

G-Cloud 15 – Terms and Conditions

GO 4 Schools Management Information System

1. DEFINITIONS

"Agreement" means this contract of supply between Hyperspheric and Customer relating to the Products and Services subject to these conditions.

"Assignee" means a party to which Hyperspheric may assign its right, title and interest in and to the Products and Services and all payments due under this Agreement which shall include the right to enforce the payment of all sums due under this Agreement.

"Authority" means the Crown Commercial Service in the UK (or any subsequent assignees).

"Authorised Users" means those users who are authorised by the Customer to use the GO 4 Schools MIS.

"GO 4 Schools" means "GO 4 Schools Management Information System (MIS) Service provided by Hyperspheric

"Hyperspheric Software" see "Software"

"Hyperspheric" or "Company" means Hyperspheric Solutions Ltd.

"Call Off Contract" document that is part of the G Cloud Services 14 Framework Agreement.

"Contract Start Date" means the date that Hyperspheric commits resources to the contract and is the same as the Customer's purchase order date.

"Customer" means the school, academy, Multi-Academy Trust or other entity that is party to this contract with Hyperspheric.

"Delivery Date" means the date specified in the Call Off Contract for delivery of any non-SaaS Services or Software to the Site. This date may be varied from time to time in respect of any Product or service by Hyperspheric giving notice to Customer.

"Help Desk" is the GO 4 Schools Help Desk which provides help and guidance by telephone, Internet, email, or other means to the Customer subscribing to the Help Desk service. Hyperspheric Help Desk provides help and guidance in the understanding of the Software, in the use of the Software and with any problems experienced in using the Software and such help and guidance includes the examination of and the provision of a solution to any reported problems with the Software.

"Installation Date" means the date on which Hyperspheric creates an account on the SaaS infrastructure for the Customer.

"Other Software" means that software supplied by Hyperspheric, and not created by Hyperspheric or on its behalf.

"Products" means the Hyperspheric and Other Software and Services provided in the Agreement.

"SaaS" means Software provided to the Customer as a Service in the form of "Software as a Service". The Software is hosted and maintained by or on behalf of Hyperspheric and made available for use by the Customer from a Web Site Address that shall be notified to the Customer.

"SaaS Service Period" means the period between the SaaS Start Date and the Contract End Date

"SaaS Start Date" means the date on which Hyperspheric provides the Web Site Address to access the SaaS and the user credentials to the administrator account allocated to the Customer for the purposes of administering access to the SaaS account.

“School” means School or Academy

"Site" means the physical location of the Customer.

"Software" or “Hyperspheric Software” means the SaaS created by Hyperspheric or on its behalf and accompanying documentation specified in the Call Off Contract together with any subsequent releases or updates of those programs (contracted for by the Customer) or documentation from time to time supplied or licensed by Hyperspheric to Customers. Software is supplied with a licence to use as SaaS.

"Warranty Period" means in relation to any services the date 90 days after their performance.

“Web Site Address” means the Uniform Resource Locator; an Internet address on the World Wide Web.

2. AGREEMENT

- 2.1. The Customer enters into a call-off contract with Hyperspheric to buy services from G-Cloud as per the terms of the G-Cloud 14 Framework Agreement. The Customer must ensure that they observe the buying process as set out in the G-Cloud 14 Framework Agreement.

Hyperspheric agrees to supply the G-Cloud 14 Services in accordance with the terms and conditions of this Agreement which are hereby deemed to be incorporated into any Call Off contract entered into under the G CLOUD 14 Framework Agreement BUT SUBJECT in any event to the terms set out in the G CLOUD 14 Framework Agreement between the Authority’s Government Procurement Service (or any subsequent assignees) and Hyperspheric.

In the event of any conflict between these Hyperspheric G CLOUD 14 Terms & Conditions and the provisions of the Authority’s Framework Agreement then the following shall apply in order of contractual precedence:

- Framework Agreement (between Hyperspheric and the Authority)
- The Completed Order Form (between Customer and Hyperspheric)
- Clauses of a Call Off Contract (excluding Hyperspheric G CLOUD 14 Terms and Conditions)
- Hyperspheric Terms and Conditions (these Hyperspheric G CLOUD 14 Terms & Conditions)
- Any other relevant document

- 2.2. Customer agrees to buy and Hyperspheric agrees to license the use of the Software as a Service and any additional or specialist cloud services in consideration of payment by Customer of the price and other sums including VAT and any other taxes specified in the Call Off Contract subject to these terms and conditions.
- 2.3. Customer consents to provide information to the lease or finance company, which if appropriate, is proposed will finance any purchase or part of a purchase, with the information that the Company requires to evaluate the proposition. Such consent being required under the Data Protection Act 1998 or as amended and updated.
- 2.4. To effect termination of the contract under the terms, written and posted notice is required to be sent on the Customer headed paper, signed by the head teacher or other authorised signatory, together with a note and details of the type of termination required.

3. PRICING AND PAYMENT

- 3.1. Customer shall pay Hyperspheric the price for the licence fees for the Hyperspheric Software and/or Other Software and/or any other services or fees as specified in the Call Off Contract in pounds sterling on the date[s] specified. All such amounts are exclusive of VAT and equivalent taxes on sales and supplies unless otherwise stated. The said taxes will be added to the invoice and the whole price including taxes shall be paid without set-off or deduction and free from all withholdings.
- 3.2. All payments to be made by the Customer under this Agreement shall be paid to an account designated by Hyperspheric either by direct debit instruction or BACS transfer and shall arrive on or before the due date in cleared funds. Prompt payment of all sums due under this Agreement is an essential condition of this Agreement.
- 3.3. The Customer agrees and accepts that its obligation to pay all the sums due under this Agreement on each due date for payment is absolute and unconditional and shall not be subject to any right of set-off, counterclaim, abatement, reduction, deferment or withholdings of any nature (save as at law). In the event that any taxes, deductions or withholdings are required by law, the Customer undertakes to pay such additional amounts as necessary in order that the net amounts received by Hyperspheric after all deductions and withholdings will not be less than such payments would have been in the absence of such deductions and withholdings.
- 3.4. The Customer agrees that Hyperspheric may assign all or part of its right, title and interest in and to the sums due under this Agreement to an Assignee. The Customer will be notified of the assignment and the Customer's payment obligations will then be owed to and enforceable by the Assignee and the Assignee shall be entitled to give the Customer good discharge for all the sums due and assigned to it under this Agreement. Following an assignment to the Assignee any payment made by the Customer to Hyperspheric will not release its payment obligation to the Assignee.
- 3.5. The Customer hereby irrevocably consents to the assignment to the Assignee and undertakes that it will, if requested, confirm its consent to the assignment in writing.
- 3.6. The Customer further agrees that the Assignee shall have no responsibility for the Products, or any of the services performed or to be performed by Hyperspheric and that it is reasonable for the Assignee to exclude its liability for these. The Customer's sole remedy for any breach by Hyperspheric under this Agreement is a matter between the Customer and Hyperspheric.
- 3.7. In addition to and without prejudice to any other remedies that may be available, interest will accrue in respect of any sum outstanding to Hyperspheric on a daily basis both before and after any judgement at the rate of 3% per annum above the base rate from time to time of Lloyds Bank plc, and will be payable on demand.
- 3.8. Any sums paid by Customer to Hyperspheric and not expressly allocated by Customer to any invoice payment due from Customer may be allocated by Hyperspheric as it sees fit.
- 3.9. In the event that there is any oversight by Hyperspheric whereby an invoice is not charged to a Customer by the due date, Hyperspheric reserves the right to subsequently invoice the Customer for the monies due.
- 3.10. Payment terms unless otherwise stated in writing are as in the next paragraph.
- 3.11. 100% of the Year 1 Software and First Year Setup charges, are payable on order. 100% of Training and Consultancy and other additional services and running costs apportioned to Year 1 are payable on order. For second and subsequent years, an invoice will be sent annually in advance

describing the charges for each year of service and these invoices must be paid in advance of the period covered.

3.12. Contract Start Date

- 3.12.1. Year 1 of the Software year and this Agreement starts from the Contract Start Date which is the date that Hyperspheric commits resources to the contract and this is the same as the Customer's purchase order date, unless otherwise specified in writing.

4. SOFTWARE

4.1. Licence to use Hyperspheric and Other Software.

- 4.1.1. Hyperspheric licenses the use of the Software subject to payment by Customer of the service fee.

- 4.1.2. Customer acknowledges that it is licensed to use Hyperspheric and Other Software and documentation only in accordance with the express terms of this Agreement and not further or otherwise.

4.2. Customer Responsibilities when using the Software

- 4.2.1. The Customer shall ensure that only Authorised Users use the Software. Authorised Users means those users who are employed or otherwise engaged by the Customer and who are specifically chosen, instructed and formally authorised by the Customer to use the Hyperspheric Software.
- 4.2.2. The Customer shall ensure that the Authorised Users use the Software and the documentation in accordance with the terms and conditions of this Agreement and shall be responsible for any Authorised User's breach of this Agreement.
- 4.2.3. In relation to the Authorised Users, the Customer undertakes that: [a] it will manage the creation and maintenance on user accounts and access rights for all Authorised Users for its service account on the Software; [b] it will ensure that only appropriate user accounts are created and those accounts are only accessed by users to fulfil their roles in so far as it is necessary for the purpose of managing the Customer's establishment; [c] it will not allow or suffer any user account 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 Software and/or documentation; [d] each Authorised User shall keep a secure password for his use of the Software and that each Authorised User shall keep his password confidential; [e] if a person ceases to be an employee of the Customer, then that person must return documentation and cease access or use of the Software on or before termination of employment.
- 4.2.4. It is Customer's responsibility to ensure that equipment is suitable for the Hyperspheric Software on which it is to be used and for ensuring that other equipment and any relevant cabling and connections are fully operational and in working order and that memory and processing power are sufficient to allow successful use of the Hyperspheric Software.
- 4.2.5. Customer understands and accepts that it may be necessary for Customer to supply information to Hyperspheric and to give Hyperspheric personnel access to Customer's staff, data, equipment details etc., in order to enable Hyperspheric to perform its obligations hereunder to provide SaaS. Customer will use all reasonable endeavours to meet the

reasonable requirements of Hyperspheric in this respect as any failure in this regard may result in delays and/or costs which shall be for Customer's account.

- 4.3. Installation for SaaS means the creation of an account by Hyperspheric on the SaaS infrastructure for the Customer. Once the account is created, Hyperspheric will inform the Customer and provide an administration user account and details of the Web Site Address.
- 4.4. The Web Site Address and password details for the Customer to access the Software is provided by Hyperspheric. All of the Customer's Software programs and data are made available on a secure hardware infrastructure that is situated remotely from the Customer. Any costs associated with accessing the hosted service including but not limited to the Customer's broadband connection, are the responsibility of the Customer.
- 4.5. The remotely hosted SaaS will be available for the most part nearly 100% of the time. Exceptions to the up-time availability are [1] scheduled maintenance, and [2] unplanned failures.
- 4.6. In the case of scheduled maintenance, Hyperspheric will notify Customers, usually by email, of scheduled maintenance events which will include events scheduled by or on behalf of Hyperspheric.
- 4.7. Service Credits
 - 4.7.1. In the case of unplanned SaaS failure, Service Level Agreement (SLA) credits, in the form of credits only, based on the Hyperspheric account may be available.
 - 4.7.2. Credit available to an individual Hyperspheric Customer in any one day in the case of an unplanned failure exceeding 120 minutes is calculated as the $\frac{1}{365}$ of the annual SaaS charge payable to Hyperspheric multiplied by the duration of the failure, divided by the number of minutes in a day.
 - 4.7.3. Any SLA credit due to a Customer for an unplanned network failure shall be allocated to the end of the Customer's initial term of contract in the form of extra or additional service time and as an extension to the initial term of contract.
 - 4.7.4. Customer must make a claim for a SLA Credit within 30 (thirty) days of the issue by writing to us. Failure to do so will result in the Service Credit being void.
 - 4.7.5. In order to make a claim, the Institution must contact Hyperspheric using the email address: businessadmin@go4schools.com
 - 4.7.6. Hyperspheric will check System Availability and either confirm or deny that the Institution may claim a SLA Credit.
 - 4.7.7. SLA Credits shall not be provided where System Availability is detrimentally affected due to: Expected Outages, provided it is communicated to an Institution no less than 12 hours in advance of such downtime; Cyber attack, distributed denial of service attack, virus or similar; factors outside of our reasonable control, including acts or omissions of any other third party or emergency maintenance.
 - 4.7.8. The maximum number of SLA Credits a Customer may claim in the Licence Period is 24 hours.
 - 4.7.9. The provision of a SLA Credit shall be an exclusive remedy for any particular System Availability failure.
- 4.8. On the remotely hosted network infrastructure Hyperspheric will be responsible for network security configuration.

- 4.9. On the remotely hosted network infrastructure Hyperspheric will be responsible for backup management and will perform a near-continuous backup of the remotely hosted network infrastructure systems and all specified Customer data held on the remotely hosted network infrastructure system.
- 4.9.1. On the remotely hosted network infrastructure Hyperspheric will be responsible for anti-virus software management and will install, configure and maintain anti-virus software.
- 4.10. The processing of Customer personal data or metadata is limited to that necessary to deliver or improve the SaaS and is not processed for any other purpose and not passed on to others without the written consent of the Customer.

5. TRAINING, CONSULTANCY

5.1. Training

- 5.1.1. Training, if ordered, is as set out in the Call Off Contract. Hyperspheric provides training for school/academy/end-user Customers and train-the-trainer training for central support teams. Training may be provided using one or more of the following methods; a remote session over the Internet (webinar), and/or at the Customer's Site, and/or at another location agreed at point of order and set out on the Call Off Contract. Customers attending a training webinar on Site should be in a quiet room to minimise background noise.
- 5.1.2. Any third party providing training for Hyperspheric Software must have authority or other written arrangement from Hyperspheric to provide such services.

5.2. Consultancy

- 5.2.1. Consultancy concerns the examination of plans, strategies and/or problems concerning the Customer's specific use of the Software. On-Site and other consultancy days are chargeable and subject to the availability of the appropriate Hyperspheric staff.
- 5.2.2. Any third party entity providing consultancy services for Hyperspheric Software must have its own authority or other written arrangement with Hyperspheric to provide such services.

6. HELP DESK & SOFTWARE MAINTENANCE

- 6.1. Hyperspheric offers a Help Desk service to Customers
- 6.2. Use of the Hyperspheric Help Desk is subject to these conditions. Hyperspheric Help Desk agents will expect Customers to be using the Hyperspheric Software according to the Software licence terms (section 4 above).
- 6.3. The service provided by the Hyperspheric Help Desk includes the examination of any reported problem with the Software by use of the telephone, Internet, email or other means. Hyperspheric Help Desk will assist the Customer in understanding the Software, explain the advanced features of the Software and explain the information in various publications supplied by Hyperspheric for the said Software.
- 6.4. Help Desk support excludes the examination of problems where the Customer contact concerned has not been trained or appears not to have been trained to use the Software. The service provided by the Hyperspheric Help Desk is not designed to be a substitute for proper and adequate training. Hyperspheric Help Desk will endeavour always to provide a solution to a

problem experienced in the use of the Software. However, where a Customer contact is experiencing difficulty understanding inter alia basic principles in the use of an application/module/work method, Help Desk may be obliged to recommend a training course as the solution.

- 6.5. If Help Desk is not able to provide a solution to a reported problem within reasonable timescales because of a fault with the Software, the agent will report the problem to the Software or Other Software creator. In the case of a Hyperspheric Software problem this will be reported to the Director of Software Development at Hyperspheric. As an interim solution the Software or Other Software creator may provide alternative methods of achieving the required result (i.e. a work-around) which should be used while a software fix is engineered. Customer should use the work-around until such time as the software fix is engineered and presented via a software upgrade or other method.
- 6.6. Where a fault is found in the Hyperspheric Software, Hyperspheric will use every reasonable endeavour to repair the Software or find a work-around where one is available. Help Desk is not responsible, under this Agreement, for fixing reported faults or malfunctions in Other Software and the provision of an updated or fixed version of Other Software, if available, is at the discretion of Help Desk.
- 6.7. Customers grant Hyperspheric Help Desk permission to access their remotely hosted data for the purposes of carrying out the Help Desk function.
- 6.8. The Customer requesting the Hyperspheric Help Desk service agrees to promptly furnish full descriptions of any reported malfunctions in the form requested by the Hyperspheric Help Desk agent. The Customer also agrees to assist Hyperspheric's efforts to duplicate the reported Software problem by responding promptly, fully and in detail to any further requests of the Help Desk.
- 6.9. During the use of the Hyperspheric Help Desk service, if telephone, Internet or other support is initiated by the Hyperspheric Help Desk then all telephone call and Internet charges incurred during the use of said support are the responsibility of Hyperspheric. The Customer is responsible for any charges incurred when the Customer's telephone line, Internet or other chargeable method of communication is used for the purposes of contacting the Help Desk.
- 6.10. Customers may use the Hyperspheric online Help Desk call tracking/logging system 24 hours a day 365 days a year.
- 6.11. Person to person Help Desk support is provided during the Hyperspheric Help Desk opening hours, as published from time to time by the Hyperspheric Help Desk manager and currently 08:00 am to 17:00 pm daily excluding Saturdays, Sundays, public holidays and Hyperspheric's internal training days held during the month of August.
- 6.12. When a reported problem is registered with the Help Desk it shall be allocated a priority level code by the Help Desk agent. A guide to such priority level codes is issued from time to time by the Help Desk manager. Help Desk agents will only provide a service to Customers with the correct password and who have paid their Software annual maintenance invoice according to this Agreement. Generally speaking, top priority shall be given to urgent support requests from Customers e.g. with their system down. The allocation of a support request as urgent or non-urgent (or any of the intervening priority level codes) is at the sole discretion of Hyperspheric Help Desk. For reference purposes, while an urgent support request may be one where the Customer's Software system is down, a non-urgent request is one where the Customer requires

to register a software change request. By the allocation of priority level codes to all Customer call requests as they are registered, a more equitable service is provided to all Customers as a whole.

- 6.13. Hyperspheric Help Desk is not responsible for any failure to fulfil or delay in fulfilling its obligations under the terms of this Agreement due to causes beyond its control, including Acts of God.
- 6.14. Hyperspheric Help Desk is not responsible for consequential loss suffered directly or indirectly by the Customer or any of his clients if applicable as a result of the Help Desk support supplied under this Agreement.
- 6.15. The following, described in clauses 6.16 to 6.17 are NOT supported by the Help Desk:
- 6.16. Requests to adapt the Software to fulfil a request made by the Customer. Hyperspheric supplies “Off the Shelf” also known as “Commercial Off the Shelf” software that is configurable and does NOT supply “custom written”, “bespoke” or “specially written” software” unless specifically otherwise agreed in writing. Hyperspheric welcomes feedback and suggestions for the continued improvement and enhancement of the Hyperspheric Software by the Hyperspheric Software Department via the Help Desk and Customer Care managers. If Other Software has been supplied by Hyperspheric then Hyperspheric shall notify any Other Software creator of any feedback received. Hyperspheric and any Other Software creator retains the sole discretion as to what use if any is made of such feedback/suggestion notifications.
- 6.17. The free provision of any improvement or modification or enhancement to the Software that Hyperspheric shall make and release from time to time.

7. DELIVERY OF THE PRODUCTS AND SERVICES

- 7.1. Delivery Date means the date specified in the Call Off Contract for delivery of any non-SaaS Services to the Site. This date may be varied from time to time in respect of any Service by Hyperspheric giving notice to Customer.
- 7.2. Unless an alternative agreement is specified in the Call Off Contract, installation of the SaaS is the setting up by Hyperspheric of an account on the SaaS infrastructure for the use by the Customer
- 7.3. Unless an alternative agreement is specified in the Call Off Contract, SaaS Start Date is the provision of the Web Site Address to access the SaaS and the user credentials to the administrator account allocated to the Customer for the purposes of administering access to the SaaS account.
- 7.4. Unless an alternative agreement is specified in the Call Off Contract, SaaS Service Period for a school is the period between the SaaS Start Date for the school and the end of the Contract

8. WARRANTY

- 8.1. Warranty Period means in relation to any services the date 90 days after their performance.
- 8.2. Hyperspheric warrants that the Software shall materially conform to the performance described in its documentation (manuals and guides) if available relating thereto during the Warranty Period, and always subject to the terms in this Agreement. Services shall materially conform to

the description defined in related correspondence between Hyperspheric and Customer. Hyperspheric provides Other Software "as is" without warranty of any kind.

- 8.3. Unless the purpose of the Software is specifically advised to Hyperspheric in writing by the Customer and Hyperspheric confirms in writing that the Software can fulfil that particular purpose, Hyperspheric warrants that the Software is fit for general purpose and does not give any warranty that the Software is fit for any particular purpose.
- 8.4. Unless (a) Hyperspheric has specifically guaranteed a variation from the general purpose warranty in writing, subject to specified tolerances in an agreed sum as liquidated damages: and (b) the environmental conditions specified by Hyperspheric are maintained, Hyperspheric warrants that the Products will achieve general performance criteria and does not warrant that the Products will achieve any particular performance criteria. The payment by Hyperspheric of any pre-agreed liquidated damages described above (if so agreed) shall be in full satisfaction of any liability of Hyperspheric in respect of the Products failing to achieve such performance criteria.
- 8.5. Except as expressly provided in the Agreement no warranty, condition, undertaking or term, express or implied, statutory or otherwise, as to the condition, quality, performance, merchantability, durability or fitness for purpose of the Products is given or assumed by Hyperspheric and such warranties, conditions, undertaking and terms are hereby excluded.
- 8.6. Customer warrants that he has not relied on any oral representation made by Hyperspheric or upon any descriptions, illustrations or specifications contained in any catalogues and/or publicity material produced by Hyperspheric which are only intended to convey a general idea of the Products mentioned therein.

9. TITLE

- 9.1. Title to Hyperspheric Software and documentation remains with Hyperspheric and/or its licensors at all times.
- 9.2. Title to Other Software and documentation is as stated by the terms and conditions of the Other Software creator.

10. TERMINATION OF AGREEMENT

10.1. TERMINATION BY EITHER PARTY

- 10.1.1. To effect termination of the contract by Customer, written and posted notice is required to be sent, on the Customer's headed paper, signed by the head teacher or other authorised signatory, together with a note of the type of termination required. Termination of the contract shall not entitle Customer to any return of monies paid or cancellation of monies remaining due to Hyperspheric in respect of the Customer's contractual obligations.

10.2. TERMINATION BY HYPERSPHERIC

- 10.2.1. Hyperspheric or its Assignee if there has been an assignment may at its option terminate the Agreement or take alternative action in the event that [a] the Customer goes into liquidation or becomes unable to pay its debts when they become due; or [b] has a receiver or administrative receiver appointed over any of its assets; or [c] makes any arrangement or compound with its creditors; or [d] should a Judgment be obtained against Customer and remain unpaid for a

period in excess of 28 days; or [e] the Customer is in substantial breach of any of its obligations under this Agreement; or [f] there is any breach by Customer or any of its associated companies including but not limited to obligations to make payments to Hyperspheric; or [g] Customer fails to pay any monies due under the Agreement within 60 days of the due date; or [h] Customer commits any breach of any term of this Agreement and (in the case of a breach capable of being remedied) fails, within 30 days after receipt of a request in writing from Hyperspheric to do so, to remedy the breach; or [i] Customer shall do or allow to be done any act or thing which may reasonably be considered by Hyperspheric to jeopardise any right of Hyperspheric and/or its licensors in Software and/or documentation or any part thereof and including but not limited to if Customer makes or allows to be made any unauthorised copy of Software and/or documentation or any part thereof and/or impart or divulge the contents of Software and documentation or any part thereof to a third party without the prior written consent of Hyperspheric.

- 10.3. Hyperspheric (or its Assignee if there has been an assignment) may at its option terminate the Agreement or take alternative action in the event that [a] Customer ceases to exist as an entity in its own right for whatever reason including but not limited to being subsumed within another, or split into more than one establishment; or [b] Customer assigns this contract to a third party without the prior written consent of Hyperspheric; except always that the terms in clauses 10.5 and 10.6 apply to a Customer, being a school, that changes legal status and becomes an academy which has been created under the Academies Act 2010 or any subsequent amendment or re-enactment.
- 10.4. If any of the events set out in clause 10.2.1 occur Hyperspheric (or its Assignee if there has been an assignment) may, by notice in writing to Customer, with immediate effect (or with effect from such later date as may be specified in such notice) take any or all of the actions in clauses 10.4.1 to 10.4.7 provided always that clauses 10.7.1 to 10.7.4 shall survive and remain in force following any termination of the Agreement.
 - 10.4.1. Terminate this Agreement in whole or in part by treating itself as discharged from further performance of any or all of Hyperspheric's obligations under this Agreement; and/or
 - 10.4.2. Cancel any credit term provided under this Agreement and require that the Customer pays in full and on demand the aggregate of (a) all arrears of payments and any interest due thereon; and (b) all remaining payments which would have fallen due but for the termination of this Agreement less a discount of 3% on each payment to reflect early receipt.
 - 10.4.3. Bring to an end the term of the licence referred to in section 4. In the case of SaaS, Hyperspheric shall withdraw the Customer's right to use the SaaS and shall be entitled to remove access to the services either by removal of the Customer SaaS account or by any other means and the Customer agrees to not attempt to make any further use of the SaaS. Any references to Hyperspheric in this clause shall apply equally to Hyperspheric's Assignee if there has been an assignment.
 - 10.4.4. If any of the events set out in clause 10.3 occur Hyperspheric (or its Assignee if there has been an assignment) may, by notice in writing to Customer, with immediate effect (or with effect from such later date as may be specified in such notice) take any or all of the actions in clauses 10.4.5 to 10.4.7 provided always that clauses 10.7.1 to 10.7.4 shall survive and remain in force following any termination of the Agreement.
 - 10.4.5. Terminate this Agreement in whole or in part by treating itself as discharged from further performance of any or all of Hyperspheric's obligations under this Agreement; and/or

- 10.4.6. Cancel any credit term provided under this Agreement and require that the Customer pays in full and on demand the aggregate of (a) all arrears of payments and any interest due thereon; and (b) all remaining payments which would have fallen due but for the termination of this Agreement less a discount of 3% on each payment to reflect early receipt.
- 10.4.7. Bring to an end the term of the licence referred to in section 4. Hyperspheric shall withdraw the Customer's right to use the SaaS and shall be entitled to remove access to the services either by removal of the Customer SaaS account or by any other means and the Customer agrees to not attempt to make any further use of the SaaS. Any references to Hyperspheric in this clause shall apply equally to Hyperspheric's Assignee if there has been an assignment.
- 10.5. In the case of a Customer, being a school, that changes legal status and becomes an academy which has been set up under the Academies Act 2010 or any subsequent amendment or re-enactment, this Agreement is deemed to be assigned to the newly established academy without additional charge for the amendment of the software licence and without additional charge for the assignment of the Agreement, provided that due notice in writing in advance is given by Customer and except as provided for in the next clause.
- 10.6. Should a Customer becoming an Academy fail to inform Hyperspheric of its establishment as a new legal entity, inform Hyperspheric of the same after the start date for the academy, or otherwise breach the terms of the Hyperspheric licence in the course of becoming an academy, Hyperspheric shall be entitled to make a full charge for the amendment of the Software licence and for the assignment of the Agreement to the newly established academy.
- 10.7. Clauses that survive termination or expiration of Agreement
- 10.7.1. The following clauses shall remain in force following the termination or expiration of the Agreement.
- 10.7.2. Any termination of this Agreement (howsoever occasioned) or expiration shall not affect any accrued rights or liabilities of either party nor shall it affect the coming into force or the continuance in force of any term, condition or provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination.
- 10.7.3. Termination shall not entitle Customer to any return of monies paid or cancellation of monies remaining due to Hyperspheric in respect of the Customer's contractual obligations.
- 10.7.4. Clauses 13.2.1 and 13.2.2 (Confidentiality) shall survive the termination or expiration of this Agreement until all confidential information is legally within the public domain.

11. REMEDIES OF CUSTOMER AND DISPUTE RESOLUTION

- 11.1. The rights and remedies of Customer set out in this Agreement are exclusive of any other rights and remedies under statute, in contract, tort or otherwise, at law or in equity, in relation to any matter to which these conditions relate save as set out below and as specified in the Call Off Contract.
- 11.2. Hyperspheric does not seek to exclude or limit any liability it may have to Customer for death or personal injury caused by negligence.
- 11.3. Any liability Hyperspheric may have to pay as damages or other sums to Customer either for each breach of its obligations under section 9 or (notwithstanding and without prejudice to the provisions of this Agreement) in contract or tort or any other way other than damages coming

within clause 12.1 shall be limited to amounts which in aggregate do not exceed the sum paid by the Customer to Hyperspheric for the Products.

- 11.4. In no circumstances shall Hyperspheric be responsible or liable to Customer or any third party for any consequential or indirect loss or damage howsoever caused (including without limitation loss of anticipated profits or revenues or loss of business or goodwill) save to the extent that Hyperspheric has agreed in writing with Customer to take responsibility for them.
- 11.5. Customer recognises that Hyperspheric is willing to negotiate acceptance by it of greater liability than is provided for this Agreement subject to an appropriate adjustment to the sums payable to it, and that Customer is best able to seek insurance for, or otherwise evaluate and manage, those areas in respect of which no liability is accepted by Hyperspheric under this Agreement.
- 11.6. Customer shall procure that no employee, licensee or customer of Customer makes any claim against Hyperspheric in respect of any matter to which this Agreement relates save to the extent that Hyperspheric has a liability or obligation in respect of that matter under the terms of the Agreement.
- 11.7. Under the Contract (Rights of Third Parties) Act 1999, this contract is not intended to create any benefit, claim or rights of any kind whatsoever enforceable by any person not a party to the contract.
- 11.8. If a dispute arises out of or relates to this Agreement, or the breach, termination, validity or subject matter thereof, or as to any related claim at law, in equity or pursuant to any statute, the parties to this Agreement and the dispute expressly agree to endeavour to settle the dispute by review and discussion of the subject matter, either by correspondence (including email), telephone and/or meeting between the parties before resorting to litigation or similar recourse.

12. SPECIFIC PRODUCTS

- 12.1. Reasonable use storage limits and charges for document storage. Customer is allocated a reasonable use limit for document storage. The reasonable use limit is set by the Customer Service department at Hyperspheric and subject to review and change. If the reasonable use limit is exceeded there will be an extra charge which is also set by the Customer Service department at Hyperspheric and this also is subject to review and change. The storage limit has been set to ensure that for a typical installation, a reasonable and sufficient amount of storage space is available. If the Customer is approaching or exceeding the storage limit, Hyperspheric is able to offer advice to the Customer with a view to the Customer either carrying out housekeeping to reduce the amount of storage space used or paying for the additional storage over and above the reasonable use limit.

13. PATENT, IPR, COPYRIGHT & CONFIDENTIALITY

- 13.1. Intellectual Property Rights.
 - 13.1.1. Hyperspheric warrants that Hyperspheric and/or its licensors are the owners of the copyright and other intellectual property rights in Software and documentation. In the event of any claim against the Customer that the normal use or possession of all or any part of Software infringes the intellectual property rights of any third party, then Hyperspheric is to be promptly notified of same by Customer in as much detail as possible, and given control of any such claim by

Customer, and Customer shall give Hyperspheric such full and prompt assistance as Hyperspheric may reasonably require to oppose or settle any such claim at Hyperspheric's expense.

13.1.2. Hyperspheric and/or its licensors shall endeavour to settle or oppose any such claim and/or if necessary make such changes to Software as may avoid or defeat the claimed infringement. Hyperspheric shall, however, at all times use reasonable endeavours to provide Customer with a fully operational and functionally equivalent Software. The foregoing states the entire liability of Hyperspheric to Customer in respect of any infringement or alleged infringement by the Hyperspheric Software of the intellectual property rights of any third party. Hyperspheric reserves the right at any time to replace or change all or any part of Software in order to avoid infringement or alleged infringement of the intellectual property of any third party. Customer shall indemnify and hold Hyperspheric harmless from any claim caused by or arising from any unauthorised modification or misuse of Software and/or documentation by Customer, its servants, agents or sub-contractors.

13.1.3. The copyright and all other intellectual property rights of whatever nature (existing now or in the future) in Software and documentation and all copies thereof are and shall remain the property of Hyperspheric and/or its licensors. Further, Customer acknowledges that "Hyperspheric" is a registered trademark of Hyperspheric and shall not be used by the Customer in any way. Customer shall notify Hyperspheric if Customer becomes aware of any unauthorised use of the whole or any part of Software and documentation and/or the 'Hyperspheric' trademark by any person. Customer will permit Hyperspheric to check the use of Software and documentation by Customer from time to time and for that purpose Hyperspheric and/or its licensors shall be entitled to enter the Customer Site subject to complying with Customer's reasonable safety and security restrictions.

13.2. Confidentiality

13.2.1. Customer undertakes to treat as confidential and keep secret all information covered or embodied in Software, documentation, data migration, installation, training and any other services provided hereunder and not to disclose the same in whole or in part to any third party without the prior written consent of Hyperspheric, save as necessary for legal or auditing purposes. In addition each party shall keep confidential all information obtained from the other pursuant to this Agreement and shall not divulge such information to any third party without the other's prior written consent save as required by law, except that Hyperspheric shall be entitled to disclose such information received from Customer as is reasonably necessary for its performance under this Agreement, and save that the obligation of confidentiality shall not apply to information which is: i) in or comes into the public domain otherwise than by breach hereof by the receiving party; and/or ii) already in the possession of the receiving party prior to such disclosure; and/or iii) received from a bona fide third party free of restrictions. The foregoing obligations as to confidentiality shall remain in full force and effect notwithstanding any termination of this Agreement howsoever arising.

13.2.2. The information disclosed to the Customer by Hyperspheric in the course of this sale and thereafter, including the disclosure of information in any tender document, is strictly confidential. The contents of Hyperspheric's pre and post-sale documents, including replies to tenders, are price sensitive and in addition the subject matter of these documents or tenders are products which are technologically innovative. For these reasons Hyperspheric considers that such information, including any tender and its contents, is strictly confidential and should not be disclosed to third parties. Please refer in writing any requests to disclose such

information to the Company Secretary of Hyperspheric at its registered address giving full details of any disclosure request. The foregoing obligations as to confidentiality shall remain in full force and effect notwithstanding any termination of this Agreement howsoever arising.

13.3. Security and Control.

- 13.3.1. Customer shall during the continuance of the Agreement take all reasonable measures to safeguard the Software and documentation from access or use by any unauthorised person. Customer agrees to hold all sensitive information relating to Hyperspheric Products (including without limitation training literature, other documentation etc.) in confidence and not to divulge to any third party. Customer shall promptly provide Hyperspheric with full details of any actual or proposed claim or threatened claim concerning alleged infringement of copyright, trademark, intellectual property rights, patent etc. by Hyperspheric or associated companies that it is aware of and before the commencement of any such proceedings in accordance with the provisions of this section 14.

14. GENERAL

- 14.1. Customer entering into a contract with Hyperspheric makes a binding commitment and Hyperspheric is entitled to see the Customer fulfil the contract.
- 14.2. All prior agreements and commitments and all other warranties and obligations (whether statutory or in contract or tort of any other kind and whether express or implied) are superseded and cancelled.
- 14.3. This Agreement supersedes all prior communications, representations and agreements relating hereto and Customer hereby acknowledges that no reliance is placed on any communication, representation or agreement written or oral made but not embodied in this Agreement.
- 14.4. No person has authority to agree or give any variation or addition on behalf of Hyperspheric in relation to this Agreement unless he is a director of Hyperspheric, and any representation which constitutes variation from these conditions made by or on behalf of Hyperspheric shall not have any force or effect whatsoever unless expressly agreed thereto in writing.
- 14.5. Each of Hyperspheric's rights under this Agreement is additional to any other rights it may have under this Agreement or by statute, common law or otherwise. An effective waiver by Hyperspheric of any of its rights under this Agreement shall not constitute waiver of any other right. To be effective, a waiver must be in writing specifying the right so waived and signed by a director of Hyperspheric. In particular, delay by Hyperspheric in enforcing any of its rights shall not constitute a waiver of that or any other right or any other breach of that right, nor otherwise prevent Hyperspheric from enforcing them, and exercise of any right shall not prevent exercise of any other right in respect of the same or any other matter.
- 14.6. Any forbearance relaxation or other indulgence which may be granted by the Company shall not affect the strict rights of the Company under this Agreement.
- 14.7. Failure by either party to enforce at any time any provision of this Agreement shall not affect its rights to later require complete performance by the other party nor shall any specific waiver of a breach of a provision be taken or held to affect its rights in the event of any subsequent or additional breach of the same or any other provision.
- 14.8. Hyperspheric will use all reasonable endeavours to meet any dates it has given to Customer in terms of delivery, installation, configuration etc., but time shall not be of the essence. In the

event of dates slipping, Hyperspheric will inform the Customer thereof as soon as reasonably practicable.

- 14.9. If any term of these Conditions is illegal or unenforceable for any purpose then the other provisions shall remain in full force and effect, and the Agreement shall be read and construed for such purpose as if such term had not been included. Hyperspheric and the Customer shall agree in good faith a replacement provision as closely equivalent as possible which is legal and enforceable.
- 14.10. The sections, headings, etc. to this Agreement are for convenience only and shall not be taken into account in construing it.
- 14.11. For references to the singular include the plural and vice versa. For references to any gender include each other gender. For reference to persons include individuals, bodies corporate, unincorporated associations, partnerships and other legal entities. Reference to clauses are to provisions of these conditions.
- 14.12. Hyperspheric shall be entitled to assign all or any of its rights and/or obligations under this Agreement, and references to Hyperspheric shall be deemed to include its successors and assigns. Hyperspheric shall be entitled to subcontract or sub-let any part of this Agreement but such shall not affect Customer's rights hereunder.
- 14.13. Customer shall neither assign this Agreement nor part with any rights or obligations hereunder in any way whatsoever whether in whole or in part without the prior written agreement of Hyperspheric and/or the Assignee if there has been an assignment.
- 14.14. Hyperspheric shall not be liable to Customer and shall not be or be deemed to be in default by reason solely of any delay or failure in its performance under the Agreement resulting from causes beyond its reasonable control (including without limitation employee disputes, failure of contractors and suppliers, transportation difficulties and government action) provided that Hyperspheric has used all reasonable efforts to mitigate their consequences, on the basis that in the case of scarcity of resources Hyperspheric may allocate its resources between third parties to whom it has obligations in such manner as it may in good faith determine. Any time period for any performance by Hyperspheric shall be increased by the period of such delay or failure affecting that performance.
- 14.15. Neither party shall be liable for any delay or breach in performing its obligations hereunder, nor any loss or damage arising there from, if such delay or breach is caused by circumstances beyond its reasonable control.
- 14.16. Except in respect of personal injury or death caused by the negligence of Hyperspheric, its servants, agents, or sub-contractors (for which by law no limit applies) the liability of Hyperspheric hereunder shall be limited to correcting Software as provided herein and to providing services in the case of Customer providing Hyperspheric with full details of any actual or proposed claim or threatened claim concerning the Company's intellectual property rights.
- 14.17. Except as expressly provided in this Agreement no warranty, condition, undertaking or term, expressed or implied, statutory or otherwise as to the condition, quality, performance, merchantability, or fitness for purpose of Software and Documentation and/or any services provided hereunder or any part thereof shall be assumed by Hyperspheric and except as expressly provided in this Agreement all such warranties, conditions, undertaking and terms are hereby excluded.

- 14.18. Notwithstanding any other provisions of this Agreement in no event shall either party be liable to the other for any incidental, special, indirect or consequential loss of whatever nature, including but not limited to loss of use and/or loss of profits and/or loss or spoiling of data, howsoever caused, whether occurring in contract, tort, negligence or otherwise, save that Customer shall be responsible for its actions if it endangers Hyperspheric's right of ownership in the Software.
- 14.19. Notices (except for termination notices) given under this Agreement shall be in writing and shall be duly served if delivered personally or sent by email or letter or facsimile transmission to the other party at such email, postal, facsimile other address as may have been notified by either party for this purpose to the other party.
- 14.20. Any termination notices to be given under this Agreement shall be in writing and shall be duly served if delivered personally or sent by recorded delivery post to the other party at its address specified in the Call Off Contract or at such other address as it may have notified for the purpose to the other party. Notices so addressed, marked and sent shall be deemed to have been received, if sent by post, on the next working day. All formal notices shall be given by prepaid first class post, or facsimile confirmed by prepaid posted letter, to Hyperspheric or the Customer at such address as shall have for the time being been notified to the other party. Termination notices from Customer to Hyperspheric concerning the termination of a contract shall be written, on the school/academy headed paper, and signed by the head teacher.
- 14.21. Customer will not entice or accept any solicitation for employment from Hyperspheric staff without prior written agreement from Hyperspheric.
- 14.22. Hyperspheric is in full compliance with the General Data Protection Regulation (GDPR) and a separate document is available which sets out the Company's compliance with the Regulation together with the Company's Privacy statement. By the fact that a Customer has contractually engaged Hyperspheric to provide Management Information System software and/or services, Hyperspheric takes this action as an unambiguous consent by the Customer that Hyperspheric shall process the personal data collected by that Customer who is a Data Controller under the Regulation.
- 14.23. This Agreement shall be deemed to be made in England and shall be subject to and construed in accordance with English Law and if any provision of this Agreement is held by any court or other competent authority to be unenforceable in whole or in part, this Agreement shall continue to be valid as to the other provisions thereof and the remainder of the affected provision. This Agreement does not affect the Customer's statutory rights.