of Jisc;
 - (d) the Institution shall comply with Jisc's health and safety, security, conduct and other rules, procedures and requirements in relation to Jisc's property and systems which have been notified by Jisc to the Institution in advance; and
 - (e) in no case shall the Institution be permitted to access any data, information or records relating to any other customer of Jisc.
- 9.1.10** except to the extent required by Applicable Law, on the earlier of:
- (a) the date of termination or expiry of this Agreement (as applicable); and/or
 - (b) the date on which the Institution Data is no longer relevant to, or necessary for, the performance of the Learning Analytics Services,

cease Processing any of the Institution Data and, within sixty (60) days of the date being applicable under this Clause 9.1.10, return or destroy (as directed, in writing, by the Institution) the Institution Data belonging to, or under the control of, the Institution and ensure that all such data is securely and permanently deleted from its systems, provided that Jisc shall be entitled to retain copies of the Institution Data for evidential purposes and to comply with legal and/or regulatory requirements;

9.1.11 comply with the obligations imposed upon a Processor under the Data Protection Legislation; and

9.1.12 assist the Institution in ensuring compliance with the obligations pursuant to Articles 32 to 36 of the UK GDPR taking into account the nature of Processing and the information available to Jisc, provided that Jisc shall be entitled to charge a fee to the Institution (on a time and materials basis and at such rate notified by Jisc to the Institution from time to time) in respect of providing any such assistance to the Institution.

9.2 Notwithstanding anything in this Agreement to the contrary, this Clause 9 shall continue in full force and effect for so long as Jisc Processes any Institution Data.

10. INTELLECTUAL PROPERTY RIGHTS

10.1 The Parties acknowledge and agree that the Institution shall retain ownership of the Institution Data.

10.2 With effect from such time as the Institution provides Jisc with, or makes available to Jisc, the Institution Data, the Institution hereby grants or shall procure the grant of a fully paid and royalty-free, worldwide, nonexclusive, transferable (in accordance with Clause 21) and sub-licensable licence to Jisc to access and use the Institution Data (including any Intellectual Property Rights in the Institution Data) in connection with the performance of the Learning Analytics Services in accordance with, and subject to, the terms of this Agreement, and any instructions as notified by the Institution from time to time. Such licence shall subsist for the Term and, to enable Jisc to comply with its obligations under Clause 9.1.10, for a period of sixty (60) days thereafter.

10.3 Any Intellectual Property Rights created or generated by or on behalf of Jisc, its Affiliates or any sub-contractor of Jisc in connection with the performance of the Learning Analytics Services and Processing of the Institution Data shall be owned by Jisc or the relevant Affiliate or sub-contractor (as applicable).

10.4 Except as expressly set out in Clause 11 and elsewhere in this Agreement, neither Party will acquire any right, title or interest in or to the Intellectual Property Rights of the other Party (or its Affiliates or sub-contractors) that has been made available to, or is accessed by, that Party pursuant to this Agreement.

11. MARKETING

11.1 The Institution grants Jisc a fully-paid, royalty-free, worldwide, non-exclusive and transferable (in accordance with Clause 21) licence to use the Institution's name, trading name and logo on the Jisc Site and on marketing materials for marketing and promotional purposes.

12. SUB-CONTRACTORS

- 12.1** Jisc may from time to time use sub-contractors (including its Affiliates) to perform all or any part of its obligations under this Agreement. Jisc shall notify the Institution prior to appointing a sub-contractor in accordance with Clause 3.3. The Institution may object to the appointment of any sub-contractor and Jisc shall reasonably take into account the views of the Institution in appointing any such sub-contractor, but for the avoidance of doubt the appointment of any sub-contractor shall be at Jisc's absolute discretion and Jisc shall have no obligation to act in accordance with any objection raised by the Institution. Information regarding the sub-contractors Jisc uses from time to time in connection with the performance of the Learning Analytics Services can be found on the LA Community Site.
- 12.2** Jisc may from time to time disclose Institution Data to its sub-contractors (or allow its sub-contractors to access Institution Data) for Processing solely in connection with the performance of the Learning Analytics Services.
- 12.3** Where Jisc uses a sub-contractor to Process Institution Data for or on its behalf, it will ensure that the sub-contractor contract (as it relates to the Processing of Personal Data) is on terms which are substantially the same as, and in any case no less onerous than, the terms set out in Clause 9 of this Agreement; provided that, in the case of Jisc's appointment of (i) an Affiliate of Jisc, and (ii) Amazon Web Services, Jisc's obligations under this Clause 12.3 shall be limited to ensuring that the sub-contract is on terms which are substantially the same as the terms set out in Clause 9 of this Agreement.
- 12.4** Jisc shall remain liable to the Institution for the acts, errors and omissions of any of its sub-contractors to whom it discloses Institution Data, and shall, be responsible to the Institution for the acts, errors and omissions of such sub-contractor as if they were Jisc's own acts, errors and omissions to the extent that Jisc would be liable to the Institution under this Agreement for those acts and omissions.

13. TRANSFERS TO INSTITUTION'S SUPPLIERS

- 13.1** The Institution may from time to time request that Jisc transfer or make available Institution Data to its third party supplier by completing a Jisc Instruction Form. In such cases Jisc is under no obligation to transfer or make the Institution Data available to the third party supplier but will use reasonable endeavours to facilitate this and may charge the Institution to do so should Jisc incur costs in setting up a secure transfer mechanism. Any charges will be agreed with the Institution in advance of any proposed transfer.
- 13.2** For the purposes of this Agreement, a third party supplier as set out in Clause 13.1 above is not a sub-contractor of Jisc.

14. WARRANTIES, REPRESENTATIONS AND UNDERTAKINGS

- 14.1** Each Party hereby warrants, represents and undertakes to the other Party that:
- 14.1.1** this Agreement is executed by a duly authorised representative of that Party;
 - 14.1.2** it has, and will have for the duration of this Agreement, full capacity and authority required to enter into this Agreement and perform its obligations as set out in this Agreement;
 - 14.1.3** it will comply with all Applicable Law and other governmental, statutory or regulatory requirements and guidance which may from time to time be applicable in relation to the subject matter of this Agreement; and

- 14.1.4** it has, at the date of this Agreement, obtained and will, for the duration of this Agreement, maintain all licences, rights, permits, permissions, certificates, qualifications, consents and regulatory approvals required lawfully and properly to perform its obligations, and grant the rights granted by it, under this Agreement.
- 14.2** The Institution hereby warrants, represents and undertakes to Jisc that it has obtained all consents and licenses necessary for the transfer to, and use by, Jisc of the Institution Data in accordance with this Agreement.
- 14.3** Jisc warrants, represents and undertakes to the Institution that it will use reasonable endeavours to ensure that it does not introduce any virus or other specific vulnerability into any information technology environment used by the Institution when installing software in those information technology environments pursuant to Clause 6.1.
- 14.4** Each Party's representations, warranties and undertakings are limited to those set out in this Agreement and any implied conditions or warranties are excluded to the fullest extent permitted by law.

15. CONFIDENTIALITY

- 15.1** The provisions of Clauses 8 and 9 shall apply in relation to the use and disclosure of Institution Data.
- 15.2** Each Party undertakes that it shall not, at any time during the Term or thereafter, disclose to any person any Confidential Information of the other Party, except as permitted by Clause 15.4.
- 15.3** Neither Party shall use the other Party's Confidential Information for any purpose other than to perform its obligations or exercising its rights under this Agreement.
- 15.4** Each Party may disclose the other Party's Confidential Information:
- 15.4.1** to its employees, officers, representatives, sub-contractors, advisers and / or Affiliates who need to know such information for the purposes of the Party exercising its rights or carrying out its obligations under this Agreement. Each Party shall ensure that its employees, officers, representatives, sub-contractors, advisers and Affiliates to whom it discloses the other Party's Confidential Information comply with this Clause 15 and are made aware of their obligations with regard to the security and protection of Confidential Information under this Agreement; and
 - 15.4.2** as may be required by law, court order or any governmental or regulatory authority.
- 15.5** In relation to the Confidential Information of the disclosing Party, the receiving Party agrees:
- 15.5.1** to use, as a minimum, the same degree of care it uses to protect its own Confidential Information of similar sensitivity, but in any event all reasonable care, to prevent unauthorised use, dissemination or publication of such information;
 - 15.5.2** not to reproduce, use or exploit such information for its own or any third party's benefit;
 - 15.5.3** to make copies of such information only as strictly necessary and not transmit it outside its usual place of business;
 - 15.5.4** in disclosing any Confidential Information as permitted by this Agreement, to comply with any Applicable Laws controlling or relating to the export of information; and
 - 15.5.5** to advise the disclosing Party promptly of any unauthorised use or disclosure of the disclosing Party's Confidential Information of which it becomes aware.
- 15.6** The obligations in Clause 15.1 do not apply to information which the receiving Party can show by reference to documentary or other evidence:

- 15.6.1** was rightfully in its possession prior to disclosure to it by the other Party and in respect of which that Party is not under an existing obligation of confidentiality;
 - 15.6.2** is already public knowledge or which becomes so at a future date (otherwise than as a result of breach of Clause 15.1 or of any other duty of confidentiality relating to that information);
 - 15.6.3** is received from a third party who is not under an obligation of confidentiality (express or implied) in relation to the information;
 - 15.6.4** is developed independently without access to, or use or knowledge of, the Confidential Information; or
 - 15.6.5** where the receiving Party is Jisc, is disclosed by Jisc to the bodies responsible for the funding of Higher and Further Education in England, Scotland, Wales and Northern Ireland as constituted from time to time and any other bodies which elect to participate in the funding of Jisc, provided that such information is disclosed under a duty of confidentiality.
- 15.7** On request by the disclosing Party, the receiving Party will immediately cease to use the disclosing Party's Confidential Information and, subject to Clause 15.8, will return or permanently and securely destroy, as the disclosing Party directs, all such Confidential Information and any other data, information, materials and records, which contains or is based on such Confidential Information, so that no such Confidential Information is retained by the receiving Party.
- 15.8** The receiving Party:
- 15.8.1** may retain one copy of the disclosing Party's Confidential Information if required for mandatory legal or regulatory reasons; and
 - 15.8.2** will not be required to remove any of the disclosing Party's Confidential Information that has been backed-up for archiving or business continuity purposes in the ordinary course of business.

16. LIABILITY

- 16.1** Subject to Clauses 16.2 and 16.3, each Party's aggregate liability to the other Party in respect of all claims arising in a given Year out of, or in connection with, this Agreement (including as a result of breach of contract, negligence or any other tort, under statute or otherwise) will in no event exceed in aggregate the greater of:
- 16.1.1** a sum equal to 100% of the Charges paid and payable under this Agreement to Jisc in that Year; and
 - 16.1.2** £10,000.
- 16.2** Subject to Clause 16.3, neither Party will be liable to the other for:
- 16.2.1** any loss (whether direct or indirect) of revenue or profits;
 - 16.2.2** any loss (whether direct or indirect) of anticipated savings;
 - 16.2.3** any loss (whether direct or indirect) of business opportunity;
 - 16.2.4** any loss (whether direct or indirect) of goodwill or injury to reputation; or
 - 16.2.5** indirect, consequential or special loss or damage,
- in each case arising out of, or in connection with, this Agreement, including as a result of breach of contract, negligence or any other tort (under statute or otherwise) and regardless of whether the defendant party knew or had reason to know of the possibility of the loss, injury or damage in question.
- 16.3** Nothing in this Agreement will exclude, limit or restrict:

16.3.1 either Party's liability for:

- (a) death or personal injury resulting from the negligence of that Party (or its officers, agents or employees);
- (b) fraud or fraudulent misrepresentation committed by that Party (or its officers, agents or employees); or
- (c) any other matter in respect of which liability cannot by Applicable Law be limited; and

16.3.2 the Institution's liability in respect of the Charges due and payable by the Institution hereunder.

17. FREEDOM OF INFORMATION OBLIGATIONS

- 17.1** Jisc is not subject to the requirements of the Freedom of Information Laws and is not obliged to respond to requests for information under the Freedom of Information Laws (**Request for Information**). Without prejudice to the foregoing, and subject to the Institution's compliance with Clause 17.2, Jisc will endeavour to inform the Institution within two (2) Business Days and endeavour to respond to any Request for Information in the spirit of the Freedom of Information Laws where reasonably able to do so. Jisc and the Institution will assist and cooperate with each other if a Request for Information is received by Jisc.
- 17.2** Jisc acknowledges that the Institution will be obliged to respond to any Request for Information as it is subject to the requirements of the Freedom of Information Laws. The Institution shall be responsible for determining in its absolute discretion and, notwithstanding any other provision in this Agreement or any other agreement, whether any information is exempt from disclosure in accordance with the provisions of the Freedom of Information Laws. Without prejudice to the foregoing, if the Institution receives a Request for Information and such request includes commercially sensitive information or Confidential Information of Jisc under the Freedom of Information laws, the Institution shall, as soon as reasonably practicable, notify Jisc of such request and shall consult with Jisc and consider any representations which Jisc may make in relation to the requested disclosure prior to deciding whether to comply with or to refuse the request (in whole or in part).
- 17.3** Jisc acknowledges that basic details of this Agreement may be included in the appropriate online information asset register under the Institution's publication scheme.

18. TERMINATION

- 18.1** Either Party may terminate this Agreement (in whole or in part) with immediate effect by giving notice in writing to the other Party if:
- 18.1.1** the other Party commits a material breach of this Agreement (being a single event or series of events which are together a material breach) which is either not capable of being remedied or, if the breach is capable of being remedied, the other Party fails to remedy such breach within thirty (30) days of receiving written notice requiring it to do so; or
 - 18.1.2** any encumbrancer takes possession of or a receiver, administrative receiver or similar officer is appointed over any of the property or assets of the other Party or if the other Party makes any voluntary arrangement with its creditors or becomes subject to an administration order or has an administrator appointed or goes into liquidation or has a resolution for its winding-up passed (except for the purpose of amalgamation or reconstruction not involving insolvency where the resulting entity agrees to be bound by or assumes the obligations imposed on the other Party) or anything analogous to any of these events under the law of any jurisdiction occurs in relation to the other Party or if the other Party ceases or threatens to cease to carry on business.

18.2 The Institution may terminate this Agreement in accordance with Clauses 2.2, 4.7 (if applicable) or 22.

18.3 Jisc may terminate this Agreement in accordance with Clauses 2.2 or 22.

19. REVISIONS

19.1 In order to continuously improve its operations, Jisc may from time to time revise these Terms and Conditions.

19.2 Jisc acknowledges that revisions implemented pursuant to Clause 19.1 (**Revisions**) are intended to clarify or improve the Institution's rights or benefits.

19.3 Revisions will be automatically effective 90 days after being published on the Jisc Site.

19.4 If any Revision would reduce the Institution's rights or benefits, then Jisc will notify the Institution as well as publishing the Revision on the Jisc Site.

19.5 If the Institution, acting reasonably, cannot accept any Revision, it may terminate the Agreement by giving Jisc written notice not less than 60 days prior to the date when the Revision would become effective. In such case, the Institution will be entitled to a pro-rata rebate of Charges already paid for Learning Analytics Services that would have been supplied subsequent to the date of termination.

20. CONSEQUENCES OF TERMINATION

20.1 The termination of this Agreement (howsoever caused) will not affect any rights and/or liabilities of either Party which have accrued before termination or expiry, or any provision of this Agreement which expressly or by implication is intended to come into or continue in effect on or after termination or expiry.

20.2 The rights and obligations of the Parties under this Agreement which are intended to continue beyond the termination or expiry of this Agreement (including those under Clause 8 (*Controller Obligations*), Clause 9 (*Processor Obligations*), Clause 10 (*Intellectual Property Rights*), Clause 15 (*Confidentiality*), Clause 15 (*Liability*), Clause 19 (*Consequences of Termination*), Clause 23.2 (*Rights of Third Parties*), and Clause 25 (*Governing Law and Jurisdiction*)) shall continue in full force and effect.

21. ASSIGNMENT

21.1 Either Party may assign, transfer or otherwise dispose of any of its rights, liabilities and/or obligations under this Agreement on a temporary or permanent basis to an Affiliate without the prior written consent of the other Party.

21.2 Subject to Clause 21.1, neither Party may assign, transfer or dispose in any way any of its rights, liabilities and/or obligations under this Agreement on a temporary or permanent basis to any third party (other than to an Affiliate in accordance with Clause 21.1) without the prior written consent of the other Party (such consent not to be unreasonably withheld or delayed).

22. FORCE MAJEURE

22.1 Notwithstanding anything herein to the contrary but subject to Clause 22.2, neither Party will be liable for any delay or failure in performance of any part of this Agreement, to the extent such delay or failure is attributable to a Force Majeure Event.

- 22.2** Where a Party is prevented from carrying out its obligations as a result of a Force Majeure Event, it will notify the other Party immediately and will agree an action plan with the other Party (each Party acting reasonably), at the cost of the Party prevented from carrying out its obligations as a result of the Force Majeure Event, to mitigate the effects of the Force Majeure Event on the performance by that Party of its obligations under and in accordance with this Agreement.
- 22.3** If either Party is prevented from performing its obligations for more than twenty five (25) Business Days due to a Force Majeure Event then either Party will be entitled to terminate this Agreement without liability to the other forthwith on giving written notice of termination to the other.

23. GENERAL TERMS

- 23.1** The Parties acknowledge that in entering into this Agreement they are not relying on, and shall have no rights or remedies (whether in tort, under statute or otherwise) in respect of any statements, collateral or other warranties, assurances, undertakings or representations (whether innocently or negligently made) by another Party.
- 23.2** A person who is not a Party to this Agreement has no rights to enforce any term of this Agreement (whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise).
- 23.3** The failure to exercise, or delay in exercising, a right, power or remedy provided by this Agreement or by law shall not constitute a waiver of that right, power or remedy. If a Party waives a breach of any provision of this Agreement this shall not operate as a waiver of a subsequent breach of that provision, or as a waiver of a breach of any other provision.
- 23.4** The rights and remedies provided in this Agreement are cumulative and unless otherwise provided in this Agreement are not exclusive of any rights and remedies provided at law, in equity or otherwise under this Agreement.
- 23.5** Subject to Clause 19, no variation of this Agreement shall be valid unless recorded in writing and signed by or on behalf of each of the Parties to this Agreement.
- 23.6** If any provision of this Agreement (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain unaffected and in force. The Parties agree, in such circumstances, to attempt to substitute for any invalid or unenforceable provision a valid or enforceable provision which achieves to the greatest extent possible the same effect as would have been achieved by the invalid or unenforceable provision.
- 23.7** This Agreement may be executed in any number of counterparts, each of which shall be an original and all of which shall together constitute a single agreement.
- 23.8** This Agreement constitutes the entire agreement and understanding between the Parties in respect of the matters dealt with in them and supersedes any previous agreement between the Parties relating to such matters.
- 23.9** The relationship of Jisc to the Institution is that of independent contractor. Neither Party is agent for the other, nor does either Party have any authority to enter into any contract, whether expressly or by implication, in the name of the other Party, without that Party's prior written consent.
- 23.10** It is further agreed and acknowledged that Jisc does not act as the appointed representative of the Institution, and does not have any authority to appoint any other intermediary to act as appointed representative of the Institution.

24. NOTICES

24.1 A notice given under this Agreement:

24.1.1 shall be in writing (which may include email);

24.1.2 shall be sent for the attention of the person, and to the address given in this Clause 24 (in the case of Jisc) or given in the Order Form (in the case of the Institution) (unless otherwise notified by the recipient Party of an alternative person or address, such notice to take effect five (5) Business Days from the notice being received); and

24.1.3 shall be delivered personally; or sent by registered post; or sent by e-mail transmission to the relevant email address specified in Clause 24.2 or the Order Form (as applicable).

24.2 The address for service of notice to Jisc is:

Address: Jisc, 15 Fetter Lane, London EC4A 1BW

Email address: da.businessoperations@jisc.ac.uk and must be copied by email to legal@jisc.ac.uk

For the attention of: Learning Analytics Service Manager

24.3 A notice is deemed to have been received:

24.3.1 if delivered personally, at the time of delivery; or

24.3.2 in the case of registered post, forty-eight (48) hours from the date of posting; or

24.3.3 in the case of e-mail, at the time of transmission, provided no error message is received indicating failure to deliver and further provided that a confirmatory copy is sent by registered post or by personal delivery before the end of the next Business Day; and

24.3.4 if deemed receipt under the previous paragraphs of this Clause 24.3 would result in the notice being received outside of business hours (meaning 9.00 am to 5.30 pm on a Business Day), the notice will be deemed to have been received at 9.00 am on the next Business Day.

24.4 To prove service, it is sufficient to prove, in the case of email, that the notice was transmitted by e-mail to the correct email address of the relevant Party and in the case of post, that the envelope containing the notice was properly addressed and posted.

25. GOVERNING LAW AND JURISDICTION

25.1 This Agreement and any non-contractual obligations arising out of or in connection with it shall be governed by and interpreted in accordance with the laws of England.

25.2 Each Party irrevocably submits to the exclusive jurisdiction of the courts of England and Wales over any claim or matter arising under, or in connection with, this Agreement.