

Education Software Solutions Limited trading as ESS READING CLOUD - HOSTING TERMS AND CONDITIONS

1 Definitions & Interpretation

1.1 The terms and conditions have the following meanings:

"Authorised Users"

Customer, employees and independent contractors of the Customer together with any persons who may lawfully access the library systems of the Customer;

"ESS"

Education Software Solutions Limited trading as ESS Reading Cloud ESS) whose Registered Address is 11 Kingsley Lodge, 13 New Cavendish Street, London, W1G 9UG and Company Registration Number 12595779 and whose Trading Address 11 Kingsley Lodge, 13 New Cavendish Street, London, W1G 9UG T: +44 (0) 161 449 9357 -
E: customer.queries@reading-cloud.com
W: <https://www.ess-readingcloud.co.uk/>
T: 0161 449 9357

"Commencement Date"

the date on which ESS commences provision of the Services;

"Contract"

these terms and conditions together with either (a) the Quotation or (b) the Order Form.

"Customer"

the customer named in the Quotation or Order Form;

"Customer Personal Data"

any personal data which is transmitted by or on behalf of the Customer to, or is otherwise processed by ESS under the Contract or which is generated under the Contract ;

"Data Protection Legislation"

means 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.

"Documentation"

the documentation provided with the Software and the Hosting Service;

"Effective Date" means the date on which the Contract is entered into by the parties;

"Fees"

the fees in respect of the Hosting Services, the Software Support Services and the Support Services (all as outlined in the Quotation or Order Form), together with any storage usage fees as referred to in clause .6.2;

"Hosting Service"

the service whereby the Software and its associated data is hosted on a computer system under the control of ESS for use by the Authorised Users;

"Information"

any and all know-how, documentation and information, whether commercial, financial, technical, operational or otherwise relating to the business, affairs, customers, suppliers or methods of one party and disclosed to or otherwise obtained by the other party in connection with the Contract;

"Initial Term"

the initial period of the Contract, as specified on the Quotation or Order Form which, commences on the Commencement Date;

"Intellectual Property"

any and all intellectual property rights including patents, trademarks, design rights, copyright, rights in databases, domain names, topography rights, know-how, look and feel, rights in confidential information and all similar rights (whether or not registered or capable of registration and whether subsisting in the United Kingdom or any other part of the world) together with any and all goodwill relating or attached thereto, the right to apply for registration of and/or register such rights and all extensions and renewals thereof;

"Modifications"

all modifications to the Software which remedy defects in the Software including temporary fixes, bug fixes, patches and maintenance releases and/or all modified versions of the Software which provide additional and/or enhanced functionality;

"Order Form"

is the form, fully completed by the Customer and submitted to ESS requesting the supply of Software and Services, subject to these terms and conditions;

"Quotation"

is the quotation issued to the Customer by ESS for the supply of Software and Services, which shall include but not limited to, pricing and any additional terms and conditions;

"Services"

the Hosting Service, the Software Support Services and the Support Services;

"Software"

the software named in the Quotation or Order Form;

"Software Support Services"

the services relating to the support and maintenance of the Software described in clause 5; and

"Support Services"

the other services provided by ESS as described in clause 5.

1.2 Headings are included for convenience only and shall not affect the construction or interpretation of these terms and conditions..

1.3 Any reference to a clause, schedule or appendix shall (unless expressly provided otherwise) be a reference to a clause of or schedule or appendix to these terms and conditions. Schedules and appendices shall have the same force and effect as if set out in the body of these terms and conditions.

1.4 Any reference to the singular shall include the plural and vice versa and any reference to one gender shall include all genders including the neuter gender.

1.5 Any reference to a person shall, unless the context otherwise requires, include individuals, partnerships, companies and all other legal persons.

1.6 The words "include", "includes", "including" and "included" will be construed without limitation unless inconsistent with the context.

1.7 Reference to a sum being variable shall be to that sum as increased on each anniversary of the Commencement Date to reflect ESS's standard charges for the relevant matter.

2 Basis of Contract and term

2.1 These terms and conditions, together with an accepted (a) Quotation or (b) Order Form, shall form the Contract between the parties.

2.2 The Effective Date shall be either of the following:-

2.2.1 Quotation

in signing and returning the Quotation to ESS by post or confirming acceptance of the Quotation, by electronic means, including but not limited to, signature or by email, the Customer accepts the Contract on the terms and conditions set out in this document and in the Quotation.

The Effective Date shall be the date upon which ESS first receives written acceptance from the Customer.

2.2.2 Order Form

In completing and submitting the Order Form to ESS by post or by electronic means, including but not limited to, signature or by email, the Customer accepts that any resulting Contract shall be on the terms and conditions set out in this document and in the Order Form accepted by ESS.

The Effective Date shall be the date upon which ESS confirms acceptance of the Order Form to the Customer by electronic means, including but not limited to, signature or by email. For the avoidance of doubt ESS shall be under no obligation to accept an Order Form submitted by the Customer.

2.3 In the event that the Customer issues a purchase order in conjunction with clause 2.2, its sole purpose shall be to facilitate the payment of ESS in accordance with the Quotation or Order Form and these terms and conditions. Therefore, any contradictions detailed within the purchase order (including any back of purchase order terms and conditions) when compared with the Quotation or Order Form and these terms and conditions, shall not apply.

2.4 The Contract shall commence on the Commencement Date and shall continue in force for the Initial Term, unless or until it is terminated in accordance with Clauses 2 or 13.

2.5 Should the Customer wish to cease using the Hosting Services (which shall include the Software Support Services) during the Initial Term, the Customer agrees to pay ESS early termination charges in accordance with clause 2.6 below.

2.6 Upon the Customer serving written notice of termination, with not less than three months' notice, such notice to expire on any anniversary of the Commencement Date, the Customer shall pay ESS those charges detailed in the Quotation or Order Form, calculated as a percentage of the total outstanding Initial Term Fees relating to the terminated Hosting Services and Software Support Services not yet invoiced by ESS and paid for by the Customer.

Outstanding Years	Percentage of Total Outstanding Initial Term Fees relating to the Hosting Services and Software Support Services terminated
1	20%
2	35%
3	35%
4	35%

2.7 In the event that the Customer wishes to cancel any ordered Support Services, following the Commencement Date, then it may do so without charge, providing it serves ESS with written notice of cancellation, with not less than three months' notice prior to the start date and/or specific individual dates for the provision of the Support Services it wishes to cancel, as agreed with the Customer in accordance with Clause 5.7. However, if timely notice isn't provided by the Customer to ESS, or the Customer has failed to agree delivery dates with ESS in accordance with Clause 5.7 for those Support Services it wishes to cancel, then the Customer agrees to pay ESS one hundred percent (100%) of the associated Support Services Fees.

2.8 Subject to earlier termination in accordance with Clauses 2.5 and 2.6, at the end of the Initial Term and each Extended Term thereafter, the Contract will automatically be renewed for an additional one (1) year term ("Extended Term") unless or until:

2.8.1 it is terminated in accordance with clause 13;

2.8.2 the maximum number of Extended Term periods ("Maximum Extended Term"), as may be agreed and specified in the Quotation or Order Form, has ended; or

2.8.3 not less than three months' written notice is served by the Customer, such notice to expire on any anniversary of the Commencement Date.

2.9 Should ESS wish to terminate the Contract for whatever reason during the Initial Term or Extended Term, it shall serve notice of termination, with not less than three months' notice, such notice to expire on any anniversary of the Commencement Date.

2.10 If the Customer has previously licensed a version of the Software on a non-hosted basis and is no longer using that version then: (a) these terms and conditions shall supersede the terms on which that version was licensed and those terms are hereby terminated by consent of the parties but without prejudice to the parties accrued rights and remedies (other than the right to use the software licensed thereunder); (b) for the purpose of the annual Fees, they shall be calculated from and be payable from each date on which the annual licence fee/support fee was payable/renewable under the previous licence and will be invoiced prior to that date.

3 Licence

3.1 ESS hereby grants to the Customer a non-exclusive, non-transferable licence to access and use the Software through the Hosting Service and to access and use the Documentation in each case only in respect of the Customer's usual business or, if the Customer is a school, educational purposes.

3.2 The licence is non-assignable and non-transferable and the Customer may not loan, rent, lease, sub-licence, sell or otherwise transfer the right to use the Software to any third party or use the same to provide bureau or other services to third parties. Notwithstanding the aforesaid and clause 14, if the Customer is a school and it is restructured or merged with another school then, provided that Customer obtains ESS's prior written consent (which will not be unreasonably withheld or delayed) the Customer may transfer the licence and this Contract to the restructured/merged school.

3.3 The licence entitles the Customer to make such copies of the Software and Documentation as are necessary (in the case of the Software) solely for

archive and back-up purposes and (in the case of the Documentation) to enable Customer to exercise its rights under the licence. The Customer shall ensure that all copyright and proprietary notices contained on the original version of the Software and Documentation appear on all copies made.

3.4 Save as permitted by law the Customer may not merge, decompile, disassemble, reverse engineer, copy, adapt or modify the Software or ascertain or list the source code of the Software or copy the Documentation.

3.5 ESS may audit the use of the Software and the Hosting Service by each Authorised User no more than once in each quarter provided that ESS shall exercise such right with reasonable prior notice and in a manner that does not substantially interfere with the Customer's normal conduct of business. If such audit reveals use of the Software or the Hosting Service by persons other than the Authorised Users, the Customer shall promptly disable such persons' access and shall not issue any new passwords to such individuals and (without prejudice to its other rights and remedies) ESS shall have the right to charge the Customer for such person's use of the Software and/or the Hosting Service as if they were additional Authorised Users.

3.6 All right, title and interest (including all Intellectual Property) in and to the Software shall be the exclusive property of ESS and other than as expressly stated herein, the Contract does not grant the Customer any rights in or to the Software.

4 Hosting

4.1 ESS shall perform the Hosting Services and shall use reasonable endeavours to ensure the Software is available to the Customer for use in accordance with this agreement. ESS shall promptly inform the Customer of any security breaches with respect to the Hosted Service.

4.2 The Customer's access to the Hosting Service shall be limited to the number of Authorised Users as detailed in the Quotation or Order Form. The Customer shall use all reasonable endeavours to prevent unauthorised access to the Hosting Service and shall notify ESS promptly if it becomes aware of any such unauthorised access or use.

4.3 The Customer shall ensure that each Authorised User keeps a secure password for his use of the Software, and that each Authorised User keeps his password confidential.

4.4 The Customer acknowledges that from time to time it may be necessary or desirable to take the Software out of service for repair or maintenance and ESS will use reasonable endeavours to inform the Customer of any such outage at least one week in advance, save that in emergency situations, when the Software needs to be taken out of service for immediate repair, the Customer recognises and accepts that such advance notice may not be possible. ESS will however attempt to notify the Customer at the earliest possible time in the event of an emergency outage.

4.5 ESS does not warrant specific uptime or network response times on any network, however ESS agrees that it will use reasonable endeavours to actively monitor network performance, and make or recommend alterations to improve such performance as it becomes necessary.

4.6 ESS or its hosting provider will save backups of the Software and the data used by the Software.

4.7 The Customer shall not use the Hosting Services to transmit, distribute, disseminate, publish or store any material or information that:

4.7.1 is illegal, spam in nature, defamatory, obscene, indecent or harassing; or threatening or encouraging bodily harm, destruction of property, or infringing the lawful rights of any party;

4.7.2 violates the privacy of any party as protected by applicable law (whether local, national or international) or regulation; or

4.7.3 contains software viruses, worms, Trojan horses or any computer code, files or programs designed to disrupt, destroy, invade, gain unauthorised access to, corrupt or modify the data, hosted applications, or any other equipment.

5 Support & Modification

5.1 ESS shall provide the Software Support Services comprising:

5.1.1 access to a Support team for general user enquiries in respect of the Software; and

5.1.2 access to online resources such as Digital Assistant, Knowledge base articles and user guides

5.2	ESS shall only be obliged to provide the Software Support Services between 8.00 and 17:30 BST/GMT Monday to Friday excluding English public holidays and the last 2 weeks of December.		Should the Customer's storage requirement be 20GB or more, ESS shall be entitled to prevent uploads exceeding this figure.										
5.3	ESS shall be entitled to implement Modifications to the Software without the prior consent of the Customer provided that such Modifications do not alter the basic functionality of the Software prior to such Modifications.	6.8	The Customer shall reimburse ESS for all reasonable out of pocket travelling, accommodation and other expenses incurred by ESS in the provision of the Services (or the relevant part thereof).										
5.4	ESS will only be obliged to provide Software Support Services in respect of the current version of the Software;	6.9	Fees and (where applicable) expenses payable are expressed exclusive of all taxes, charges, duties and levies (such as but not limited to value added tax) which the Customer shall pay in addition to the Fees and (where applicable) expenses at the rate and in the manner prescribed by law from time to time.										
5.5	The Customer grants ESS unrestricted access to their digital library system with regards to a support enquiry. This includes hosting the data in the test environment at the Marple office. This will comply with the upmost security process and Data Usage policy. The data will be deleted from the test environment within 90 days of the closure of the support incident.	7	Warranties										
5.6	Any Support Services which are to be provided by ESS to the Customer, together with the applicable Support Services fees, shall be specified in the Quotation or Order Form. Such Support Services may include, but not be limited to, the provision of training or cataloguing.	7.1	ESS warrants that:										
5.7	Where the Customer has ordered any Support Services, the Customer shall agree the delivery dates for such Support Services with ESS no later than ninety (90) days from the Commencement Date. The Customer may request to rearrange the delivery dates for such Support Services on no less than one (1) months' notice. Any revisions to the delivery dates shall be subject to ESS' agreement, which shall be final.	7.1.1	it has full capacity and authority and all necessary consents to enter into and to perform its obligations under the Contract;										
6	Fees	7.1.2	use of the Software and Documentation strictly in accordance with the Contract will not infringe the Intellectual Property or other rights of any third party;										
6.1	The Customer shall pay the amount of Fees as detailed within the Quotation or Order Form.	7.1.3	it shall provide the Services with reasonable skill and care; and										
6.2	Subject to Clause 2, payment of the Fees shall be as follows:-	7.1.4	the Software will for ninety days following commencement of the Hosting Service possess the functionality detailed in the Documentation.										
6.2.1	for the Initial Term, the first instalment of the Hosting Services and Software Support Services Fees shall be payable on the Effective Date of the Contract ;	7.2	If the Customer notifies ESS in writing of a failure to comply with the warranty in clause 7.1(b) ESS may, in its sole discretion:										
6.2.2	the remaining Initial Term and ongoing Extended Term instalments for the Hosting Services and Software Support Services Fees shall be payable on each anniversary of the Commencement Date	7.2.1	procure the right for all Authorised Users to continue to use the Software and Documentation in question; or										
6.2.3	the Support Services Fees shall be payable upon completion of the Support Services delivered each month	7.2.2	replace, vary or modify the Software and/or Documentation in question so that they conform to the warranty in clause 7.1(b); or										
6.2.4	The storage Fees shall be payable upon the additional amount of storage capacity utilisation each month	7.2.3	terminate the Contract and refund any Fees paid by the Customer that became due and were paid during the year in which ESS gave notice to the Customer under this clause 7.2.										
6.3	In the event that the Customer serves notice to cease use of the Hosting Services and Software Support Services in accordance with Clause 2.5, then payment of the relevant early termination charges calculated in accordance with Clause 2.6, shall be payable upon ESS's receipt of the Customer's written termination notice.	7.3	If the Customer notifies ESS in writing of a failure to comply with the warranty in clause 7.1(d), ESS sole liability and obligation in relation to any breach of this warranty shall (at its option) be to use its reasonable endeavours to remedy any material defect in the Software or refund the first instalment of the Fee.										
6.4	In the event that the Customer serves notice to cancel any Support Services in accordance with Clause 2.7, then payment of any termination charges shall be payable upon ESS's receipt of the Customer's written termination notice.	7.4	The Customer warrants that it has full capacity and authority and all necessary consents to enter into and perform its obligations under the Contract.										
6.5	ESS shall invoice the Customer as follows:-	7.5	All warranties, representations, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.										
6.5.1	For Fees attributable to Clause 6.2.1, on or following the Effective Date	8	Liability										
6.5.2	For Fees attributable to Clause 6.2.2 in advance of each anniversary of the Commencement Date	8.1	Subject to clauses 8.3 and 8.4, ESS's total aggregate liability to the Customer in respect of all causes of action arising out of or in connection with this agreement (whether in contract, strict liability, tort, delictual liability (including negligence), misrepresentation or otherwise) shall not exceed, in the case of loss or damage to tangible property, £50,000 and in any other case the greater of £1,000 and the Fees paid by the Customer to ESS in relation to the Contract over the preceding twelve (12) months.										
6.5.3	For Fees attributable to Clauses 6.2.3 and 6.2.4 at the end of each month in which they were incurred	8.2	Save as provided in clauses 8.3 and 8.4, ESS shall not be liable to the Customer for any loss of profit, loss of revenue, loss of or depletion of goodwill, loss of anticipated savings, loss of business opportunity, loss of data or loss of use of data, injury to reputation or any indirect, consequential or special loss or damage, regardless of the form of action, whether in contract, strict liability, tort or delictual liability (including negligence) and regardless of whether either party knew or had reason to know of the possibility of the loss, damage or injury in question.										
6.6	The Customer shall pay ESS' within thirty (30) days of the date of each invoice. Barclays Bank PLC Sort Code: 20-67-59 Account Number: 83067971	8.3	Nothing in the Contract shall limit or exclude either party's liability:										
6.7	ESS shall be entitled to charge the following Fees should the Customer use the storage capacity of the Hosting Service beyond the storage limit of 2GB at any time during a month:	8.3.1	for death or personal injury resulting from negligence;										
	<table><tr><th>Storage Requirement</th><th>Monthly Cost</th></tr><tr><td>>2GB and <5GB</td><td>£9.99</td></tr><tr><td>>=5GB and <10GB</td><td>£19.99</td></tr><tr><td>>=10GB and <15GB</td><td>£29.99</td></tr><tr><td>>=15GB and <20GB</td><td>£39.99</td></tr></table>	Storage Requirement	Monthly Cost	>2GB and <5GB	£9.99	>=5GB and <10GB	£19.99	>=10GB and <15GB	£29.99	>=15GB and <20GB	£39.99	8.3.2	for fraud or fraudulent misrepresentation;
Storage Requirement	Monthly Cost												
>2GB and <5GB	£9.99												
>=5GB and <10GB	£19.99												
>=10GB and <15GB	£29.99												
>=15GB and <20GB	£39.99												
		8.3.3	for any other liability the exclusion or limitation of which is not permitted by English law.										

8.4	The Customer shall assume sole responsibility for the use of the Software and Services by all Authorised Users and ESS shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to ESS by Customer in connection with the Software and the Services or any actions taken by ESS at Customer's direction. Customer shall indemnify and hold ESS harmless from any claim caused by or arising from any breach of the Software and/or Service conditions and from any unauthorised modification or misuse of the Software and/or Services or Documentation by Customer, its servants, agents or subcontractors.	processing of Customer Personal Data by the controller shall be lawful;
		12.3.2 any instruction given to ESS in relation to the processing of the Customer Personal Data shall be lawful;
		12.3.3 it is solely responsible for the accuracy of the Customer Personal Data;
		12.3.4 if processing by the processor involves any "special" or "sensitive" categories of Customer Personal Data (as defined under Data Protection Legislation), it has collected such Customer Personal Data in accordance with Data Protection Legislation;
		12.3.5 it shall ensure that data subjects receive a privacy notice compliant with Data Protection Legislation; and
		12.3.6 it shall respond in a reasonable time and to the extent reasonably practicable to enquiries by data subjects regarding the processing of the Customer Personal Data by the Customer, and to give appropriate instructions to ESS in a timely manner.
9	Indemnity	
9.1	ESS will indemnify the Customer from and against any and all losses, damages, claims, costs and expenses (including legal expenses) suffered or incurred by or awarded against the Customer as a result of any claim that receipt of the Services and/or use of the Software or Documentation infringes the Intellectual Property of any third party, provided that:	12.4 The Parties confirm that the Data Protection Schedule at Schedule A contains the necessary information in relation to the subject matter and duration of the processing; the nature and purpose of the processing; the type of personal data; the categories of data subjects; and the obligations and rights of the Customer.
9.1.1	ESS is given prompt notice of any such claim;	
9.1.2	The Customer provides reasonable co-operation to ESS in the defence and settlement of such claim; and	12.5 Where ESS processes Customer Personal Data under or in connection with this Agreement, ESS shall:
9.1.3	ESS is given sole authority to defend or settle such claim.	
10	Confidentiality	12.5.5 save as required otherwise by law, only process such Customer Personal Data as is necessary to perform its obligations under this Agreement, and only in accordance with the Customer's documented instructions;
10.1	Each party shall keep the other's Information confidential and shall not divulge the same to any third party except for the purposes of the Contract or use it itself for any other purpose without the prior written consent of the other party. The Software shall be deemed to be the Information of ESS.	12.5.6 put in place appropriate technical and organisational measures to meet its own obligations under the Data Protection Legislation;
10.2	The provisions of this clause 10 shall not apply to any Information that the receiving party can show:	12.5.7 ensure ESS staff who will have access to Customer Personal Data are subject to appropriate confidentiality obligations;
10.2.1	is in the public domain in substantially the same combination as that in which it was disclosed to the receiving party other than as a result of a breach of the Contract or any other obligations of confidentiality;	12.5.8 be entitled to engage sub-processors to process Customer Personal Data subject to ESS ensuring that equivalent requirements to those set out in this Clause are imposed on any sub-processor(s), ESS remaining fully liable to the Customer for the performance of the sub-processor's obligations and where applicable, providing the Customer with reasonable prior notice of any addition, removal or replacement of any such sub-processors;
10.2.2	is or was lawfully received from a third party not under an obligation of confidentiality with respect thereto;	12.5.9 not process or transfer Customer Personal Data outside the United Kingdom or the European Economic Area ("EEA") without the prior documented consent of the Customer (which consent shall not be unreasonably withheld or delayed) except in either or both of the following circumstances:
10.2.3	is required to be disclosed under operation of law, by court order or by any regulatory body of competent jurisdiction (but then only to the extent and for the purpose required);	12.5.9.1 for the purposes of developing, testing, implementing, supporting or providing the Software and/or Services as appropriate where the data is processed or transferred by a member of the ParentPay Group; or,
10.2.4	is approved for disclosure in writing; or	12.5.9.2 where such transfer is strictly necessary to maintain the integrity or security of the platform or service. For example, cloud based denial-of-service mitigation platforms.
10.2.5	was developed independently of and without reference to confidential information disclosed by the other party, provided always that each party shall provide the other with at least ten days' written notice of its intention to rely upon one or more of these exceptions, such notice specifying details of the exception to be relied upon and the information concerned.	
10.3	Each party shall be entitled to divulge the other party's Information to its employees, agents, directors, officers, authorised sub-contractors, professional advisors and consultants who have a need to know the same in connection with the Contract provided that the receiving party shall ensure that such persons are aware of and, shall procure that such persons comply with, these obligations as to confidentiality.	12.5.10 have in place the appropriate technical and organisational security measures to protect the Customer Personal Data against accidental or unlawful destruction, loss, alteration, unauthorised disclosure or access;
11	Publicity	12.5.11 notify the Customer without undue delay after becoming aware of any personal data breach involving Customer Personal Data, taking into account the nature of processing and the information available to ESS;
12	Data Protection	12.5.12 take appropriate technical and organisational measures, insofar as is possible, to assist the Customer in responding to requests for data subjects for access to or rectification, erasure or portability of Customer Personal Data or for restriction of processing or objections to processing of Customer Personal Data (but ESS will not itself respond to any such data subject request except on written instructions from the Customer). Furthermore, ESS will, upon the request of the Customer, provide assistance to the Customer relating to the Customer's security; impact assessment; data breach reporting requirements; and data protection or data privacy authority consultation obligations under the Data Protection Legislation taking into account the information available to ESS. ESS may charge the Customer its reasonable costs (or the rates otherwise agreed between the Parties) for its time spent and expenses incurred in providing the Customer with co-operation and assistance as required by this Clause;
12.1	Within this Clause the terms "controller", "data subject", "personal data", "personal data breach", "process ("processed" to be construed accordingly) and "processor" shall have the same meanings as in the Data Protection Legislation. With respect to the parties' rights and obligations under this Agreement, the parties acknowledge that in relation to any Customer Personal Data, the Customer is a controller and ESS is a processor.	
12.2	The parties acknowledge their respective obligations under the Data Protection Legislation and shall give each other such assistance as is reasonable to enable each other to comply with such obligations, however, for the avoidance of doubt the Customer agrees that where ESS has satisfied a contractual obligation under this Agreement, then such satisfaction of the contractual obligation is deemed to satisfy the same or similar requirement under the Data Protection Legislation.	
12.3	The Customer warrants, represents and undertakes to ESS that:	12.5.13 make available to the Customer such information as the Customer reasonably requests and ESS is reasonably able to provide, and, permit and contribute to such audits, including inspections, conducted
12.3.1	the means by which Customer Personal Data is acquired and the	

12.5.14	by the Customer (or the [Customer's] appointed auditors), as is necessary to demonstrate ESS'S compliance with the Data Protection Legislation. The Customer will give reasonable notice of any audit and will be fully liable for any associated costs (including those of ESS); and save as may be required by law, and at the Customer's cost and option, either delete or return the Customer Personal Data to the Customer on expiry or termination of this Agreement, provided always that nothing in this Clause shall oblige ESS to provide assistance which does not relate directly to the Services performed pursuant to this Agreement.	13.3	Upon expiration or termination of the Contract for any reason:
12.6	ESS shall inform the Customer in writing if, in ESS's opinion, an instruction from the Customer infringes the Data Protection Legislation but only in relation to a breach of General Data Protection Regulation ((EU 2016/679)) and/or other Union or Member State data protection provisions and not jurisdictions outside of these areas. However, the Customer acknowledges that:	13.3.1	ESS shall cease to provide the Services; and
12.6.1	any information ESS provides is not legal advice or guidance in any way whatsoever, and that ESS makes no warranty or representation regarding the information (express or implied); and	13.3.2	All Authorised Users shall stop using the Software and Services;
12.6.2	this Clause shall not relieve the Customer of its obligation to ensure that all instructions to ESS comply with all applicable legislation, including all Data Protection Legislation; and	13.3.3	The Customer shall promptly instruct ESS to either; destroy or deliver in a universal CSV file format to the Customer, all of the Customer Personal Data in its possession or control. ESS shall certify in writing that it has done so.
12.6.3	ESS may charge the Customer its reasonable costs (or the rates otherwise agreed between the Parties) for its time spent and expenses incurred in providing the Customer with co-operation and assistance as required by this Clause.	13.3.4	The Customer shall promptly and at ESS's option either destroy or deliver to ESS all of ESS's Information and personal data in its possession or control and, if requested to do so by ESS shall certify in writing that it has done so.
12.7	In order to fulfil any UK government (which will include the Senedd or the Scottish Parliament for the purposes of this clause) requests made in accordance with Data Protection Legislation, ESS may release data to the UK government or any party authorised by the UK government on receipt of a lawful written request from the same but where practicable ESS shall remove any data fields which enable anyone to identify an individual data subject using such data.	14	Assignment & Subcontracting
12.8	Notwithstanding anything to the contrary in this Agreement, if any of the following occur:	14.1	The Customer shall not assign, transfer or otherwise part with the Contractor the benefits or obligations thereof in whole or in part without the written consent of ESS.
12.8.1	any changes/modifications to the Data Protection Legislation (including in connection with the withdrawal of the United Kingdom from the European Union and/or the EEA) including the requirement to amend, update, modify or replace any systems ESS use to process the Customer Personal Data;	14.2	ESS shall be entitled to assign or transfer the Contract in whole or in part or sub-contract the performance of any part of the Contract to any third party upon written notice to the Customer.
12.8.2	any new, clarified or amended guidance or policies issued by a supervisory authority;	14.3	References to a party shall include a reference to its successor and permitted assigns.
12.8.3	any direction or instruction issued by a supervisory authority (whether relating to the Customer or ESS in respect of the Services (including any processing of the Customer Personal Data) then any increased effort or costs incurred by ESS in association with the aforementioned shall be additionally chargeable to the Customer.	15	Third Party Rights
12.9	The Customer shall indemnify and keep indemnified ESS against any liability, fines, claims, demands, expenses and costs (including legal fees) arising as a result of any breach of the Data Protection Legislation by the Customer, or ESS acting in accordance with any instruction, policy or procedure of the Customer.		A person who is not a party to the Contract has no right to enforce any of the provisions of the Contract.
13	Termination	16	Notices
13.1	A party shall be entitled to terminate the Contract immediately upon notice in writing to the other if the other:		Each notice or communication given under or in relation to the Contract shall be in writing and shall be delivered by hand or sent by special delivery post or facsimile to the other party at its address/facsimile number set out below or to such other address/facsimile number as it has previously notified to the sending party in writing. Each such notice shall be deemed to have been served:
13.1.1	commits an irremediable breach of the Contract ; or	16.1	in the case of by hand and special delivery, when actually received; or
13.1.2	commits a material remediable breach of the Contract and has failed to remedy such breach within thirty (30) days of written notice requiring remediation; or	16.2	if sent by special delivery mail and returned marked "gone away" or to the like effect, on return of such special delivery mail; or
13.1.3	makes an arrangement with or enters into a compromise with its creditors, becomes the subject of a voluntary arrangement, scheme of arrangement, receivership, administration, liquidation, bankruptcy or winding up, is unable to pay its debts or otherwise becomes insolvent or suffers or is the subject of a distraint, execution, event of insolvency or event of bankruptcy or any similar process or event, whether in the United Kingdom or elsewhere.	16.3	if sent by facsimile, on the second working day (being a day other than Saturdays, Sundays and public holidays in the part of the United Kingdom in which the Software is used) after the day of transmission provided that the sending party shall have received an error free transmission report in respect of the notice.
13.2	Save as provided below, each party's rights, liabilities and obligations under the Contract shall cease upon its termination or expiration. Each party's accrued rights and liabilities and the rights and obligations of each party that are expressly or by implication intended to come into force upon, or remain in force following, the termination or expiration of the Contract (including under clauses 6, 8, 10, 12, 13, 15, 18 and 19) shall survive any termination or expiration of the Contract.		<u>For Customer</u>
			The Customer name and address provided in the Quotation or Order Form.
			Facsimile: the number provided in the Quotation or Order Form
			Attention: the contact named in the Quotation or Order Form
			<u>For ESS</u>
			Education Software Solutions LTD trading as ESS Reading Cloud (ESS), 11 Kingsley Lodge, 13 New Cavendish Street, London, W1G 9UG
			Attention: Managing Director
		17	Force Majeure
		17.1	Subject to clause 17.2, neither party shall be in breach of the Contract , nor liable for any failure or delay in performance of any obligations under the Contract arising from or attributable to acts, events, omissions or accidents beyond its reasonable control (a "Force Majeure Event"), including acts of God, governmental actions, war or national emergency, acts or threats of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials.
		17.2	The provisions of clause 17.1 shall apply to a party only if it:
		17.2.1	promptly notifies the other parties in writing of the nature and extent of the Force Majeure Event causing its failure or delay in performance; and
		17.2.2	could not have avoided the effect of the Force Majeure Event by taking precautions which, having regard to all the matters known to it before the Force Majeure Event, it ought reasonably to have taken, but did not; and

17.2.3 has used all reasonable endeavours to mitigate the effect of the Force Majeure Event, to carry out its obligations under the Contract in any way that is reasonably practicable and to resume the performance of its obligations as soon as reasonably possible.

17.3 If a Force Majeure Event prevails for a continuous period of more than six months, any party may terminate the Contract by giving 14 days written notice to the other party. On the expiry of this notice period, the Contract will terminate. Such termination shall be without prejudice to the rights of the parties in respect of any breach of the Contract occurring prior to such termination.

18 General

18.1 No variation of or amendment to the Contract shall be effective unless made in writing and signed by the parties (or their authorised representatives).

18.2 The failure or delay of ESS to enforce or to exercise, at any time or for any period of time, any term of or any right, power or privilege arising pursuant to the Contract does not constitute and shall not be construed as a waiver of such term or right, power or privilege and shall in no way affect ESS's right to later enforce or exercise it, nor shall any single or partial exercise of any right, remedy, power or privilege preclude any further exercise of the same or the exercise of any other remedy, right, power or privilege.

18.3 The illegality, invalidity or unenforceability of any provision of, or any part of a provision of, or any right or remedy arising pursuant to this agreement shall not affect in any way the remaining provisions, rights or remedies, which shall be construed as if such illegal, invalid or unenforceable part did not exist.

18.4 The Contract (including the schedules) contains all the terms agreed by the parties in relation to its subject matter and supersedes any and all prior agreements, understandings or arrangements between them, whether oral or in writing in relation to such matters.

18.5 Except as expressly provided in the Contract, neither party shall be entitled to assert any credit, set-off or counterclaim against the other in order to justify withholding payment of all or any part of sums due under the Contract.

19 Governing Law

19.1 The Contract (including any associated non-contractual disputes or claims) is governed by English law and the parties hereby submit to the exclusive jurisdiction of the English courts.

SCHEDULE A

PERSONAL DATA AND PROCESSING ACTIVITY

Subject matter of the processing	Provision of a digital library system
Duration of the processing	From the signing of the Order Form until the anniversary date.
Nature and purpose of the processing	In order to provide the digital library system and 1st /2nd line support and maintenance to the Customer, ESS requires access to Customer Personal Data. Customer Personal Data is secured, backed up and made available to the Customer. Customer Personal Data is stored within the Microsoft Azure platform based within the EEA. To deliver a highly available and secure digital library system ESS deploy a Content Delivery Network provided by CloudFlare. Customer Personal Data is not transferred or accessible by CloudFlare employees. CloudFlare only caches static content which is shared among all library systems such as cover images, language file etc. If the Customer has ordered: • GroupCall ESS Connect Xporter, • Overdrive ebooks (including Primary eBooks Now, Secondary eBooksNow Overdrive Standard Platform), or • BioStore Biometric solution • Wonde RC Intake the following applies : GroupCall ESS Connect Xporter has been created by GroupCall Ltd. in the UK, to retrieve Customer Personal Data from the Management Information System and securely push this to the digital library system. In time, GroupCall support staff may require access to the Customer Personal Data collected in the provision of support and maintenance services. RC-Intake has been created by Reading Cloud as a method for student provisioning. It works with the data-integration providers Wonde and Groupcall, in the UK to retrieve Customer Personal Data from your Management Information System and pull this into your digital library system. Wonde and/or Groupcall staff may require access to the Customer Personal Data collected in the provision of support and

	maintenance services. Rakuten Overdrive provide a digital ebook library system. There are two situations, the most common is whereby Overdrive is not provided with Customer Personal Data. Customer Personal Data does not leave the EEA remain in the ESS digital library system. It connects to an existing digital library system via an industry standard protocol. Overdrive store a unique identifier but this on its own is not able to identify any Customer Personal Data. All loan history is stored in Overdrive. The other method does require the Customer to provide Customer Personal Data, therefore, Customer Personal Data is transferred outwit the EEA to the US. All data will be stored securely in the US and it would be recommended to see its GDPR information at the following link: https://company.cdn.overdrive.com/policies/gdpr A biometric identification to the digital library system is provided by a 3rd Party provider BioStore Ltd. in the UK. BioStore requires Customer Personal Data to be transferred to its locally hosted ID Manager. BioStore uses AES256 encryption - a US Government and worldwide encryption standard. This also applies to communication between different parts of the BioStore system. Each organisation has a unique key that is used for encrypting the database, so a database cannot be transferred to another system and viewed.
Type of personal data	To allow the full function of the library system ESS requires access to the following Customer Personal Data:- • Forename • Surname • Gender • Date of Birth • Tutor group • Year Group • Management System ID These are the mandatory fields when transferring via csv file or GroupCall ESS Connect to the library system. There is optional data which may be transferred – Photograph, Address, Telephone, Ethnicity and guardian information. To allow ordering of books and other library products from third party suppliers/distributors ESS requires the following Customer Personal Data to be shared with a Sub-Processor: - • Librarian Customer contact information including Librarian Customer e-mail address

Categories of data subjects	• Pupils • Parents • Staff • Customers
Obligations and rights of the Client	Please see the beginning of this Agreement.

ESS is permitted to transfer Customer Personal Data to the following entities outside the EEA in accordance with Clause 12.5.5:

Destination	Recipient
US	Rakuten Overdrive , One OverDrive Way Cleveland, OH 44125 USA