

Nessy Learning Limited – Terms and Conditions

Version: 001 25th August 2024

IF YOU HAVE BEEN GIVEN ACCESS TO THE PORTAL BY YOUR LEARNING ESTABLISHMENT PLEASE READ THE USER REQUIREMENT SET OUT IN THE ANNEX TO THESE CONDITIONS.

THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THE PROVISIONS OF CLAUSE 10.

1 Interpretation

1.1 In these Conditions, the following definitions apply:

"**Annex**" means the annex to these Conditions;

"**Authorised Users**" means Educators, Learners and other users who are authorised by the Customer to access the Portals in accordance with the Contract;

"**Business Day**" means a day (other than a Saturday, Sunday or public holiday) when banks in Glasgow in Scotland are open for business;

"**Charges**" means the charges payable by the Customer for access to the Portals and/or the Services as set out in the Order and payable in accordance with clause 6;

"**Commencement Date**" has the meaning set out in clause 2.2;

"**Conditions**" means these terms and conditions as amended from time to time in accordance with clause 14.7;

"**Contract**" means the contract between the Supplier and the Customer relating to access to the Portals and/or provision of the Services consisting of these Conditions and the documents incorporated into it by reference;

"**Controller**" has the meaning given to it in the Data Protection Laws;

"**Customer**" means the person or entity being a school, home school, nursery, college, university or other learning establishment which purchases access to the Portals under the Contract;

"**Data Protection Laws**" means all laws and regulations relating to the Processing of Personal Data;

"**Educators**" means persons qualified to provide education services who are providing such services for the Customer at the Learning Establishment, including head Educators, student Educators, administrators, home Educators, lecturers and other teaching staff;

"**Intellectual Property Rights**" means patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in software, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

"**Learners**" means pupils, students and other learners who are registered to attend and are attending the Learning Establishment;

"Learning Establishment" means the school, home school, nursery, college, university, tutoring centre, distance learning or other learning establishment of the Customer;

"Order" means the Customer's order for access to the Portals and/or provision of the Services as set out in an order form or communicated by the Customer to the Supplier verbally or otherwise including via email or via completing an online order process upon the Portals;

"Personal Data" has the meaning given to it in the Data Protection Laws;

"Portals" means the Supplier's portals made available to or accessed by the Customer;

"Process" and **"Processing"** have the meaning given to them in the Data Protection Laws;

"Processor" has the meaning given to it in the Data Protection Laws;

"Secure Network" means a network where access is on a unique user basis enabled through a password known only to the user and which is secure;

"Services" means the services referred to in an Order;

"Specification" means the specification for the Portals and/or the Services as available from the Supplier on request;

"Supplier" means the person providing the Portals, as set out upon the Portals, and/or the Services, as set out in the Order;

"Supplier Materials" has the meaning set out in clause 5.1.15;

"Supplier's Group" means the entities controlled by, controlling, or under common control with the Supplier and any other entities specified from time to time by the Supplier as affiliated with it;

"Term" has the meaning set out in clause 11.1; and

"User Requirements" means the requirements which Authorised Users are required to adhere to whilst accessing the Portal as set out in the Annex.

1.2 In these Conditions, the following rules apply:

1.2.1 a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);

1.2.2 a reference to a party includes its personal representatives, successors or permitted assignees;

1.2.3 a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision;

1.2.4 any phrase introduced by the terms including, include, in particular or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and

1.2.5 a reference to writing or written includes e-mail but not fax.

2 **Basis of contract**

- 2.1 The Order constitutes an offer by the Customer to purchase access to the Portals and provision of the Services during the Term in accordance with these Conditions.
- 2.2 The Order shall only be deemed to be accepted when the Supplier confirms acceptance of the Order (which may be constituted by the Supplier issuing an invoice, in email, or verbally) or provides access to the Portals or commences provision of the Services at which point and on which date the Contract shall come into existence ("**Commencement Date**").
- 2.3 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Supplier which is not set out in the Contract.
- 2.4 Any descriptive matter or advertising material issued by the Supplier (on its website or otherwise) is issued or published for the sole purpose of giving an approximate idea of the Portals and Services. It shall not form part of the Contract or have any contractual force.
- 2.5 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, tender document, practice or course of dealing.
- 2.6 Any quotation given by the Supplier shall not constitute an offer and is only valid for a period of twenty (20) Business Days from its date of issue.

3 Grant of Licence

- 3.1 The Supplier grants the Customer a non-exclusive, non-transferable licence to permit Authorised Users to access the Portals via a Secure Network for the Customer's internal educational purposes during the Term only. The Customer may create profiles for Authorised Users in the Portals and permit Authorised Users to create profiles for themselves or other Authorised Users in the Portals in accordance with the licence granted in this clause 3.
- 3.2 Where a maximum number of Authorised Users has been specified in the Order the Customer shall ensure that the number of Authorised Users it permits to access the Portals does not exceed this number.
- 3.3 The Supplier may agree terms upon which the number of Authorised Users may be increased subject to payment of any increased Charges. The number of Authorised Users may not be reduced without the Supplier's express written consent.

4 Supplier's Rights and Obligations

- 4.1 Commencing on the Commencement Date the Supplier shall provide the Services. The Services shall be provided with reasonable skill and care and in accordance with the Specification. The Supplier may provide the Services by remote means, in which event the Customer is responsible for arranging suitable access to the remote delivery means for the Services as specified by the Supplier from time to time, and also for ensuring any Authorised Users have such access. The Supplier shall make the Services available and perform the same at the times set out in the Order, otherwise the Specification, otherwise agreed with the Customer. The Customer acknowledges and agrees that unavailability of the Customer or any Authorised User to receive the Services at a time scheduled by the Supplier for delivery shall not entitle the Customer to reschedule the time of delivery or to receive additional Services.
- 4.2 The Supplier shall use reasonable endeavours to ensure that each Portal operates properly at all times, excluding:
- 4.2.1 time during which planned maintenance is being carried out;
 - 4.2.2 times for unscheduled maintenance to be carried out;
 - 4.2.3 downtime attributable to failure of the Supplier's suppliers or subcontractors;

- 4.2.4 downtime attributable to a cause beyond the reasonable control of the Supplier;
 - 4.2.5 downtime arising due to misuse of the Portals; and
 - 4.2.6 downtime attributable to the Customer's network, infrastructure or operating system, or suppliers or subcontractors.
- 4.3 The Customer can contact the Supplier through the online enquiry form on the Portals website, via the email and the telephone numbers shown on the Portals website and can submit support requests relating to the Portals and/or the Services during the hours of 08:00 to 18:00 on Business Days only. The Supplier shall respond to such requests within a reasonable timeframe and will use reasonable endeavours to resolve any reported issues.
- 4.4 The Customer acknowledges that from time to time during the Term, the Supplier may apply upgrades to the Portals, and that such upgrades may result in changes to the appearance and/or functionality of the Portals.
- 4.5 The Supplier may make changes to the content of the Portals and/or the Services (including the addition and/or removal of content) from time to time.
- 4.6 It is acknowledged that the Supplier has the right to contact the Customer and the Authorised Users through the Portals' messaging systems and by email or phone as provided by the Customer and the Authorised Users to inform the Customer and the Authorised Users about information relating to the Portals and Services (or related services). The Supplier will not pass any Customer and Authorised Users' contact details to third parties outwith the Supplier's Group.

5 **Customer's Obligations**

- 5.1 The Customer shall:
- 5.1.1 keep its details (including login details and passwords) for access to the Portals confidential and ensure Authorised Users do the same;
 - 5.1.2 comply with the Annex and procure that Authorised Users comply with the Annex;
 - 5.1.3 effectively communicate to Authorised Users the data protection statements contained within the Annex, the purpose for which Authorised Users may use the Portals (being internal educational purposes only), and what constitutes inappropriate or unauthorised use of the Portals (including any use which is prohibited by the Annex);
 - 5.1.4 not copy, redistribute, publish or exploit any materials provided to it or Authorised Users as part of the Services;
 - 5.1.5 be responsible for the acts and omissions of Authorised Users as if made by itself;
 - 5.1.6 ensure that Authorised Users keep any login details and passwords confidential;
 - 5.1.7 ensure that its network and systems comply with the relevant Specifications provided by the Supplier from time to time (including via notices upon the Portals) and properly maintain those networks and systems in accordance with good industry practice during the Term;
 - 5.1.8 require and procure that any computers or devices used in connection with the Portals meet all relevant technical Specifications required to use the Portals;

- 5.1.9 use all reasonable endeavours to prevent any unauthorised access to, or use of, the Portals and in the event of any such unauthorised access or use, promptly notify the Supplier;
 - 5.1.10 ensure that the terms of the Order are complete and accurate;
 - 5.1.11 co-operate with the Supplier in all matters relating to the Contract;
 - 5.1.12 provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises and other facilities as reasonably required by the Supplier to perform its obligations under the Contract and/or to verify compliance with the Contract;
 - 5.1.13 provide the Supplier with such information and materials as the Supplier may reasonably require in relation to the Contract (including information which the Supplier requires to grant access to the Portals) and ensure that such information is accurate in all material respects;
 - 5.1.14 obtain and maintain all necessary licences, permissions and consents which may be required in relation to the Contract;
 - 5.1.15 keep and maintain all materials, documents, written instructions and other property of the Supplier ("**Supplier Materials**") at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation.
- 5.2 The Customer acknowledges that the Customer is responsible for overseeing, monitoring and moderating:
- 5.2.1 use of the Portals and participation in the Services by Authorised Users; and
 - 5.2.2 all material submitted by Authorised Users to the Portals;
- and the Customer shall immediately remove from the Portals any material submitted by an Authorised User which is inappropriate or otherwise breaches the terms of the Annex.
- 5.3 If the Customer becomes aware (or should have become aware) that any Portal or Service has been used by an Authorised User inappropriately or otherwise in breach of the Contract or the requirements set out in the Annex the Customer shall immediately notify the Supplier and delete the profile of such Authorised User and ensure that they do not in the future access the Portals or Services unless otherwise agreed by the Supplier.
- 5.4 If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation ("**Customer Default**"):
- 5.4.1 the Supplier shall without limiting its other rights or remedies have the right to rely on the Customer Default to relieve it from the performance of any of its obligations under the Contract;
 - 5.4.2 the Supplier shall not be liable for any costs, expenses, damages or losses, or claims or liabilities, sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations referred to in this clause 5.4; and
 - 5.4.3 the Customer shall reimburse the Supplier on written demand for any costs, expenses, damage or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

6 Charges and Payment

- 6.1 The Supplier shall not be required to grant the Customer access to the Portals or Services in accordance with clause 3.1 until payment of the Charges have been received in full.
- 6.2 The Customer shall pay each invoice submitted by the Supplier:
- 6.2.1 within 30 days of the date of the invoice;
 - 6.2.2 in full and in cleared funds to a bank account nominated in writing by the Supplier, and
 - 6.2.3 time for payment shall be of the essence of the Contract.
- 6.3 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable for the time being ("**VAT**"). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT.
- 6.4 If the Supplier does not receive payment of the Charges or of the Customer breaches any term of the Contract the Supplier may temporarily disable the Customer (and its Authorised Users') passwords, account and access to all or part of the Portals and/or the Services and the Supplier shall be under no obligation to provide access to the Portals while the payments concerned remain unpaid. If such amounts remain unpaid for one (1) month or more the Supplier may delete the Customer's account (which for the avoidance of doubt shall include deletion of Authorised Users' profiles) and upon deletion the Contract shall terminate.
- 6.5 Without limiting its other rights and remedies, if the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 4% per cent per annum above the Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 6.6 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Supplier may at any time, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer. If the Customer is required to deduct and/or withhold the payment of any sum to the Supplier, the Customer shall pay such additional amount to the Supplier so as to ensure that the Supplier actually receives what it would have received but for such deduction or withholding.
- 6.7 In respect of each Renewal Period on commencement thereof the Charges shall automatically increase by the then current rate of change in the Consumer Prices Index (CPI) as published by the UK's Office of National Statistics.
- 6.8 In the event that on commencement of each Renewal Period the Charges are not the Supplier's then standard and generally available charges (the "**List Prices**"), the Charges shall be automatically amended to the List Prices.

7 Intellectual Property Rights

- 7.1 All Intellectual Property Rights in the Portals and the Services (and the content in the Portals and Services) are and shall remain the property of the Supplier or its third party licensors.
- 7.2 It is a condition of use of the Portals and the Services that the Supplier is granted a non-exclusive licence to use, in connection with the Portals and Services, a licence of all content which is not Personal Data submitted to the Portals or as part of the Services by any

Authorised User who is an Educator and the Customer hereby assigns to the Supplier all rights in and to such content. The Customer shall ensure that it acquires such rights from Educators so as to enable it to make such assignment. The Customer waives and agrees not to assert and shall procure that Educators waive and agree not to assert any moral or similar rights in any content the rights in which are assigned pursuant to this clause 7.2

7.3 The Customer acknowledges that, in respect of any third party Intellectual Property Rights, the Customer's use of any such Intellectual Property Rights is conditional on the Supplier obtaining a written licence from the relevant licensor on such terms as will entitle the Supplier to license such rights to the Customer.

7.4 All Supplier Materials are the exclusive property of the Supplier.

8 Data Protection

8.1 The Customer acknowledges and agrees that for the purposes of the Data Protection Laws, the Supplier shall be the Processor and the Customer shall be the Controller of any Personal Data that Authorised Users upload to the Portals or which is provided as part of the Services ("**Portals Personal Data**"), including but not limited to documents, video, image and audio files. As Processor, the Supplier shall:

8.1.1 only Process Portals Personal Data strictly in accordance with the Data Protection Laws and these Conditions; and

8.1.2 put in place appropriate technical and organisational processes and procedures to safeguard against any unauthorised and unlawful Processing of, and against accidental loss or destruction of, or damage to, the Portals Personal Data.

8.2 The Customer warrants that it and its Authorised Users have authority and consent (or another lawful basis exists) to submit the Portals Personal Data to the Supplier including via the Portals and that any relevant data subject is aware of such submission and the basis upon which it is made.

8.3 The Customer acknowledges that the Supplier may review the Portals Personal Data from time to time and use some or all of the Portals Personal Data for purposes related to improvement of the Supplier's business. In the event that the Supplier does so, the Customer acknowledges that the Supplier shall become the Controller of any such Portals Personal Data.

8.4 The Customer acknowledges and agrees that the Supplier may disclose Personal Data relating to Authorised Users to its service providers and members of the Supplier's Group, to enable it to perform the Contract. In such an event the Supplier shall endeavour to ensure that such Personal Data is protected appropriately against unauthorised use or disclosure. The Customer acknowledges and agrees that Personal Data relating to Authorised Users may be transferred to and Processed in territories outwith the Customer's place of business, and that such territories may offer a lesser standard of protection to Personal Data than that afforded in the territory in which the Customer operates its business. In such an event the Supplier shall endeavour to ensure that such Personal Data is protected appropriately against unauthorised use or disclosure.

8.5 The Supplier may supplement the contents of this clause 8 by including privacy notices upon the Portals, which shall form part of the Contract as if set out in the Contract.

9 Confidentiality

9.1 The Customer shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Customer by the Supplier, its employees, agents or subcontractors, and any other information concerning the Supplier's business, its products and services which the Customer may obtain. The Customer shall only disclose such confidential information to those

of its employees, agents and subcontractors who need to know it for the purpose of discharging the Customer's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The Supplier may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction. This clause 9 shall survive termination of the Contract.

10 Limitation Of Liability THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

10.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:

10.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors; or

10.1.2 fraud or fraudulent misrepresentation.

10.2 Subject to clause 10.1:

10.2.1 the Supplier shall under no circumstances whatever be liable to the Customer, whether in contract, delict (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and

10.2.2 the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, delict (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the Charges then paid by the Customer in the previous twelve (12) month period.

10.3 The Supplier does not guarantee that any content made available through the Portals or via the Services is accurate, complete or error free. The Customer undertakes not to rely upon (and to ensure that Authorised Users do not rely on) any content made available in the Portals or via the Services. Any reliance the Customer places upon the Portals or the Services or the content made available in the Portals or via the Services is entirely at the Customer's (or the Authorised User's) own risk and the Customer undertakes not to hold the Supplier (and to ensure that Authorised Users do not hold the Supplier) liable for any loss, cost, damage or expense incurred as a result of such reliance.

10.4 The Supplier does not guarantee that the Portals or Services will be free of errors or defects or operate in an uninterrupted manner.

10.5 The Supplier does not guarantee that the Portals will not interfere with the performance or operation of the computer or device through which it is accessed or other software installed thereon or peripherals connected thereto (and any software installed on said peripherals).

10.6 The Supplier does not guarantee that the Portals will be free of viruses or other malicious code.

10.7 The Supplier does not guarantee that the Portals or Services are suitable for any particular purpose or that they will meet the Customer's requirements, irrespective of whether that purpose or those requirements are known to the Supplier.

10.8 Other than as expressly stated hereunder the Supplier excludes all guarantees, warranties, conditions and representations whether express or implied.

10.9 This clause 10 shall survive termination of this Contract.

11 Term and Termination

- 11.1 The Contract shall, unless otherwise terminated as provided for in the Contract, commence on the Commencement Date and continue for the period set out in the Order (the "**Initial Term**") and thereafter shall automatically renew for successive periods of one (1) year (each a "**Renewal Period**") (the Initial Term and the Renewal Period together being the "**Term**") unless and until terminated by either party giving to the other at least three (3) full calendar months' written notice to expire at the end of the Initial Term or any subsequent Renewal Period.
- 11.2 Without limiting its other rights or remedies, the Supplier may terminate the Contract by giving the Customer thirty (30) days' written notice at any time following which the Supplier shall repay to the Customer on a pro rata basis any Charges paid in advance by the Customer relating to the period after the date of termination.
- 11.3 Without limiting its other rights or remedies, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
- 11.3.1 the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within thirty (30) days of that party being notified in writing to do so;
- 11.3.2 if the other party ceases to do business or becomes insolvent or an order is made or a resolution passed for the winding up of it or an order is made for the appointment of an administrator to manage its affairs business or property, or a receiver is appointed of its assets or undertakings or circumstances arise which entitle the Court or a creditor to appoint a receiver or manager or which entitle the Court to make a winding up order, or it suffers any similar or analogous action in consequence of debt.
- 11.4 Without limiting its other rights or remedies (including without limitation those in clause 6.4), the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment and fails to pay all outstanding amounts within thirty (30) days after being notified in writing to do so.

12 **Consequences of Termination**

- 12.1 On termination of the Contract for any reason:
- 12.1.1 all rights and licences granted under the Contract in favour of the Customer shall immediately terminate and the Customer shall ensure that Authorised Users cease accessing the Portals immediately;
- 12.1.2 the Customer shall permanently erase its login details and password and the login details and passwords of Authorised Users;
- 12.1.3 the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest, and the Supplier may levy an invoice for any sums then due but not then invoices which shall be payable on receipt;
- 12.1.4 the Customer shall return all of the Supplier Materials in its possession or under its control. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
- 12.1.5 the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall be unaffected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry;

- 12.1.6 clauses which expressly or by implication survive termination shall continue in full force and effect; and
- 12.1.7 the Supplier shall return or destroy, at the Customer's discretion, all Personal Data of an Authorised User within any content uploaded by an Authorised User.

13 **Force Majeure**

- 13.1 For the purposes of this Contract, "**Force Majeure Event**" means an event beyond the reasonable control of the Supplier including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport 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.
- 13.2 The Supplier shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.
- 13.3 If the Force Majeure Event prevents the Supplier from performing any of its obligations for more than four (4) weeks, the Supplier shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.

14 **General**

- 14.1 Assignment and other dealings.
 - 14.1.1 The Supplier may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.
 - 14.1.2 The Customer shall not, without the prior written consent of the Supplier, assign, transfer, mortgage, charge, subcontract, or deal in any other manner with any or all of its rights or obligations under the Contract.
- 14.2 Notices.
 - 14.2.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid registered first class post or other recorded next working day delivery service, commercial courier, or e-mail.
 - 14.2.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 14.2.1; if sent by recorded pre-paid first class post or other recorded next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by e-mail, one Business Day after transmission provided that the sender does not receive a notification that delivery has been unsuccessful.
 - 14.2.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.
- 14.3 Severance.
 - 14.3.1 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to

make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

- 14.3.2 If any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 14.4 **Waiver.** A waiver of any right under the Contract or law is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising 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 its 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.
- 14.5 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, nor constitute either party the agent of the other for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.
- 14.6 **Third parties.** A person who is not a party to the Contract shall not have any rights to enforce its terms.
- 14.7 **Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by the Supplier. The Supplier may vary these Conditions at any time by giving three months' notice to the Customer. If such variation is material, the Customer shall be entitled to terminate the Contract by giving three (3) months' notice in writing to the Supplier within one (1) month of the Customer being notified of the variation. If the Supplier withdraws the variation during such notice period, the notice of termination shall be deemed withdrawn and of no effect.
- 14.8 **Governing law.** This 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 laws of England and Wales.
- 14.9 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).

Annex User Obligations

- 1 Access to the Portals and Services is provided to you by the Supplier.
- 2 You may use the Portals and Services only as permitted under this annex.
- 3 By accessing the Portals and Services, you agree to accept the terms of this annex and are legally bound by its terms. If you do not agree to the terms of this annex, you are not permitted to access or use the Portals or Services.
- 4 Any updates, upgrades or new versions of the Portals we provide to you shall be deemed to be part of the Portals and subject to the terms of this annex.
- 5 You are responsible for making all arrangements necessary for you to use the Portals and Services. You are responsible for ensuring that any computers or devices you use in connection with the Portals and Services meet all relevant technical Specifications required to use the Portals (as appropriate). We shall not be liable to you for any loss, cost, expense

or damage arising as a result of any technical incompatibility between the Portals and Services and any of your computers or devices.

- 6 You are also responsible for ensuring that all persons whom you permit to access the Portals and Services are aware of the terms of this annex and that they comply with them.
- 7 The terms of this annex do not affect your rights under applicable law. For more information upon these rights, please contact your local Citizens Advice Bureau, or equivalent body in your country of residence.
- 8 We have used reasonable endeavours to ensure that the Portals and Services comply with the laws of Scotland. However, we make no representations, warranties or guarantees that the Portals is appropriate for use in locations outside Scotland.
- 9 If using the Portals or accessing the Services is contrary to or infringes any applicable law in your place of use, you are not authorised to use the Portals or access the Services, and the Portals and Services are not made available to you.
- 10 The Portals and all content and materials made available in the Portals or via the Services ("Material") are protected by international copyright laws and other intellectual property rights. You acknowledge that we are the owner or the licensee of all rights (including all intellectual property rights) in or relating to the Portals, the Services and the Material.
- 11 We grant you no rights to use the Portals or access the Services other than as stated in this annex. We reserve all rights in and to the Portals and Services not expressly granted to you under this annex. Nothing contained in this annex should be construed as granting any other licence or right to use the Portals or Services without our express written permission.
- 12 Your right to use the Portals is limited to a non-exclusive, non-transferable licence to access and use the Portals only through networks where your access is on a unique user basis personal to yourself, where your access is enabled through a password known only to you, and which are secure. This will make you an Authorised User of the Portals. You are not permitted to access or use the Portals on any other network.
- 13 You must not use the Portals:
 - 13.1 to impersonate any person, or misrepresent your identity or affiliation with any person;
 - 13.2 to advocate, promote, incite any third party to commit, or assist any violent, offensive, hateful, unlawful or criminal act;
 - 13.3 to attempt to gain unauthorised access to any server, computer or database;
 - 13.4 in a manner that imposes an unreasonable or disproportionately large load on our infrastructure, or that of any third party;
 - 13.5 to seek to infringe rights held by third parties;
 - 13.6 to breach any legal duty owed to any third party; or
 - 13.7 for any purposes prohibited by the laws of Scotland, or applicable in your place of use of the Portals.
- 14 If you breach this Annex we have the right to report any such breach to the relevant law enforcement authorities, and we will co-operate with those authorities by disclosing your identity to them. In the event of such a breach, your right to use the Portals and access the Services will cease immediately.

- 15 You must not attempt in any way to remove or circumvent any technical protection measures applied to the Portals, Services or Material to prevent unauthorised use, copying or misappropriation thereof or of the intellectual property rights relating thereto, or apply, manufacture, import, distribute, sell, let for hire, offer, expose or advertise for sale for hire or have in your possession for private or commercial purposes, any means whose sole reasonable purpose is to facilitate the unauthorised removal or circumvention of such technical protection measures.
- 16 You may create within the Portals a profile or profiles at the Learning Establishment of which you are an Authorised User for learning purposes including to allow a person whose learning you are responsible for to use the Portal (an "**Authorised Learner**"). Authorised Learners must adhere to this annex in relation to their use of the Portal and you are responsible for ensuring that.
- 17 You must effectively communicate to Authorised Learners:
- 17.1 the purpose for which Authorised Learners may use the Portals (being internal educational purposes only); and
- 17.2 what constitutes inappropriate or unauthorised use of the Portals (including any use which is prohibited by this annex).
- 18 You acknowledge that we shall not have access to profiles of Authorised Learners and that you are solely responsible for overseeing, monitoring and moderating:
- 18.1 use of the Portals by Authorised Learners; and
- 18.2 all material submitted by Authorised Learners to the Portals,
- and you shall immediately remove from the Portals any material submitted by an Authorised Learner which is inappropriate or otherwise breaches the terms of this annex.
- 19 If you become aware (or should have become aware) that any Portal has been used by an Authorised Learner inappropriately or otherwise in breach of this annex, you shall immediately notify us, and if so instructed by us delete the profile of such Authorised Learner and ensure that they do not in the future access the Portals unless otherwise agreed by us.
- 20 Where use of the Portals by a minor is subject to the consent of their parent or guardian, you shall ensure that such consent has been obtained prior to allowing such a minor to access the Portals.
- 21 You may print and use copies of the Material for your internal educational non-commercial purposes of the Learning Establishment of which you are an Authorised User provided that any such printing and use does not otherwise breach the terms of this annex. You may not under any circumstances sell, licence or otherwise distribute for use by other persons or entities any such copies.
- 22 We may notify to you from time to time of additional restrictions applicable to your use of Material. Notifications may be set out upon the Portals. You must abide by these restrictions, which shall be deemed to form part of this annex as if set out in the body of this annex.
- 23 You may adapt, annotate and modify the Material only where and to the extent we permit you to do so in the Portals or as part of the Services.
- 24 You may also upload content and materials to the Portals, where we permit you to do so.
- 25 Where you adapt, annotate and modify Material and/or create new content or material in the Portals or pursuant to the Services, you grant to us the perpetual and irrevocable right without limitation and without a requirement to pay to you any sums to use, copy, publish and otherwise disseminate, modify, adapt, create derivative works based upon, extract elements

from and reorganise such content and material. You acknowledge that we may permit others to exercise these rights.

- 26 By submitting content or material to us you are guaranteeing that you have the right to grant to us the rights described in this annex. If you are not able to grant to us these rights, please do not submit any such content or material.
- 27 You shall ensure that all material and content you submit to the Portals or via the Services shall comply with all applicable laws in any country from which it is submitted and in which it may be read.
- 28 In relation to any information or material submitted by you to us you waive absolutely all moral rights arising under Chapter 4 of the Copyright, Designs and Patents Act 1988 and, so far as is legally possible, any broadly equivalent rights you may have in any territory of the world, in such information or material.
- 29 You agree and undertake not to use the Portals:
 - 29.1 to distribute or make available for viewing material which is in any way inappropriate, including without limitation inappropriate for viewing by minors and/ or children; and/or
 - 29.2 to distribute or make available for viewing material which is malicious or technologically harmful.
- 30 Any content or material submitted by you to or through the Portals or via the Services must not:
 - 30.1 be defamatory of any person, be obscene, offensive, hateful or inflammatory, promote discrimination based on race, sex, religion, nationality, disability, sexual orientation or age;
 - 30.2 disclose the name, address, telephone, mobile or fax number, e-mail address or any other personal information in respect of any individual other than where you have the express permission of that individual to disclose such information subject to and in accordance with these terms of this Annex;
 - 30.3 infringe any copyright, database right or trade mark of any other person;
 - 30.4 breach any legal duty owed to a third party, such as a contractual duty or a duty of confidence;
 - 30.5 be in contempt of court;
 - 30.6 be likely to harass, upset, embarrass, alarm or annoy any other person;
 - 30.7 advocate, promote, incite any third party to commit, or assist any unlawful or criminal act; or
 - 30.8 contain a statement which you know or believe, or have reasonable grounds for believing, that members of the public to whom the statement is, or is to be, published are likely to understand as a direct or indirect encouragement or other inducement to the commission, preparation or instigation of acts of terrorism.
- 31 Where content or material submitted to or through the Portals or via the Services in our opinion breaches the terms of this Annex, we may at our sole discretion take all or any of the following actions:
 - 31.1 carry out an investigation of the identity of the person responsible for submitting such content or material and the circumstances surrounding the submission of such information or material, in respect of which you undertake to provide us with confirmation of your identity and any other information we may require in connection therewith and to cooperate with us fully;

- 31.2 immediate, temporary or permanent withdrawal or removal of the content or material or your ability to access the Portals and/or Services;
 - 31.3 issuing a warning to you;
 - 31.4 raising legal proceedings against you for recovery of all costs resulting from the breach;
 - 31.5 raising further legal action against you;
 - 31.6 disclosing such information to law enforcement authorities or relevant third parties as we reasonably feel is necessary or as required by law; or
 - 31.7 such other action as we reasonably deem appropriate.
- 32 We will provide you with a password when you register to use the Portals. When you receive this, please access the Portals and change the password to something known only to yourself. You must treat any user identification code, login, password or any other piece of information enabling access to or use of the Portals, as confidential, and you must not disclose it to any third party.
- 33 We reserve the right to disable any user identification code, login, password, or any other piece of information enabling access to or use of the Portals at any time where we believe you are in breach or likely to breach the terms of this Annex.
- 34 You must immediately notify us if you have reason to believe any user identification code, login, password, or any other piece of information enabling access to or use of the Portals provided by us to you or created by you has become known to any third party.
- 35 Any breach of the terms of this annex is a violation of our rights and (if applicable) those of our licensors, service providers and third parties. If you breach the terms of this Annex you may incur liability and become subject to court action.
- 36 If we have reason to believe that you have breached the terms of this annex or are likely to breach the terms of this Annex we may take action to protect ourselves, our licensors, service providers and third parties from liability, including but not limited to:
- 36.1 contacting relevant third parties and disclosing information collected from you or concerning you;
 - 36.2 changing, suspending, removing, or disabling access to the Portals, Services or any Materials without notice; or
 - 36.3 imposing limits on your use of or access to certain parts of the Portals, Services or any Materials,
- and in no event will we be liable to you for any action taken pursuant to this clause.
- 37 We do not guarantee that any Materials made available through the Portals or via the Services are accurate, complete or error free. You undertake not to rely upon Materials, nor to provide Materials to any third party with a view to that third party relying upon the Materials. Any reliance you or any third party places upon the Materials is entirely at your (or their) own risk and you undertake not to hold us liable for any loss, cost, damage or expense incurred as a result of such reliance.
- 38 We do not guarantee that the Portals or Services will be free of errors or defects or operate in an uninterrupted manner.

- 39 We do not guarantee that the Portals will not interfere with the performance or operation of the computer or device through which it is installed or accessed or other software installed thereon or peripherals connected thereto (and any software installed on said peripherals).
- 40 We do not guarantee that the Portals will be free of viruses or other malicious code.
- 41 We do not guarantee that the Portals or Services are suitable for any particular purpose or that they will meet your requirements, irrespective of whether that purpose or those requirements are known to us.