

Thrive Group Companies' standard terms and conditions ("Standard Terms")

The Customer's attention is specifically drawn to clause 8 (Third Party Providers and AI), clause 15 (Limited Warranty and Customer Reliance), clause 16 (Indemnity), clause 17 (Limitation of Liability) and clause 19.3 (Auto Renewal).

1. Definitions and Interpretation

- 1.1 The definitions in the Order Form shall have the same meanings as in the Standard Terms and in addition, the following definitions and rules of interpretation in this clause apply to these Standard Terms:

Additional Services: any services that may be provided by the Supplier pursuant to an Order Form Variation in addition to those the Supplier agrees to supply from the Start Date. Those Additional Services may include services provided by another Thrive Group Company.

Affiliates: means any person which is, in relation to a company, its parent undertaking or its subsidiary undertaking, or a subsidiary undertaking of its parent undertaking or any other person controlled by or under the same control either directly or indirectly. "Parent undertaking" and "subsidiary undertaking" will have the meanings attributed to them in section 1162 of the Companies Act 2006.

AI: artificial intelligence.

AI Tools: the AI tools used by the relevant Thrive Group Company in the course of providing the Services from time to time, details of which are set out at [Supplier LMS AI - Thrive \(thrivelearning.com\)](#)

App: the mobile software application known as the "Thrive App" which may be licensed to the Customer by the Supplier for use as part of the Services from time to time, with Thrive's branding or on a 'white label' basis.

Authorised Users/ Enabled Users: those employees, agents and independent contractors of the Customer (and where the context permits those employees, agents and independent contractor of an Affiliate) who are authorised by the Customer to use the Services and the Documentation, as further described in clause 2.

Bespoke Content: content created on behalf of or by the Customer, either at the Customer's request or by the Customer as a result of its usage of the relevant Thrive Group Company's Platform (including the usage of the AI Tools).

Bespoke IPR: any and all IPR subsisting in the Bespoke Content.

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

Charges: the charges payable in accordance with the Order Form and clause 11 of these Standard Terms.

Cloud Platform: the AWS platform which hosts the Services for and on behalf of the relevant Thrive Group Company.

Code of Conduct: Supplier's (together with any relevant Thrive Group Company's)code of conduct from time to time which can be accessed via <https://www.thrivelearning.com/privacy-policy-terms-and-conditions/Supplier-code-of-conduct> or as otherwise advised by the relevant Thrive Group Company's website

Confidential Information: information that is proprietary or confidential to a party (including the Thrive Group Companies), is either clearly labelled as such or identified as Confidential Information in clause 13.5 or 13.6.

Configuration: a configuration of the Services (as the case may be) for the business scope specified in the Order Form, using the Configurator Tool and "Configure" shall be construed accordingly.

Content: content provided by the relevant Thrive Group Company as part of the Platform(s) or other content offered by the relevant Thrive Group Company from time to time.

Controller, processor, data subject, personal data, personal data breach, processing and appropriate technical and organisational measures: as defined in the Data Protection Legislation.

Customer Data: the data inputted by the Customer, Authorised Users, or the relevant Thrive Group Company (including the relevant Thrive Group Company's 's Sub-Processors as set out in the relevant Appendices to the DPA) on the Customer's behalf for the purpose of using the Services or facilitating the Customer's use of the Services.

Customer Infrastructure: the hardware, software and IT infrastructure owned or used by the Customer.

Customer IPR: all IPR owned by or licensed to the Customer now or in the future including but not limited to all IPR in and to:

- (a) the Customer's own website;
- (b) any trademarks, logos or branding owned by the Customer;
- (c) Customer Data; and
- (d) Report Data (excluding report templates forming part of the Thrive Group Company IPR).

Customer's Marks: the trading name, trading style and/or trade marks used by the Customer in the course of its business as specified in the Order Form (if applicable).

Customisation: any customisation of the Services, whether made through development, configuration (other than Configuration), modification or integration of any of the Platform(s) or otherwise.

Data Protection Legislation: includes the UK General Data Protection Regulation (**UK GDPR**), the Data Protection Act 2018 and the Privacy and Electronic Communications Regulations 2003 (as amended), together with amendments or replacement legislation if you are based in England and Wales. If you are based outside of the UK the EU GDPR 2016/679 will apply.

Data Migration: the transfer and import of any pre-existing customer data (if any) into the relevant Thrive Group Company's Platform.

Deliverables: all deliverables to be provided as per the Statement of Work.

DPA: a data processing agreement in the agreed form.

Documentation: the document(s) made available to the Customer by the relevant Thrive Group Company via the relevant Thrive Group Company's Platform from time to time, which sets out a description of the Services and includes user instructions for the Services.

Expenses: travel, accommodation and subsistence expenses that are necessary and reasonably incurred by the relevant Thrive Group Company exclusively in connection with the performance of Supplier's obligations under the Agreement .

Force Majeure Event: any of those events listed in clause 20

Good Industry Practice: the level of care and skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of business to the Supplier.

Implementation: the implementation of the Services in accordance with the Statement of Work.

IPR: means any and all intellectual property rights, including but not limited to: patents, rights to inventions, copyright and related rights, trademarks, trade names, domain names, rights to get-up, rights and good will or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, rights in source code, rights in databases, moral rights, rights in confidential information (including without limitation know-how and trade secrets) and any other intellectual property right in each case whether registered or unregistered and including all existing and future rights capable of present assignment, applications for and renewals or extensions as such rights, and/or similar or equivalent rights or forms of protection in any part of the world.

Maintenance and Support: any error corrections, updates and upgrades that Supplier may provide or perform with respect of the Supplier Platform (or any other Platform as applicable) in accordance with the SLA, as well as any other support or training services provided to the Customer under the agreement as described in the Statement of Work.

Maintenance Release: a release of the Platform(s) that corrects faults, adds functionality or otherwise amends or upgrades the Platform(s) but which does not constitute a New Version.

New Version: any new version of the Platform(s) which is from time to time publicly marketed and offered for purchase by Supplier in the course of its normal business, being a version which contains such significant differences from the previous versions as to be generally accepted in the marketplace as constituting a new product.

Normal Business Hours: 9.00 am to 5.00 pm local UK time, each Business Day.

Order Form Variation: a form called “Order Form Variation” authored by Supplier, to be used where a Customer requests any changes or variations to the Services.

Report Data: data in any media generated or produced by virtue of the use of the Services.

Services: the subscription services, Content and Documentation made available or provided by Supplier (which may also include services supplied by the relevant Thrive Group Company from time to time) to the Customer under the Agreement, as more particularly described in the Order Form, or the Order Form Variation (as the case may be).

SLA: the Supplier’s service level agreement, detailing the particulars of Supplier’s standard Maintenance and Support, together with the target service level standards.

Statement of Work: the statement of work detailing Implementation and other services (if any). “Statement of Work” shall also be deemed to include a reference to “Implementation Methodology.”

Supplier: shall be the applicable Thrive Group Company as stated on the Order Form.

Supplier Platform: the Supplier software learning platform that may be provided as part of the Services, accessed via [customer.learn.link](#) .

Thrive Group Company: shall mean either of Thrive, or Guider or any other Affiliate of Thrive as the context permits or and “Thrive Group Companies” shall mean all of them.

Thrive: Thrive Learning Limited (company number 10988277).

Guider: Guider Global Limited (company number 11388427).

Thrive Group Company IPR: all IPR created, owned by or licensed to the relevant Thrive Group Company now or in the future including but not limited to all IPR in and to:

- (a) the Services;
- (b) the Platform(s) (including but not limited to their entire code bases and graphical assets) including any Updates, Maintenance Releases and New Versions;
- (c) Content;
- (d) Bespoke Content;
- (e) the App;
- (f) any report templates;
- (g) any database or database architecture used in connection with any of the Platform(s), proprietary to the relevant Thrive Group Company;
- (h) the Thrive Group Companies’ configurator tools (Configurator Tools); and
- (i) all trademarks, logos and branding used by Supplier or any other Thrive Group Company (save for the Customer’s trademarks, logos and branding).

Terms of Use: the relevant Thrive Group Company’s terms of use for the Services (including for the avoidance of doubt any terms of use and/or licence in connection with the use of the App), which can be accessed via the relevant Thrive Group Company’s website.

UK Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

Update: a minor update, patch or hotfix to the Platform (s) and or the Content.

User Subscriptions: the user subscriptions purchased by the Customer in accordance with the provisions of the Agreement which entitle the Customer and its Authorised Users to use and access the Services.

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 rearranging, 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.

(a) Clause (any Schedules) and paragraph headings shall not affect the interpretation of these Standard Terms. (b) 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 (c) A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established. (d) Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular (e) Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders. (f)A reference to a statute or statutory provision is a reference to it as it is in force from time to time. (g) A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of the Order Form under that statute or statutory provision. (h) A reference to writing or written excludes faxes but includes email; (i) Any words following the terms **including, include, in particular, for example** or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms; and (j) references to clauses are to the clauses of these Standard Terms unless expressly stated otherwise.

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2. User subscriptions and Affiliate Company Usage

- 2.1 Subject to the Customer paying the Charges on the dates due and payable, and otherwise complying with the terms of the Agreement, the Supplier hereby grants to the Customer during the Subscription Term (subject to early termination in accordance with clause 20.5) a non-exclusive, non-transferable right, without the right to grant sublicences (unless otherwise specified in the Statement of Work or save to the extent expressly provided by the Agreement), to permit the Authorised Users to:
- (a) use the Services for the Customer's own internal business operations; and
 - (b) (where the App is being provided as part of the Services), to integrate the Services into the App, to provide the Services to its Authorised Users and to permit those Services to be used in connection with the Customer's Marks.
- 2.2 The Customer and its Affiliates (where Affiliate Company Usage is not prohibited in accordance with the terms of the Order Form) shall have the right during the Term to configure the Services using the Configurator Tool(s).
- 2.3 Subject to such usage not being prohibited in accordance with the terms of the Order Form, the Customer may permit the Services to be used by its Affiliates (Affiliate Company Usage), provided:
- (a) it gives prior written notification to Supplier; and
 - (b) in permitting its Affiliates to use the Services, the Customer procures that such Affiliates shall do nothing to put the Customer in breach of this Agreement and, the Customer does not exceed the maximum number of Authorised Users.
- 2.4 If the Configuration at clause 2.2, and/or the usage at clause 2.3 results in the Customer and/or its Affiliates (as applicable) requiring additional instances of the Supplier Platform, the parties will follow the procedure set out at clause 4 of these Standard Terms.
- 2.5 The Customer shall be liable for any breaches by the Affiliates of the Agreement as if those Affiliates were a party to the Agreement.
- 2.6 The Customer shall not represent itself as an agent of or any Thrive Group Company nor make any representations on behalf of any Thrive Group Company's behalf or commit any Thrive Group Company to any agreements. Further, the Customer shall not make any representations or warranties, guarantees or other commitments with respect to the Services.

2.7 In relation to the Authorised Users, the Customer undertakes that:

- (a) to the extent specified on the Order Form, the maximum number of Authorised Users that it authorises to access and use the Services shall not exceed the number of User Subscriptions it has purchased from time to time including Affiliate Company Usage and associated Authorised Users (if applicable);
- (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 Services;
- (c) each Authorised User shall keep a secure password for his use of the Services and Documentation, and that each Authorised User shall keep their password confidential; and

2.8 The Customer 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 the 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 Platform(s) 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 Platform(s); or
- (b) access all or any part of the Services in order to build a product or service which competes with the Platform (s) or any of the Services; or save as expressly provided in this clause 2, use the Services or any part of the Services to provide services to third parties; or
- (c) subject to clause 2.2 and clause 27.1, licence, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services or any part of the Services available to any third party except the Authorised Users, or
- (d) subject to clause 2.3, attempt to obtain, or assist third parties in obtaining, access to the Services or any part of the Services , other than as provided under this clause 2; and/or

- (e) knowingly introduce, permit or allow the introduction of, any Virus into any Thrive Group Company's 's network and information systems.
- 2.9 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services or any part of the Services and, in the event of any such unauthorised access or use, promptly notify the Supplier.
- 2.10 Subject to clause 2.3, the rights provided under this clause 2, are granted to the Customer only, and shall not be considered granted to any subsidiary or holding company of the Customer.

3. Implementation and Data Migration

If the parties agree that the Supplier will assist the Customer with the Implementation and any Data Migration, the details will be outlined in the Statement of Work.

4. Changes to the Agreement

- 4.1 If the Customer requires any changes to the Services , it shall contact the Supplier via phone or email to discuss.
- 4.2 Upon receiving such request, the Supplier will provide the Customer with a proposed Order Form Variation and Statement of Work (if applicable) which shall include:
 - (a) A description of the Additional Services to be provided by Supplier or the relevant Thrive Group Company;
 - (b) Any estimated timelines for delivery ;
 - (c) The fees payable in relation to the additional services; and
 - (d) Any other applicable information or details.
- 4.3 Unless the parties agree to the terms of the Order Form Variation (which shall be effective upon signature by both the Customer and the Supplier), the Agreement shall continue without any variation. If the parties are able to agree the terms of the Order Form Variation, the Agreement shall be varied to the minimum extent necessary to accommodate the variations to the Agreement, save that the Subscription Term shall be deemed to be automatically extended to be co-terminus with the expiration of the provision of any additional services, unless the Order Form Variation states otherwise .

5. Services

- 5.1 Subject to the payment of the Charges on the due dates for payment, the Supplier will provide or the Supplier shall procure that the relevant Thrive Group Company shall provide, the Services during the Term to the Customer on and subject to the terms of the Agreement.
- 5.2 Unless expressly stated in an Order Form or Statement of Work agreed between the parties, the Services do not include any product development, custom development, feature creation, or other engineering work. Any such work will be subject to a separate written agreement or statement of work and associated Charges.

6. Customer data

- 6.1 The Customer shall own all right, title and interest in and to all of the Customer Data and Report Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of all such Customer Data and Report Data, save to the extent that such data is unreliable, lost or corrupt due a breach by Supplier (or the relevant Thrive Group Company) of its obligations under the Agreement.

7. Data Protection and Data Security

- 7.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 7 is in addition to, and does not relieve, remove or replace, a party's obligations under Data Protection Legislation.
- 7.2 The Supplier may by Customer consent (not to be unreasonably withheld or delayed), at any time on not less than 30 days' notice, revise this clause 7 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).
- 7.3 The parties shall comply with the DPA.
- 7.4 Without prejudice to Supplier's rights to terminate the Agreement in accordance with the provisions of clause 19.4, the Supplier reserves the right to suspend the Customer's access to the Services at any time to the extent that, in the reasonable opinion of the Supplier, the security or any part of Supplier or the relevant Thrive Group Company's systems is in jeopardy due the Customer's access of the relevant Services.

8. Third party providers and use of AI

- 8.1 The Customer acknowledges that the Services may enable or assist it to access the website content of, correspond with, and purchase products and services from, third parties via third-party websites and that it does so solely at its own risk. The Supplier makes no representation, warranty or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such third-party website, or any transactions completed, and any contract entered into by the Customer, with any such third party. Any contract entered into and any transaction completed via any third-party website is between the Customer and the relevant third party, and not the Supplier. The Supplier recommends that the Customer refers to the third party's website terms and conditions and privacy policy prior to using the relevant third-party website. The Supplier does not endorse or approve any third-party website nor the content of any of the third-party website made available via the Services.
- 8.2 The Customer has the option of activating or disabling the use of certain (but not all) AI Tools as part of its usage and interaction with the Services. If the Customer activates the usage of those AI Tools, the Customer acknowledges and agrees that such usage will be subject to third party terms and conditions. Supplier shall have no liability to the Customer whatsoever or howsoever arising in connection with services offered by third parties and/or the usage of the AI Tools.
- 8.3 If the Customer uses the AI Tools, it acknowledges that such usage may be subject to payment of additional costs and expenses as may be advised by Supplier from time to time.
- 8.4 The parties acknowledge and agree that the Customer's access to the Cloud Platform shall be subject to its compliance with <https://aws.amazon.com/aup>, unless otherwise advised by the Supplier.

9. Supplier 's obligations

- 9.1 The Supplier undertakes that the Services will be performed with reasonable skill and care and in accordance with Good Industry Practice.
- 9.2 The Supplier will provide Maintenance and Support services in accordance with the SLA, save that the timescales and resolution times in the SLA are targets only and shall not be contractually binding upon Supplier.
- 9.3 The undertaking at clause 9.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to the Supplier 's instructions, or modification or

alteration of the Services by any party other than the Supplier , the Supplier 's duly authorised contractors or agents or a Thrive Group Company. If the Services do not conform with the foregoing undertaking, Supplier will, at its expense, use all reasonable commercial endeavours to correct (or procure that the relevant Thrive Group Company corrects, as applicable) any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in clause 9.1.

- 9.4 The Agreement shall not prevent the Supplier or any other Thrive Group Company from entering into the same or similar agreements with third parties or from independently, using, selling or licensing documentation, products and/or services which are the same or similar to those provided under the Agreement.

10. Customer's obligations

- 10.1 The Customer shall:

- (a) provide the Supplier (and any applicable Thrive Group Company) with:
 - (i) all necessary co-operation in relation to the Agreement; and
 - (ii) all necessary access to such information as may be required by the Supplier and any relevant Thrive Group Company) ,

in order to provide the Services, including but not limited to Customer Data, security access information and configuration services;

- (b) carry out all other Customer responsibilities set out in the Agreement in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, the Supplier may adjust any agreed timetable or delivery schedule as reasonably necessary;
- (c) ensure that the Authorised Users (and its Affiliates where applicable), use the Services and the Documentation in accordance with the terms and conditions of the Agreement, The Supplier's Terms of Use and shall be responsible for any Authorised User's breach of the Agreement;
- (d) comply with the relevant Code(s) of Conduct ; and
- (e) be (to the extent permitted by law and except as otherwise expressly provided in the Agreement) solely responsible for procuring, maintaining and securing its network connections and telecommunications links from its systems to Supplier's

(or the relevant Thrive Group Company as applicable) data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.

11. Charges and payment

- 11.1 The Customer shall pay the Charges to Supplier in accordance with this clause 11, the Order Form and any Order Form Variation (if applicable).
- 11.2 All Charges are non-cancellable and non-refundable, unless there is a material breach by the Supplier of the Agreement.
- 11.3 The Supplier shall invoice the Customer at, on or before the Start Date. Supplier will then invoice the Customer at such frequencies as set out in the Order Form and/or Order Form Variation (if applicable). If the Supplier has not received payment within 30 days after the due date, and without prejudice to any other rights and remedies that Supplier may have:
- (a) the Supplier may, without liability to the Customer, disable and/or suspend the Customer's and its Authorised Users passwords, accounts and access to all or part of the Services and the Supplier shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and
 - (b) interest shall accrue on a daily basis on such due amounts at an annual rate equal to 4% over the then current Bank of England base rate from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.

12. Proprietary rights

- 12.1 The Customer acknowledges and agrees that the Thrive Group Companies and/or its licensors own all IPR in and to the Thrive Group Companies IPR. Except as expressly stated herein, this agreement does not grant the Customer any rights to or licences of the Thrive Group Companies IPR.
- 12.2 The Customer undertakes that it shall not and shall procure that its Authorised Users shall not:
- (a) use any Thrive Group Companies IPR in any way which might prejudice any distinctiveness, validity or the goodwill of Thrive Group Companies ; or
 - (b) use any trademarks or trade name so resembling any trademark or trade names of any Thrive Group Company so as to be likely to cause confusion or deception.

- 12.3 Other than the licence granted by the Supplier under the Agreement, the Supplier does not grant any licence of, right in or makes any assignment of any of the Thrive Group Companies IPR. The Customer shall execute such documents and perform such acts as may be required by any Thrive Group Company to ensure the relevant Thrive Group Company has the full benefit of and title to, its IPR.
- 12.4 The Customer shall promptly give notice to Supplier in the event that it becomes aware of any actual or suspected infringement of any the Thrive Group Company IPR.
- 12.5 In the case of any matter falling within clause 12.4:
- (a) the Supplier shall in its absolute discretion determine what action if any shall be taken in respect of the matter;
 - (b) the Supplier or the relevant Thrive Group Company (as applicable) shall have sole control over and shall conduct any consequent action as it shall deem necessary; and
 - (c) the Supplier or the relevant Thrive Group Company (as applicable) shall pay all costs in connection with that action (provided the Customer has not infringed any Thrive Group Company IPR) and shall be entitled to all damages and other sums which may be paid or awarded as a result of any such action.
- 12.6 The Customer shall, at the request and expense of Supplier, provide all reasonable assistance to the other (including but not limited to, the use of its name in or being joined as a party to, proceedings) in connection with any action to be taken by Supplier or the relevant Thrive Group Company related to an infringement of the Thrive Group Company IPR, provided the Customer is given an indemnity as to costs/ expenses or damages and provided always that the Customer is not infringing the Thrive Group Company IPR.
- 12.7 The Supplier acknowledges and agrees that the Customer and/or its licensors own all IPR in and to the Customer IPR. The Supplier is granted a non-exclusive, royalty free licence of the Customer IPR with the right to sub licence to any relevant Thrive Group Company, to the extent necessary to enable the Supplier to perform its obligations under the Agreement.
- 12.8 The Customer grants the Supplier a non-exclusive revocable licence to use the Customer's branding and logo to market, promote and sell Services to other customers and potential customers.

13. Confidentiality

- 13.1 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.
- 13.2 Subject to clause 13.4, 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 the Agreement..
- 13.3 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 the Agreement.
- 13.4 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 13.4, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.
- 13.5 The Customer acknowledges that the Thrive Group Companies IPR (to the extent not in the public domain), details of the Services, and the results of any application vulnerability tests and performance tests of the Services, constitute the Thrive Group Companies' 's Confidential Information. In addition, "Confidential Information" shall include any information relating to a party or a Thrive Group Company's business, affairs, finances, trade secrets and know-how.
- 13.6 The Supplier acknowledges that the Customer Data is the Confidential Information of the Customer.

- 13.7 No party shall make, or permit any person to make, any public announcement concerning the Agreement without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.
- 13.8 The provisions of this clause 13 shall survive termination of the Agreement, however arising.

14. Compliance

- 14.1 The parties shall at all times comply with all applicable laws, statutes and regulations relating to slavery, involuntary servitude, debt bondage, force labour or human trafficking (including the Modern Slavery Act 2015).
- 14.2 Breach of this clause 14 shall be deemed to be material breach.

15. Limited Warranty and Customer Reliance

- 15.1 The Supplier warrants that the Services will comply with the terms set out in the Statement of Work.
- 15.2 The Supplier warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under the Agreement.
- 15.3 No warranties or representations are made or given by the Supplier or any Thrive Group Company that the Customer's and their Authorised Users that:
- (a) the Customer's and the Authorised User's use of the Services will be uninterrupted or error-free;
 - (b) subject to clause 15.1, the Services and/or the information obtained by the Customer or its Authorised Users through the use of the Services will meet their requirements; or
 - (c) the Customer's IT infrastructure (including their internet connection with sufficient bandwidth), is suitable and fit for use and has the required capability to support the use of the Services.
- 15.4 The Customer acknowledges and agrees that any reliance upon the Content and/or any training videos or materials provided to the Customer by the Supplier or any other Thrive Group Company (**Training Materials**), is entirely at the Customer's own risk. Subject to

clause 17.2, neither the Supplier nor any other Thrive Group Company shall have no liability to the Customer to its directors, officers, employees, agents or contractors whatsoever or howsoever arising for any reliance placed, steps taken or omissions by the Customer, its directors, officers, employees, agents or contractors by virtue of the viewing, use, interaction or reliance placed on the Training Materials.

16. Indemnity

16.1 Customer Indemnification: The Customer shall defend, indemnify Supplier and any applicable Thrive Group Company 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 Customer's use of the Services. The Customer's liability under or in connection with the indemnity set out in this clause 16.1 shall be limited in the amounts set out at clause 17.3.

16.2 Supplier Indemnification: The Supplier shall defend the Customer, its officers, directors and employees against any claim that the Customer's use of the Services or Documentation in accordance with this agreement infringes any United Kingdom patent effective as of the Commencement Date, copyright, trade mark, database right or right of confidentiality, and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims. Supplier's liability under or in connection with the indemnity set out in this clause 16.2 shall be limited in the amounts set out at clause 17.3.

16.3 In no event shall Supplier, its directors, officers, employees, agents and subcontractors be liable to the Customer to the extent that the alleged infringement is based on:

- (a) a modification of the Services or Documentation by anyone other than the Supplier or any applicable Thrive Group Company ; or
- (b) the Customer's use of the Services in a manner contrary to the instructions given to the Customer by Supplier or any applicable Thrive Group Company ; or
- (c) use of the Services otherwise than in accordance with the Agreement; or
- (d) the Customer's use of the Services after notice of the alleged or actual infringement from the Supplier or any applicable Thrive Group Company or any body or authority of Competent jurisdiction

16.4 The indemnification provided in clause 16.2 is conditional on:

- (a) The Supplier being given prompt notice of any such claim to Supplier;

- (b) The Customer providing all reasonable co-operation to the in the defence and settlement of such claim, at the indemnifying parties expense; and
 - (c) Supplier or the relevant Thrive Group Company (as applicable) being given sole authority to defend or settle the claim.
- 16.5 In the defence or settlement of any claim, the Supplier may procure the right for the Customer to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate this agreement on 5 Business Days' notice to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer.
- 16.6 The foregoing states the Customer's sole and exclusive rights and remedies, against the Supplier(including the Supplier's employees, agents and subcontractors) including for the avoidance of doubt the Supplier's entire obligations and liability, for infringement of any IPR. or right of confidentiality.

17. Limitation of liability

- 17.1 Except as expressly and specifically provided in the Agreement:
 - (a) the Customer assumes sole responsibility for results obtained from the use of the Services by the Customer, and for conclusions drawn from such use. Neither the Supplier nor any Thrive Group Company shall assume any responsibility and shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to Supplier or any Thrive Group Company by the Customer in connection with the Services, or any actions taken by Supplier or any Thrive Group Company at the Customer'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 Services and the Documentation are provided to the Customer on an "as is" basis.
- 17.2 Nothing in the Agreement excludes the liability of either party:
 - (a) for death or personal injury caused by a party's own negligence; or
 - (b) for fraud or fraudulent misrepresentation.

- 17.3 Subject to clause 17.1 and clause 17.2 :

- (a) neither party shall be liable to the other party 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 (save where we are in breach of our obligations under the data protection legislation), or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under the Agreement, save that this clause 17.3 (a) shall not limit the Customer's payment obligations; and
- (b) both party's total aggregate liability in contract, tort including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Agreement shall be limited as follows:
 - (i) the sum of £1 million pounds in the case of any liability arising in connection with any claim or breach of a party's IPR;
 - (ii) £1 million pounds for an claims or breaches of Data Protection Legislation; and
 - (iii) 200% of the Charges due to Supplier under the Agreement in respect of any other loss, liability, claim, damages, expenses, costs, fines or penalties, arising under or in connection with the Agreement.

17.4 For the avoidance of doubt, in the event of a claim arising under or in connection with this Agreement, the Customer warrants and undertakes that it shall not bring any claim or action against or take any step in relation to any Thrive Group Company, other than the Supplier.

18. Non-solicitation

18.1 During the term of the Agreement and for a period of 12 months after its termination (howsoever arising):

- (a) neither party shall directly or indirectly solicit, hire, or attempt to solicit or hire any employee of the other party (and for the purpose of this clause 18.1(a) "other party" shall also include any other Thrive Group Company); and
- (b) The Customer shall not directly or indirectly solicit, hire, or attempt to solicit or hire any employee of any other Thrive Group Company,

without prior written consent of the other party or the relevant Thrive Group Company (as the case may be). This clause 18.1 does not restrict general recruitment efforts, such as job postings or advertisements, not specifically targeting the other party's employees.

- 18.2 If the Supplier (or the relevant Thrive Group Company as the case may be) provides its consent for the Customer to employ an employee of the Supplier or the relevant Thrive Group Company (as the case may be), the Customer shall be liable to pay the Supplier immediately on demand a sum equal to 30% of the employee's remuneration at the time Supplier gives its consent. The parties agree that this clause 18.2 is a genuine pre-estimate of Supplier's losses.

19. Term and termination

- 19.1 The Agreement shall, unless otherwise terminated as provided in this clause 19, commence on the Start Date and shall continue for the Subscription Term (which shall include for the avoidance of doubt, any extension thereof by virtue of any Order Form Variation).
- 19.2 60 days before expiration of the Subscription Term, the Supplier will provide the Customer with details of its pricing, together with other variations to the Agreement (Proposal), for a further term of 3 years (Renewal Term).
- 19.3 Automatic Renewal: If the Customer does not serve notice to terminate the Agreement by giving the Supplier not less than 30 days prior written notice to terminate the Agreement prior to the expiration of the Subscription Term, then subject to clause 19.4, the Agreement shall automatically renew on the terms and for the period set out in the Proposal.
- 19.4 Without affecting any other right or remedy available to it, either party may terminate the 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 28 days after being notified in writing to make such payment;
 - (b) the other party commits a material breach of any other term of the Agreement where the 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 the 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 the 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 19.4 (d) to clause (j) (inclusive 19.4); or
- (l) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

19.5 On termination of the Agreement for any reason:

- (a) all licences granted under the Agreement shall immediately terminate and the Customer shall immediately cease all use of the Services;

- (b) each party shall return and make no further use of any equipment, property, Documentation and other items (and all copies of them) belonging to the other party;
- (c) the Supplier may destroy or otherwise dispose of any of the Customer Data in its possession unless the Supplier receives, no later than ten Business Days after the effective date of the termination of the Agreement, a written request for the delivery to the Customer of the then most recent back-up of the Customer Data. The Supplier (or the relevant Thrive Group Company as applicable) shall use reasonable commercial endeavours to deliver the back-up to the Customer within 30 days of its receipt of such a written request, provided that the Customer has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The Customer shall pay all reasonable expenses incurred by the Supplier in returning or disposing of Customer Data; and
- (d) any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination shall not be affected or prejudiced.

20. Force majeure

- 20.1 The Supplier shall have no liability to the Customer under the Agreement if it is prevented from or delayed in performing its obligations under the 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, any other Thrive Group Company 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, epidemic, pandemic, accident, breakdown of plant or machinery, fire, flood, storm or default of the Supplier's (or any Thrive Group Company's) or sub-contractors (Force Majeure Event), provided that the Customer is notified of such an event and its expected duration.
- 20.2 A party affected by a Force Event shall notify the other party promptly, providing details of the expected duration of the Force Majeure Event.

- 20.3 If the Force Majeure Event continues for more than 30 consecutive days, either party may terminate the Agreement by serving 10 Business Days prior written notice on the other party.

21. Exit Planning

- 21.1 Save where the Agreement is terminated for any reason set out in clause 19.4, the Supplier shall, upon reasonable request by the Customer, provide the Customer with reasonable access to all available Customer Data and information (utilising a secure SFTP method) needed to complete the exit process as efficiently and effectively as possible. Any other data export work would need to be requested as a bespoke service and would be charged for in addition, subject to the terms of an agreed Order Form Variation and Statement of Work (if applicable).

22. Variation

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

23. Waiver

- 23.1 No failure or delay by a party to exercise any right or remedy provided under the 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.

24. Rights and remedies

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

25. Severance

- 25.1 If any provision or part-provision of the 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 the Agreement.

- 25.2 If any provision or part-provision of the Agreement is deemed deleted under clause 25.1, 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.

26. Entire agreement

- 26.1 The 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.
- 26.2 Each party acknowledges that in entering into the 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 the Agreement.
- 26.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Agreement.
- 26.4 Nothing in this clause shall limit or exclude any liability for fraud.

27. Assignment

- 27.1 The Customer may not assign the Agreement without the Supplier's written consent, save that Customer may assign or transfer the Agreement in connection with a sale of all or substantially all of Customer's assets (other than to a direct competitor of the Supplier and provided that the assignee agrees in writing to be bound by all terms and conditions of the Agreement) (**Proposed Assignment**). If the Customer wishes to effect a Proposed Assignment, it shall give the Supplier not less than 10 Business Days prior written notice. The Supplier may withhold its consent to a Proposed Assignment if in the Supplier's opinion the proposed assignee is not of good financial standing or is a credit risk or may otherwise result in a conflict of interest.
- 27.2 Any assignment by the Customer contrary to clause 27.1, shall be ineffective.

28. No partnership or agency

- 28.1 Nothing in the 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).

28.2 Third party rights. Save for the Thrive Group Companies who may enforce the Agreement in full, the 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.

29. Notices

29.1 Any notice required to be given under the Agreement shall be in writing and shall be delivered by hand, sent by pre-paid first-class post or recorded delivery post or via email to the other party at the relevant address set out in the Order Form, or such other address as may have been notified by that party in writing for such purposes.

30. 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 second Business Day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice sent by email shall be deemed to be received the next Business Day after transmission of the email. Any correspondence by email should be sent to commercial@thrivelearning.com.

31. Governing law The 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 laws of England.

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

