

CONTRACTUAL TERMS & CONDITIONS

AGREED TERMS

1. INTERPRETATION

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

Active User: means Authorised Users who require an account to access the Software during the Subscription Term (or any part of the Subscription Term), subject to the appropriate Subscription Fee being paid for the provision of such account.

ATLAS: means the computer software application included within the Software that supports the submission of work for assessment and other organisational processes.

Authorised Users: those employees, agents, associates and students of the Customer who are authorised by the Customer to use the Services and the Documentation and the Customer has paid for such use.

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

Conditions: means these terms and conditions.

Confidential Information: information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in clause 12.4.

Contract: has the meaning ascribed to it in clause 2.1.

Customer: means the person, firm or business who purchases the Services from the Supplier.

Customer Data: the data inputted by the Customer, Authorised Users, or the Supplier on the Customer's behalf for the purpose of using the Services or facilitating the Customer's use of the Services.

Customer Software: software integrated into the Services by or on behalf of the Customer

Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR, the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of Personal Data (including, without limitation, the privacy of electronic communications) and, to the extent the EU GDPR applies, the law of the European Union or any member state of the European Union to which the Customer or Supplier is subject, which relates to the protection of Personal Data.

Documentation: the document(s) made available to the Customer by the Supplier online via <https://resources.pebblepad.co.uk/contract-documents> or such other web address notified by the Supplier to the Customer from time to

time which sets out a description of the Services, the user instructions for the Services, the functional specification, service level agreement and details of the Third Party Software that is incorporated in to the Software.

Effective Date: has the meaning provided to it in clause 2.1.

External Assessor: means an Authorised User who can log in to view items created by an Internal Authorised User. External Assessors may provide feedback within the Software in a range of formats to support assessment, accreditation or mentoring of Internal Authorised Users, but there are no options for External Assessors to create items other than those relating to assessment, feedback or support of Internal Authorised Users.

Initial Subscription Term: term and commencement date as set out in the Quote.

Internal Authorised User: means any Authorised User of the Software who can log into the Software to create and modify items within their own account.

Internal Authentication Facility: means the password and account management system included within the administration area of the Software to grant access to the Software to Authorised Users who cannot access the Software via an Organisational Authentication Facility.

Normal Business Hours: 8.30 am to 5.30 pm local UK time, each Business Day.

Organisational Authentication Facility: means a password access system based on a username and password, provided by the Customer, including, without limitation, Lightweight Directory Access Protocol, Shibboleth, Single Sign On, Active Directory and other appropriate access control systems.

PebblePad: means the Software application known as PebblePad as made available by the Supplier from time to time.

Personal Account: means the personal account made available to an Authorised User, following the purchase of an account for that Authorised User, which is subject to the payment of Subscription Fees.

Personal Data Breach: Personal Data breach means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data transmitted, stored or otherwise processed.

Quote: means the quote provided by the Supplier to the Customer for the provision of the Services.

Renewal Period: the period described in clause 14.1.

Security Breach: any unauthorised use of, loss of, access to or disclosure of Customer Data or any other security breach or data breach relating to Customer Data that is governed by applicable laws.

Services: the subscription services provided by the Supplier to the Customer under this Contract via a website notified to the Customer by the Supplier, or as more particularly described in the Documentation.

Software: the online software applications provided by the Supplier as part of the Services, including PebblePad; ATLAS; and Pebble+, and all other software (if any) listed in the Quote.

Subscription Fees: the subscription fees payable by the Customer to the Supplier for the User Subscriptions, as set out in the Quote.

Subscription Term: has the meaning given in clause 14.1 (being the Initial Subscription Term together with any subsequent Renewal Periods).

Supplier: Pebble Learning LTD incorporated and registered in England and Wales with company number 04922922 whose registered office is at E-Innovation Centre Shifnal Road, Priorslee, Telford, Shropshire, TF2 9FT.

Third Party Software: means any third party Supplier software that is combined with or incorporated into the Software, as more particularly described in the Documentation.

UK GDPR: has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the DPA 2018

User Subscriptions: the user subscriptions purchased by the Customer pursuant to clause 9.1 which entitles Authorised Users to access and use the Services and the Documentation in accordance with this Contract.

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

- 1.2 Clause headings shall not affect the interpretation of this Contract.
- 1.3 A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors or permitted assigns.
- 1.4 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.5 A reference to a statute or statutory provision is a reference to it as it is in force as at the date of this Contract.
- 1.6 A reference to writing or written includes e-mail.
- 1.7 References to clauses are to the clauses of these Conditions.

2. BASIS OF CONTRACT USER SUBSCRIPTIONS

- 2.1 The Contract between the Supplier and the Customer for the provision and purchase of the Services, shall come into existence upon the earlier of: (a) the

Customer confirming acceptance of the Supplier's quote; or (b) the Customer making payment of the Subscription Fees (or any part of them) to the Supplier.

2.2 Subject to the Customer purchasing the User Subscriptions in accordance with clause 3.3 and clause 9.1, the restrictions set out in this clause 2 and the other terms and conditions of these Conditions, the Supplier grants to the Customer a non-exclusive, non-transferable right to permit the Authorised Users to use the Services and the Documentation during the Subscription Term solely for the Customer's business, administration and/or training purposes.

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

(a) the maximum number of Authorised Users that it authorises to access and use the Services and the Documentation shall not exceed the number of User Subscriptions it has purchased from time to time;

(i) notwithstanding the number of authorised accounts User Subscriptions are only payable for accounts deemed active in accordance with clause 2.6;

(b) it will not allow or suffer any User Subscription to be used by more than one individual Authorised User;

(c) each Authorised User shall keep a secure password for their use of the Services and Documentation, and that each Authorised User shall keep their password confidential;

(d) it shall permit the Supplier to audit the Services in order to establish the level of use of the system. Such audit will be conducted at the Supplier's expense, and this right may be exercised without prior notice, in such a manner as not to substantially interfere with the Customer's normal conduct of business; and

(e) if any of the audits referred to in clause 2.3(d) reveal that the Customer has underpaid Subscription Fees to the Supplier, then without prejudice to the Supplier's other rights, the Customer shall pay to the Supplier an amount equal to such underpayment as calculated in accordance with the prices set out in the Quote within 10 Business Days of the date of the relevant audit.

2.4 The Customer shall not access, store, distribute or transmit any viruses, or any material during the course of its use of the Services that:

(a) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;

(b) facilitates illegal activity;

(c) depicts sexually explicit images;

(d) promotes unlawful violence;

(e) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or

- (f) in a manner that is otherwise illegal or causes damage or injury to any person or property,

and the Supplier reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's access to any material that breaches the provisions of this clause 2.4.

2.5 The Customer shall not:

- (a) except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties, and except to the extent expressly permitted under this Contract,
 - (i) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or Documentation (as applicable) in any form or media or by any means; or
 - (ii) attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or
- (b) access all or any part of the Services and Documentation in order to build a product or service which competes with the Services and/or the Documentation; or
- (c) use the Services and/or Documentation to provide services to third parties; or
- (d) subject to clause 21.1, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or Documentation available to any third party except the Authorised Users; or
- (e) attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation, other than as provided under this clause 2.

2.6 Any Internal Authorised User who does any one of the following, shall be considered as an Active User (and will therefore require a PebblePad end user account);

- (a) logs in to either PebblePad or ATLAS three or more times; or
- (b) creates three or more assets; or
- (c) submits a piece of work to ATLAS; or
- (d) shares any material with the web.

2.7 Upon an account becoming active in accordance with clause 2.6 above, it shall continue to remain active until it is removed. For the avoidance of doubt, an account shall continue to remain active until the next annual period of the Initial Subscription Term, or the Renewal Period (as applicable), even if such account is removed or transferred to a Personal Account prior to the end of the current annual period.

- 2.8 The Customer shall at all times remain responsible for the removal of any accounts that are no longer in use. An account is removed by deletion from the platform.
- 2.9 Active Accounts from the previous annual period may remain in the software for up to 30 days, during the transition from one annual period to another. The Customer shall not be charged for these accounts remaining in the Software during this period. Any account that is not required by the Customer must be deleted from the Software during this 30 day period. Following the 30 day period, all remaining accounts shall be considered as Active (**Active Account**).
- 2.10 All Active Accounts shall be liable to appropriate Subscription Fees as specified in the Quote.
- 2.11 Accounts cannot be recycled from one Authorised User to another user (whether or not such user is an Authorised User). Following activation of an account, such account shall remain active for the duration of the annual subscription period (even where such account has been deleted by the Customer).
- 2.12 Following activation of an account, a Personal Account (alumni account) will be made available to each Authorised User activating a paid account. This Personal Account will be provided free of charge, subject to the following conditions:
- (a) the Personal Account will remain free of charge for the duration of the Contract and for a period of three years following its expiry or termination (howsoever caused); and
 - (b) shall (at the discretion of the Supplier) be subject to an annual fee paid by the alumni, where the three year period specified in clause 2.11(a) expires and the Authorised User of the Personal Account wishes to continue using it.
- 2.13 In the event that an Authorised User opts to convert their account to an alumni account (Personal Account), the Customer hereby grants approval to the Supplier to utilise the existing personal data of the Authorised User for this purpose. The Customer also authorises the Supplier to retain any data relating to an Authorised User's account for a period of 150 days after that individual ceases to be an Authorised User to give the Authorised User the opportunity to convert to an alumni account. For the avoidance of doubt, an alumni account is subject to a direct agreement between the (former) Authorised User and the Supplier, and the Supplier will be the controller in connection with any processing activity carried out in respect of an alumni account.
- 2.14 If at any time during the Subscription Term, 1,000 or more user accounts are held by the Customer within the internal authentication facility, the Customer must promptly provide to the Supplier an Organisational Authentication Facility for the Software, to enable the Supplier to manage access to the Software.
- 2.15 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Software, Services and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify the Supplier.

- 2.16 The Supplier shall under no circumstances hold any responsibility or be liable for any of the Customer Software integrated into the services. The Supplier acknowledges and agrees that it is responsible for all Third Party Software and the Customer shall under no circumstances hold any responsibility or be liable for any of the Supplier's Third Party Software.
- 2.17 The rights provided under this clause 2 are granted to the Customer only, and shall not be considered granted to any other party including, without limitation, any subsidiary or holding company of the Customer.
- 2.18 The Supplier does not warrant, represent or otherwise agree that the Software is or shall be compatible with any other Customer Software unless the Supplier has stated so in writing.

3. ADDITIONAL USER SUBSCRIPTIONS

- 3.1 Subject to clause 3.2 and clause 3.3, the Customer may, from time to time during any Subscription Term, purchase additional User Subscriptions in excess of the number set out in the Quote and the Supplier shall grant access to the Services and the Documentation to such additional Authorised Users in accordance with the provisions of the Contract.
- 3.2 If the Customer wishes to purchase additional User Subscriptions, the Customer shall notify the Supplier in writing with details of the required number of additional User Subscriptions and the commencement date.
- 3.3 If the Supplier approves the Customer's request to purchase additional User Subscriptions, the Customer shall, within 30 days of the date of the Supplier's invoice, pay to the Supplier the relevant fees for such additional User Subscriptions as set out in the Quote and, if such additional User Subscriptions are purchased by the Customer part way through the Initial Subscription Term or any Renewal Period (as applicable), such Fees shall be charged at their standard rate provided always that if such additional User Subscriptions are purchased in the last 3 months of the Initial Subscription Term or then current Renewal Period (as applicable) they shall be charged at 75% of their standard rate for the remainder of the current annual contract period and at 100% per year thereafter.

4. SERVICES

- 4.1 The Supplier shall, during the Subscription Term, provide the Services and make available the Documentation to the Customer on and subject to the terms of these Conditions.
- 4.2 The Supplier shall use commercially reasonable endeavours to make the Services available 24 hours a day, seven days a week, except for:
- (a) planned maintenance carried out during the maintenance window of 02:00 am to 07:00 am UK time; and
 - (b) unscheduled maintenance performed outside Normal Business Hours, provided that the Supplier has used reasonable endeavours to give the Customer at least 6 Normal Business Hours' notice in advance.

- 4.3 The Supplier will, as part of the Services and at no additional cost to the Customer, provide the Customer with the Supplier's standard customer support services in accordance with the documentation.

5. CUSTOMER DATA AND DATA PROTECTION

- 5.1 The Customer shall own all right, title and interest in and to all of the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data.
- 5.2 The Supplier shall back up all Customer Data on a daily basis, overnight (**backed-up data**). All backed-up data shall be retained by the Supplier for a period of 14 days, following the date on which it was backed-up. Customer Data shall only be backed up for disaster recovery purposes, and all backed-up data will not be made available to the Customer for the purposes of restoring any accidentally deleted data by any Authorised User.
- 5.3 In the event of any loss or damage to Customer Data (but not for the avoidance of doubt, any Customer Data that is accidentally deleted by an Authorised User), the customer's sole and exclusive remedy shall be for the Supplier to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by the Supplier. The Supplier shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party (except those third parties subcontracted by the Supplier to perform services related to Customer Data maintenance and back-up).
- 5.4 Both parties will comply with all applicable requirements of the data protection legislation. This clause 5 is in addition to, and does not relieve, remove or replace, a party's obligations under the data protection legislation.
- 5.5 Data controller, data processor, data subject, Personal Data, processing and appropriate technical and organisational measures shall bear the meanings given to those terms respectively in the data protection legislation
- 5.6 The parties acknowledge that for the purposes of the data protection legislation, the Customer is the data controller and the Supplier is the data processor of any Personal Data which forms part of the Customer Data.
- 5.7 Without prejudice to the generality of clause 5.4:
- (a) the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of all Personal Data it passes to the Supplier for the duration and purposes of this Contract; and
 - (b) the Customer retains control of the Customer Data and remains responsible for its compliance obligations under the applicable Data Protection Legislation, including providing any required notices and obtaining any required consents, and for the processing instructions it gives to the Supplier.
- 5.8 Without prejudice to the generality of clause 5.4, the Supplier shall, in relation to any Personal Data which forms part of the Customer Data processed in

connection with the performance by the Supplier of its obligations under this Contract:

- (a) process that Personal Data only on the instructions of the Customer unless the Supplier is required by applicable law to otherwise process such Personal Data. Where the Supplier is relying on such applicable law as the basis for processing Personal Data, the Supplier shall notify the Customer of this before performing the processing required by the applicable law unless that applicable law prohibits the Supplier from so notifying the Customer;
- (b) ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures;
- (c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential. If a law, court, regulator or supervisory authority requires the Supplier to process or disclose Personal Data, the Supplier must first inform the Customer of the legal or regulatory requirement and give the Customer an opportunity to object or challenge the requirement, unless the law prohibits such notice;
- (d) assist the Customer, at the Customer's cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (e) notify the Customer on becoming aware of a Personal Data Breach;
- (f) at the reasonable written direction of the Customer and, so far as it is legally and technically possible to do so, delete or return Personal Data and copies thereof to the Customer on termination of this Contract unless required by applicable law to store the Personal Data. If any law, regulation, or government or regulatory body requires the Supplier to retain any documents or materials that the Supplier would otherwise be required to return or destroy, it will notify the Customer in writing of that retention requirement, giving details of the documents or materials that it must retain, the legal basis for retention, and establishing a specific timeline for destruction once the retention requirement ends; and
- (g) maintain complete and accurate records and information to demonstrate its compliance with this clause 5.

5.9 Subject to the Customer ensuring minimal disruption is caused to the Supplier's business, the Supplier will permit the Customer and its third-party representatives to audit the Supplier's compliance with its obligations under this clause 6, on at

least 30 days' written notice, during the Subscription Term. The Supplier will give the Customer and its third-party representatives all necessary assistance to conduct such audits. The assistance may include, but is not limited to:

- (a) physical access to, remote electronic access to, and copies of records and any other information held at the Supplier's premises or on systems storing Customer Data;
- (b) access to and meetings with any of the Supplier's personnel reasonably necessary to provide all explanations and perform the audit effectively; and
- (c) inspection of all records and the infrastructure, electronic data or systems, facilities, equipment or application software used to store, process or transport Customer Data.

5.10 The Supplier may authorise a third-party subcontractor to process Customer Data if:

- (a) the Customer is provided with an opportunity to make a reasonable objection to the appointment of each subcontractor within 14 days after the Supplier supplies the Customer with full details regarding such subcontractor;
- (b) the Supplier enters into a written contract with the subcontractor that contains terms substantially the same as those set out in this Contract, in particular, in relation to requiring appropriate technical and organisational data security measures, and, upon the Customer's written request, provides the Customer with copies of such contracts; and
- (c) the Supplier maintains control over all Customer Data it entrusts to the subcontractor

5.11 The Customer acknowledges that the Supplier is reliant on the Customer for direction as to the extent to which the Supplier is entitled to use and process the Personal Data. Consequently, the Supplier will not be liable for any claim brought by a data subject or any action of any regulator (including, for the avoidance of doubt any fine) arising from any action or omission by the Supplier to the extent that such action or omission resulted directly from the Customer's instructions and the Customer shall indemnify the Supplier in full against any costs, claims, damages or expenses incurred by the Supplier as a result of any action by a data subject or regulator resulting from the Supplier following the instructions of the Customer.

5.12 The Customer acknowledges that the Supplier is under no duty to investigate the completeness, accuracy or sufficiency of any instructions provided by the Customer or the Personal Data.

5.13 The Supplier shall not transfer any Personal Data outside the EEA save to a third party Supplier under conditions of protection prescribed by Data Protection Legislation.

6. SUPPLIER'S OBLIGATIONS

- 6.1 The Supplier undertakes that the Services and the Software will be performed substantially in accordance with the Documentation and with reasonable skill and care.
- 6.2 The undertaking at clause 6.1 shall not apply to the extent of any non-conformance which is caused by use of the Services and/or the Software contrary to the Supplier's instructions, or modification or alteration of the Services and/or Software by any party other than the Supplier or the Supplier's duly authorised contractors or agents. If the Services and/or Software do not conform with the foregoing undertaking, the Supplier will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in clause 6.1. Notwithstanding the foregoing, the Supplier:
- (a) does not warrant that the Customer's use of the Services and/or Software will be uninterrupted or error-free; or that the Services and/or Software, Documentation and/or the information obtained by the Customer through the Services will meet the Customer's requirements; and
 - (b) is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services and/or Software and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 6.3 The Contract shall not prevent the Supplier from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under these Conditions.
- 6.4 The Supplier warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under the Contract.

7. CUSTOMER'S OBLIGATIONS

The Customer shall:

- (a) provide the Supplier with:
 - (i) all necessary co-operation in relation to the Contract; and
 - (ii) all necessary access to such information as may be required by the Supplier;

in order to provide the Services, including but not limited to Customer Data, security access information and configuration services;
- (b) comply with all applicable laws and regulations with respect to its activities under the Contract;

- (c) carry out all other Customer responsibilities set out in the Contract in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, the Supplier may adjust any agreed timetable or delivery schedule as reasonably necessary;
- (d) ensure that the Authorised Users use the Services and the Documentation in accordance with the terms and conditions of the Contract and shall be responsible for any Authorised User's breach of this Contract;
- (e) obtain and shall maintain all necessary licences, consents, and permissions necessary for the Supplier, its contractors and agents to perform their obligations under the Contract, including without limitation the Services;
- (f) ensure that its network and systems comply with the relevant specifications provided by the Supplier from time to time; and
- (g) be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to the Supplier's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.

8. EXTERNAL ASSESSOR ACCOUNTS

8.1 External Assessor accounts may be used without charge to support the assessment and moderation processes. External Assessor Accounts are subject to the following conditions:

- (a) employees of the Customer may not be given an External Assessor Account;
- (b) anyone with an email address @customerdomain may not be given an External Assessor Account and the Software will automatically create an internal account, if such email address is used; and
- (c) the number of External Assessor Accounts may not be greater than 10% of user subscriptions specified in the Quote.

9. CHARGES AND PAYMENT

9.1 The Customer shall pay the Subscription Fees to the Supplier, annually, for the User Subscriptions in accordance with this clause 9 and the Quote.

9.2 The Customer confirms that it will provide to the Supplier approved purchase order information acceptable to the Supplier and any other relevant valid, up-to-date and complete contact and billing details and, that it will receive from the Supplier an invoice for the Subscription Fees payable in respect of the Initial Subscription Term.

9.3 Subject to clause 14.1, at least 60 days prior to each anniversary of the Effective Date the Supplier shall send to the Customer an invoice for the Subscription Fees payable in respect of the next annual contract period including for any Renewal Period (as applicable).

9.4 The Customer shall pay each invoice within 30 days after the date of such invoice.

- 9.5 If the Supplier has not received payment within 30 days after the due date, and without prejudice to any other rights and remedies of the Supplier:
- (a) the Supplier may, without liability to the Customer, disable the Customer's password, account and access to all or part of the Services and the Supplier shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and
 - (b) interest shall accrue on a daily basis on such due amounts at an annual rate equal to 3% over the then current base lending rate of Lloyds Bank from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.
- 9.6 All amounts and fees stated or referred to in the Contract:
- (a) shall be payable in pounds sterling;
 - (b) are non-cancellable and non-refundable; and
 - (c) are exclusive of value added tax, which shall be added to the Supplier's invoice(s) at the appropriate rate.
- 9.7 At the end of each annual period the Supplier shall have the right to increase the Subscription & Services Fees and the fees payable in respect of the User Subscriptions, by the greater of either 5% or the then UK Consumer Price Index Inflation rate.
- 9.8 The Supplier, on the written agreement by the customer, shall be entitled to increase the Subscription & Services Fees and the Fees payable for in respect of the User Subscriptions purchased during the Subscription Term (such increase to take effect on the next anniversary of the Effective Date) in the event that there is an appreciable increase in the cost to the Supplier of providing the Services.

10. PROPRIETARY RIGHTS

- 10.1 The Customer acknowledges and agrees that the Supplier and/or its licensors own all intellectual property rights in the Services and the Documentation. Except as expressly stated herein, the Contract does not grant the Customer any rights to, or in, patents, copyright, database right, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Services or the Documentation.
- 10.2 The Supplier confirms that it has all the rights in relation to the Services and the Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of the Contract.

11. CONFIDENTIALITY

- 11.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under the Contract. A party's Confidential Information shall not be deemed to include information that:
- (a) is or becomes publicly known other than through any act or omission of the receiving party;
 - (b) was in the other party's lawful possession before the disclosure;

- (c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure;
 - (d) is independently developed by the receiving party, which independent development can be shown by written evidence; or
 - (e) is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.
- 11.2 Each party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of the Contract.
- 11.3 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of the Contract.
- 11.4 The Customer acknowledges that details of the Services, and the results of any performance tests of the Services, constitute the Supplier's Confidential Information.
- 11.5 The Supplier acknowledges that the Customer Data is the Confidential Information of the Customer.
- 11.6 No party shall make, or permit any person to make, any public announcement concerning the Contract without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.
- 11.7 The above provisions of this clause 11 shall survive termination of the Contract, however arising.

12. INDEMNITY

- 12.1 The Customer shall defend, indemnify and hold harmless the Supplier against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with any breach by the Customer of clause 2.4.
- 12.2 The Supplier shall defend the Customer, its officers, directors and employees against any claim that the Services or Documentation infringes any United Kingdom patent effective as of the Effective Date, copyright, trade mark, database right or right of confidentiality, and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that:
 - (a) the Supplier is given prompt notice of any such claim;
 - (b) the Customer does not make any admission, or otherwise attempt to compromise or settle the claim and provides reasonable co-operation to the Supplier in the defence and settlement of such claim, at the Supplier's expense; and

- (c) the Supplier is given sole authority to defend or settle the claim.
- 12.3 In the defence or settlement of any claim, the Supplier may procure the right for the Customer to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate the Contract on 2 Business Days' notice to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer.
- 12.4 In no event shall the Supplier, its employees, agents and subcontractors be liable to the Customer to the extent that the alleged infringement is based on:
 - (a) a modification of the Services or Documentation by anyone other than the Supplier; or
 - (b) the Customer's use of the Services or Documentation in a manner contrary to the instructions given to the Customer by the Supplier; or
 - (c) the Customer's use of the Services or Documentation after notice of the alleged or actual infringement from the Supplier or any appropriate authority; or
 - (d) the Customer's breach of this Contract.
- 13.5 The foregoing states the Customer's sole and exclusive rights and remedies, and the Supplier's (including the Supplier's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.

13. LIMITATION OF LIABILITY

- 13.1 This clause 13 sets out the entire financial liability of the Supplier (including any liability for the acts or omissions of its employees, agents and subcontractors) to the Customer:
 - (a) arising under or in connection with the Contract;
 - (b) in respect of any use made by the Customer of the Services and Documentation or any part of them; and
 - (c) in respect of any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Contract.
- 13.2 Except as expressly and specifically provided in the Contract:
 - (a) the Customer assumes sole responsibility for results obtained from the use of the Services and the Documentation by the Customer, and for conclusions drawn from such use. The Supplier shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to the Supplier by the Customer in connection with the Services, or any actions taken by the Supplier at the Customer's direction;
 - (b) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from the Contract; and

- (c) the Services and the Documentation are provided to the Customer on an "as is" basis.

13.3 Nothing in the Contract limits or excludes the liability of the Supplier:

- (a) for death or personal injury caused by the Supplier's negligence;
- (b) for fraud or fraudulent misrepresentation; or
- (c) for any liability that cannot be limited or excluded as a matter of law.

13.4 Subject to clause 13.2 and clause 13.3 the Supplier shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any:

- (a) loss of profits;
- (b) loss of business; depletion of goodwill and/or similar losses;
- (c) pure economic loss; or
- (d) any special, indirect or consequential loss, costs, damages, charges or expenses however arising.

13.5 The Supplier's total aggregate liability in contract (other than in respect of the indemnity at clause 12.2), tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to a sum equal to 110% of the total Subscription Fees paid for the User Subscriptions during the 12 months immediately preceding the date on which the claim arose.

14. TERM AND TERMINATION

14.1 This Contract shall commence on the Effective Date and shall continue for the Initial Subscription Term and, thereafter, this Contract shall be automatically renewed for successive periods equal to the periods of the Initial Subscription Term (each a **Renewal Period**) as set out in the quote, provided always that:

- (a) in the event that the parties have not agreed Subscription Fees for a forthcoming Renewal Period prior to the start of such Renewal Period either party shall be entitled to terminate this Contract by giving written notice to the other party, such notice to expire on the final day of the Initial Subscription Term or the current Renewal Period (as the case may be); and;
- (b) this Contract shall come to an end if otherwise terminated in accordance with its provisions;

and the Initial Subscription Term together with any subsequent Renewal Periods shall constitute the **Subscription Term**.

14.2 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

- (a) the other party fails to pay any amount due under the Contract on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment;
- (b) the other party commits a material breach of any other term of the Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 28 days after being notified in writing to do so;
- (c) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- (d) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (e) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (f) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party;
- (g) the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;
- (h) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- (i) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
- (j) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 14.2(c) to clause 14.2(i) (inclusive); or
- (k) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

14.3 On termination of the Contract for any reason:

- (a) all licences granted under the Contract shall immediately terminate;

- (b) each party shall return and make no further use of any equipment, property, Documentation and other items (and all copies of them) belonging to the other party;
- (c) the Customer may extract and store, upon a separate media, any Customer Data which has been submitted to ATLAS during the Subscription Term. The Supplier shall provide reasonable assistance (at the Customer's expense) to the Customer to enable the Customer to extract and store the Customer Data from ATLAS;
- (d) the Software shall remain available to Authorised User for 60 days following termination of the Subscription Term (**First Period**), to enable Authorised Users to transfer any Customer Data to an alternative system. All Customer Data held within the Software shall be retained for a further period of 90 days, following the end of the First Period (**Second Period**), unless the Customer provides the Supplier with notice to destroy the Customer Data earlier (following the First Period) or to retain the Customer Data for longer (following the Second Period). The Supplier shall reserve the right to accept or decline at its sole discretion, any such request made by the Customer;
- (e) it is the responsibility of the Customer to inform all Authorised Users of the termination date and the date after which their access to data will no longer be available (at the end of the First Period). The Customer acknowledges that the provider has no responsibility to provide access for individual Authorised Users after this date; and
- (f) any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination shall not be affected or prejudiced.

15. FORCE MAJEURE

- 15.1 Neither party shall have any liability to the other party under the Contract if it is prevented from or delayed in performing its obligations under the Contract, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes, failure of a utility service or transport or telecommunications network, act of god, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of Suppliers or subcontractors (force majeure event), provided that the other party is promptly notified of such an event and its expected duration.
- 15.2 In the event that a force majeure event exists for a continuous period of 90 days or more, either party may terminate the Contract upon providing written notice to the other party, and in such circumstances, the Customer shall be liable to immediately settle all and any outstanding invoices due to the Supplier for the services (or any part of the services).

16. CONFLICT

If there is an inconsistency between any of the provisions in these Conditions and the Quote, the provisions in the Quote shall prevail.

17. VARIATION

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

18. WAIVER

No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

19. SEVERANCE

19.1 If any provision (or part of a provision) of the Contract is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

19.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

20. ENTIRE CONTRACT

20.1 The Contract, and any documents referred to in it, constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover.

20.2 Each of the parties acknowledges and agrees that in entering into the Contract it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to the Contract or not) relating to the subject matter of the Contract, other than as expressly set out in the Contract.

21. ASSIGNMENT

21.1 The customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

21.2 The Supplier may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

22. NO PARTNERSHIP OR AGENCY

Nothing in the Contract is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making

of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

23. THIRD PARTY RIGHTS

The Contract does not confer any rights on any person or party (other than the parties to this Contract and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

24. NOTICES

24.1 Any notice required to be given under this Contract shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in the Contract, or such other address as may have been notified by that party for such purposes, or sent by email to an email address customarily used by the other party to communicate under the Contract.

24.2 A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9 am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice sent by email shall be deemed to have been received at the time of transmission (unless there is clear evidence to the contrary).

25. GOVERNING LAW

The Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England.

26. JURISDICTION

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

Last updated: 12th June 2024