



Firefly Learning: Software-as-a-Service Subscription Terms

THESE SOFTWARE-AS-A-SERVICE SUBSCRIPTION TERMS are incorporated into the Order Form entered into by and between: (1) Firefly Learning Limited, incorporated and registered in England and Wales, with company number 10115230, whose registered office is at 100 Cambridge Grove, London, England, W6 0LE (the “**Supplier**”); and (2) the customer identified on that Order Form (the “**Customer**”).

BACKGROUND:

- (A) The Supplier has developed certain software applications and platforms which it makes available to subscribers via the internet on a pay-per-user basis for the purpose of enabling teachers students, and parents to access school information online.
- (B) The Customer wishes to use the Supplier’s service in its operations.
- (C) The Supplier has agreed to provide and the Customer has agreed to take and pay for the Supplier’s service subject to the terms and conditions of this agreement.

1. Interpretation

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

“**Affiliate**” any entity that directly or indirectly Controls, is Controlled by, or is under common Control with another entity.

“**Associated School**” has the meaning given in clause 2.7.

“**Authorised Users**” those of Customer’s named: (a) Personnel or (b) Students and their Parents, who are authorised by the Customer to use the Services and the Documentation, subject to clause 2.10 and any applicable provisions of the Order Form relating to categories of permitted Authorised Users.

“**Balance Fee**” the cumulative total of the Subscription Fees payable in each of the remaining years of the applicable Initial Subscription Term or Renewal Subscription Term, it being acknowledged and agreed that the Subscription Fees for each of the remaining years shall be equivalent to the Subscription Fees paid, or payable, for the existing year in which notice of termination is given.

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

“**Confidential Information**” information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in clause 11.6 or clause 11.7.

“**Consulting Services**” those consulting or other professional services that the Supplier is engaged by the Customer to provide under and pursuant to an Order Form.



“Contract Year” each 12 months’ period commencing on the Service Start Date and each anniversary of the Service Start Date.

“Control” (and its derivatives) means, in relation to the Customer, the power of a person (or persons acting together) to conduct or direct the affairs of the Customer in accordance with the wishes of that/(these) person(s) either:

- (a) by means of the holding of shares, a membership interest, or the direct or indirect possession of voting power, in or in relation to the Customer or any other person; or
- (b) by virtue of any powers conferred by the constitutional or corporate documents, or any other document, regulating the Customer or any other person.

“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.

“Data Processing Addendum” the Supplier’s data processing addendum for its customers, as is posted at <https://fireflylearning.com/data-processing-addendum> , or otherwise notified to the Customer, from time-to-time.

“Documentation” the document made available to the Customer by the Supplier online via www.fireflylearning.com or such other web address notified by the Supplier to the Customer from time to time which sets out a description of the Services and the user instructions for the Services.

“Effective Date” the date of last signature of the relevant Order Form into which these Software-as-a-Service Subscription Terms are incorporated.

“Excess Use” has the meaning given in 2.9.

“Fees” the Subscription Fees and the Training and Consulting Fees.

“Initial Subscription Term” the period prescribed in the Order Form as the Initial Subscription Term commencing on the Service Start Date.

“Insolvent” mean when a Party:

- (a) has a receiver, administrator or provisional liquidator appointed;
- (b) is subject to a notice of intention to appoint an administrator;
- (c) passes a resolution for its winding-up (save for the purpose of a solvent restructuring);
- (d) has a winding up order made by a court in respect of it;
- (e) enters into any composition or arrangement with creditors (other than relating to a solvent restructuring);
- (f) ceases to carry on business; or



- (g) has any steps or actions taken in connection with any of these procedures; or
- (h) is the subject of anything analogous to the foregoing under the laws of any applicable jurisdiction; or
- (i) is the subject of any proceeding in any Member State of the European Union which is capable of recognition under the EC Regulation on Insolvency Proceedings (EC 1346/2000).

“Normal Business Hours” 9.00 am to 6.00 pm local UK time, each Business Day.

“Order Form” an order form signed by the Parties, which incorporates these Software-as-a-Service Terms.

“Parties” Supplier and Customer; and **“Party”** shall mean one of them.

“Parents” the parents or legal guardians of Customer’s Students.

“Personnel” a person’s employees, agents, consultants or contractors.

“Renewal Subscription Term” the period prescribed in the Order Form as the Renewal Subscription Term, commencing on the expiry of the Initial Subscription Term and each subsequent Renewal Subscription Term thereafter.

“Service Start Date” the Service Start Date set out in the Order Form, being the date on which provision of the Subscription Services shall commence.

“Services” the Subscription Services, the Support Services and the Training and Consulting Services.

“Software” the software applications provided by the Supplier as part of the Services.

“Students” natural persons enrolled as pupils at Customer’s school(s).

“Subscription Fees” the subscription fees payable by the Customer to the Supplier for the Units, as set out in the relevant Order Form.

“Subscription Services” those subscription services (as such identified on the Order Form), which are to be provided by the Supplier to the Customer under this agreement via www.fireflylearning.com or any other website notified to the Customer by the Supplier from time to time, including associated mobile applications, as more particularly described in the Documentation.

“Subscription Term” the Initial Subscription Term together with each subsequent Renewal Subscription Term.



“Support Services” the technical support that the Supplier provides in relation to the Subscription Services, including phone and email support in accordance with the description at <http://helpcentre.fireflylearning.com>.

“Teachers” those of Customer’s Personnel engaged as ‘teachers’ or otherwise as educators of Customer’s Students.

“Training” the training described in the relevant Order Form.

“Training and Consulting Fees” those fees payable for Training and/or Consulting Services, as set out in the relevant Order Form.

“Units” the user subscriptions purchased by the Customer pursuant to clause 2.1, in such number as is specified in the Order Form, which entitle Authorised Users to access and use the Services and the Documentation in accordance with this agreement. As and to the extent necessary in the context, the term **“Units”** shall be construed with regard to the particular Subscription Services for which the Customer has purchased user subscriptions (as set out on relevant Order Forms), which may vary as between Customer and any Associated Schools(s) (where any such Associated School(s) are specified in an Order Form).

“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 A reference to this **“agreement”** shall mean these Software-as-a-Service Subscription Terms, together with the Order Form into which they are incorporated by reference.
- 1.3 Any capitalised terms used in this agreement shall, to the extent not otherwise defined above, have the meaning given to them in the Order Form.
- 1.4 Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.5 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.
- 1.6 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.7 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.



- 1.8 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.9 A reference to a statute or statutory provision is a reference to it as it is in force as at the date of this agreement.
- 1.10 Any words following the terms “including”, “include” or any similar expression shall be construed as illustrative and shall not limit the sense of the description, definition, phrase or terms that comes before the relevant term.
- 1.11 A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of this agreement under that statute or statutory provision.
- 1.12 A reference to writing or written includes e-mail but not faxes.
- 1.13 References to clauses and schedules are to the clauses and schedules of this agreement; references to paragraphs are to paragraphs of the relevant schedule to this agreement.

2. **User Subscription Units**

- 2.1 Subject to the Customer purchasing the Units in accordance with clause 3, the restrictions set out in this clause 2 and the other terms and conditions of this agreement, the Supplier hereby grants to the Customer a non-exclusive, non-transferable right, without the right to grant sublicences, to permit the Authorised Users to use the Services and the Documentation during the Subscription Term solely for the Customer’s business operations.
- 2.2 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 Units it has purchased from time to time;
 - (b) it will not allow or suffer any user subscription Unit to be used by more than one named individual Authorised User unless it has been reassigned in its entirety to another individual Authorised User, in which case the prior Authorised User shall no longer have any right to access or use the Services and/or Documentation;
 - (c) each Authorised User shall keep a secure password for his use of the Services and Documentation and each Authorised User shall keep his password confidential;
 - (d) it shall maintain a written, up to date list of current Authorised Users and provide such list to the Supplier within 5 Business Days of the Supplier’s written request at any time or times; and
 - (e) it shall permit the Supplier to conduct an audit of the Customer’s records (which may be conducted remotely or on-site, at the Supplier’s option) to establish the then-current number of Authorised Users. Such audit may be conducted no more than once per quarter, at the Supplier’s expense, and this right shall be exercised with reasonable



prior notice, in such a manner as not to substantially interfere with the Customer's normal conduct of business.

2.3 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) 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 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 agreement:
 - (i) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or Documentation (as applicable) in any form or media or by any means; or
 - (ii) attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the 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 22.1, 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.



- 2.5 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify the Supplier.
- 2.6 Unless such Affiliate is expressly identified on an Order Form (in which case the terms of clause 2.7 shall apply), the rights provided under this clause 2 are granted to the Customer only, and shall not be considered granted to any Affiliate of the Customer.
- 2.7 In the event that any Affiliate of the Customer and/or any other unaffiliated school associated with the Customer (each an “**Associated School**”) is identified in the Order Form as an Associated School:
- (a) where the context permits, all references to the Customer in this agreement shall be construed to mean the Customer identified on the Order Form and each such Associated School;
 - (b) the Customer identified on the Order Form shall:
 - (i) procure, and shall be fully liable for, the performance by each such Associated School of all obligations imposed on the ‘Customer’ herein; and
 - (ii) promptly upon request from the Supplier, procure any such Associated School’s execution and delivery of a written agreement under which such Associated School agrees to comply with the terms of this agreement as if it were the ‘Customer’ for the purposes hereof; and
 - (c) the Customer identified on the Order Form shall remain fully liable to the Supplier for the acts and omissions of each such Associated School and that Associated School’s Personnel and Authorised Users.
- 2.8 The Customer warrants and represents (on an going basis on each day throughout the Subscription Term) that it has purchased a number of Units that is equal to or in excess of the then-current number of Authorised Users.
- 2.9 If any of the audits referred to in clause 2.2(e) reveal, or the Supplier otherwise reasonably determines (including through facts or information made publicly-available by Customer), that the then-current number of Authorised Users exceeds the number of purchased Units (in respect of any one or more Subscription Services) (“**Excess Use**”), the Customer agrees to pay the Supplier on demand:
- (a) those sums reasonably determined by the Supplier as required to cover the period and extent of such Excess Use (based on the fees agreed in the Order Form); and
 - (b) the fees required for the Customer to purchase such additional Units as may be required to ensure that the number of purchased Units is equal to the then-current number of Authorised Users (based on the fees agreed in the Order Form), which the Supplier shall promptly activate for the remainder of the Initial Subscription Term or then current Renewal Subscription Term (as applicable).



2.10 For the purposes of this Agreement, those persons that the Customer may authorise to be Authorised Users shall (where applicable) be limited to named natural individuals within those category(ies) of permitted Authorised User (e.g., 'Students', 'Parents' or 'Teachers') specified in an Order Form, which may vary on a Subscription Service-by-Subscription Service basis. Any limits on the number of permitted Authorised Users outlined in this Agreement shall be construed with reference to this clause 2.10.

3. **Orders**

3.1 When the Customer wishes to place an order for Services (including Units), it shall submit an Order Form to the Supplier.

3.2 If the Customer wishes to purchase additional Units, the Customer shall submit a further Order Form. The Supplier shall evaluate such request for additional Units and respond to the Customer with approval or rejection of the request at the sole discretion of the Supplier. Where the Supplier approves the request, the Supplier shall activate the additional Units within 28 days of its approval of the Customer's request.

3.3 If the Supplier approves the Customer's request to purchase additional Units, the Customer shall, within 30 days of the date of the Supplier's invoice, pay to the Supplier the relevant fees for such additional Units as set out in the relevant Order Form and, if such additional Units are purchased by the Customer part way through the Initial Subscription Term or any Renewal Subscription Term (as applicable), such fees shall be pro-rated from the date of activation by the Supplier of such additional Units for the remainder of the Initial Subscription Term or then current Renewal Subscription Term (as applicable).

4. **Services**

4.1 The Supplier shall provide the Services and make available the Documentation to the Customer on and subject to the terms of this agreement and clause 4.3.

4.2 The Supplier shall provide the Training and the Consulting Services in accordance with the terms set out in the Order Form and clause 4.3.

4.3 Where any Associated School(s) are specified on an Order Form, the Supplier shall only be obliged to provide to the Customer and any Associated School(s) those Services (or elements thereof) as are set out against the Customer's and any Associated School's(s') names in the Order Form.

4.4 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 10.00 pm to 2.00 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.



4.5 The Supplier will, as part of the Services and at no additional cost to the Customer, provide the Customer with the Supplier's standard Support Services, as further described at <http://helpcentre.fireflylearning.com>, during Normal Business Hours. The Customer may purchase enhanced support services separately at the Supplier's then current rates.

5. **Customer Data**

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, in providing the Services, comply with its Privacy and Cookies Policy available at <https://fireflylearning.com/privacy-and-cookies> or such other website address as may be notified to the Customer from time to time, as such document may be amended from time to time by the Supplier in its sole discretion.

5.3 If the Supplier processes any personal data on the Customer's behalf when performing its obligations under this agreement, the Parties:

(a) record their intention that the Customer shall be the Controller (as defined in the Data Processing Addendum) and the Supplier shall be a Processor (as defined in the Data Processing Addendum); and

(b) the Parties agree to comply with the Data Processing Addendum.

6. **Third party providers**

The Customer acknowledges that the Services may enable or assist it to access the website content of, correspond with, and purchase products and services from, third parties via third-party websites and that it does so solely at its own risk. The Supplier makes no representation, warranty or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such third-party website, or any transactions completed, and any contract entered into by the Customer, with any such third party. Any contract entered into and any transaction completed via any third-party website is between the Customer and the relevant third party, and not the Supplier. The Supplier recommends that the Customer refers to the third party's website terms and conditions and privacy policy prior to using the relevant third-party website. The Supplier does not endorse or approve any third-party website nor the content of any of the third-party website made available via the Services.

7. **Supplier's obligations**

7.1 The Supplier undertakes that the Services will be performed substantially in accordance with the Documentation and with reasonable skill and care.

7.2 The undertaking at clause 7.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to the Supplier's instructions, or modification or alteration of the Services by any party other than the Supplier or the Supplier's duly authorised contractors or agents. If the Services do not conform with the foregoing undertaking, 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 7.1. Notwithstanding the foregoing, the Supplier:

- (a) does not warrant that the Customer's use of the Services will be uninterrupted or error-free; or that the Services, the 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 Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

7.3 This agreement 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 this agreement.

7.4 The Supplier warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this agreement.

8. **Customer's obligations**

8.1 The Customer shall:

- (a) provide the Supplier with:
 - (i) an accurate, up to date and verifiable number of Authorised Users, promptly on request;
 - (ii) all necessary co-operation in relation to this agreement; and
 - (iii) 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, including all applicable Data Protection Laws (as defined in the Data Processing Addendum) and any education and/or schools specific laws and/or regulations and obligations, with respect to its activities and in the performance of its obligations under this agreement;
- (c) carry out all other Customer responsibilities set out in this agreement in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the Parties, the Supplier may adjust any agreed timetable or delivery schedule as reasonably necessary;



- (d) ensure that the Authorised Users use the Services and the Documentation in accordance with the terms and conditions of this agreement and shall be responsible for any Authorised User's breach of this agreement;
 - (e) ensure that its network and systems comply with the relevant specifications provided by the Supplier from time to time; and
 - (f) 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.
- 8.2 The Customer warrants that it has obtained and shall maintain all necessary licences, consents, and permissions required for the Supplier, its contractors and agents to perform their obligations under this agreement, including without limitation the Services;
9. **Charges and payment**
- 9.1 The Customer shall pay the Fees to the Supplier in accordance with this clause 9 and each Order Form.
- 9.2 The Subscription Fees shall be payable annually in advance with respect to each Contract Year, and the Fees for services other than Subscription Services shall be payable in advance unless stated to the contrary in the relevant Order Form.
- 9.3 The Customer shall pay each invoice in accordance with the payment terms specified on the Order Form.
- 9.4 If the Supplier has not received payment within 28 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 the Supplier's bankers in the UK from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.
- 9.5 All amounts and fees stated or referred to in this agreement:
- (a) shall be payable in currency specified on the Order Form;
 - (b) are, subject to clause 13.3(b), non-cancellable and non-refundable;



(c) are exclusive of all taxes (including any sales or value added taxes) and similar assessments, which shall be added to such amounts in the relevant invoice.

9.6 As between the Parties, the Customer shall be liable for any sales, use, excise, value-added, services, consumption and other taxes and duties on amounts payable by Customer in respect of any services supplied or provided by the Supplier to the Customer.

9.7 The Supplier shall be entitled to increase the Subscription Fees and the fees payable in respect of the additional Units purchased pursuant to clause 3.2 at the start of each Renewal Subscription Term upon 90 days' prior notice to the Customer and the relevant Order Form shall be deemed to have been amended accordingly.

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 Documentation. Except as expressly stated herein, this agreement does not grant the Customer any rights to, under or in, any 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 and Documentation.

10.2 The Supplier confirms that it has all the rights in relation to the Services and Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this agreement.

11. **Confidentiality and publicity**

11.1 Each Party may be given access to Confidential Information from the other Party in order to perform its obligations under this agreement. A Party's Confidential Information shall not be deemed to include information that:

- (a) is or becomes publicly known other than through any act or omission of the receiving Party;
- (b) was in the other Party's lawful possession before the disclosure;
- (c) is lawfully disclosed to the receiving Party by a third party without restriction on disclosure; or
- (d) is independently developed by the receiving Party, which independent development can be shown by written evidence.

11.2 Subject to clause 11.4, each Party shall hold the other's Confidential Information in confidence and not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this agreement.

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 this agreement.



- 11.4 A Party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction, provided that, to the extent it is legally permitted to do so, it gives the other Party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 11.4, it takes into account the reasonable requests of the other Party in relation to the content of such disclosure.
- 11.5 Neither Party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.
- 11.6 The Customer acknowledges that details of the Services, and the results of any performance tests of the Services, constitute the Supplier's Confidential Information.
- 11.7 The Supplier acknowledges that the Customer Data is the Confidential Information of the Customer.
- 11.8 The Supplier reserves the right to reference the Customer as a user of the Services. The Customer grants the Supplier the right to use the Customer's name and any associated trademarks for the purposes identifying the Customer as a user of the Services on the Supplier's website and in the Supplier's promotional or marketing materials. Save for the limited licence granted in this clause 11.8, the Supplier shall not acquire any rights in or to the Customer's name or trademarks, and any goodwill generated by the Supplier's use of such name or trademarks under this limited licence shall enure to the benefit of the Customer.
- 11.9 Save as provided in clause 11.8, no Party shall make, or permit any person to make, any public announcement concerning this agreement without the prior written consent of the other Parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.
- 11.10 The above provisions of this clause 11 shall survive termination of this agreement, however arising.

12. **Indemnity**

- 12.1 The Customer shall defend, indemnify and hold harmless the Supplier, its officers, directors and employees against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Customer's use of the Services and/or Documentation, including, without limitation, breach of confidentiality, provided that:
- (a) the Customer is given prompt notice of any such claim;
 - (b) the Supplier provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and
 - (c) the Customer is given sole authority to defend or settle the claim.



- 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 provides reasonable co-operation to the Supplier in the defence and settlement of such claim, at the Customer'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 this agreement 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 sub-contractors 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.
- 12.5 The foregoing and clause 13.3(b) state 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 Except as expressly and specifically provided in this agreement:
- (a) the Customer assumes sole responsibility for results obtained from the use of the Services and 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 this agreement; and
- (c) the Services and Documentation are provided to the Customer on an “as is” basis.

13.2 Nothing in this agreement excludes the liability of the Supplier:

- (a) for death or personal injury caused by the Supplier's negligence; or
- (b) for fraud or fraudulent misrepresentation.

13.3 Subject to clause 13.1 and clause 13.2:

- (a) the Supplier shall not be liable whether in tort (including for breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this agreement; and
- (b) the Supplier's total aggregate liability in contract (including 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 this agreement shall be limited to the total Subscription Fees paid for the Units during the 12 months immediately preceding the date on which the first claim arising in connection with the performance or contemplated performance of this agreement was made or brought against the Supplier.

14. **Term and termination**

14.1 This agreement shall, unless otherwise terminated as provided in this clause 14, commence on the Effective Date and shall continue for the Subscription Term, unless:

- (a) either Party notifies the other Party of termination, in writing, at least 60 days before the end of the Initial Subscription Term or any Renewal Subscription Term, in which case this agreement shall terminate upon the expiry of the applicable Initial Subscription Term or Renewal Subscription Term; or
- (b) otherwise terminated in accordance with the provisions of this agreement.

14.2 Without affecting any other right or remedy available to it, the Supplier may terminate this agreement with immediate effect by giving written notice to the Customer if:

- (a) the Customer fails to pay any amount due under this agreement on the due date for payment and remains in default not less than 30 days after being notified in writing to make such payment;



- (b) the Customer commits a material breach of any other term of this agreement which 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 Customer becomes Insolvent;
- (d) there is a change of Control of the Customer; or
- (e) if the Customer breaches any warranty under this agreement.

14.3 Without prejudice to any other right or remedy available to it, the Customer may terminate this agreement with immediate effect on giving 60 days' written notice to the Supplier, and paying the Balance Fee. For the sake of clarity, the provisions of 14.4 will also apply.

14.4 On termination of this agreement for any reason:

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

15. **Force majeure**

The Supplier shall have no liability to the Customer under this agreement if it is prevented from or delayed in performing its obligations under this agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other Party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors, provided that the Customer is notified of such an event and its expected duration.



16. **Conflict**

In the event of any conflict or inconsistency between an Order Form and these Terms and Conditions, the Order Form shall prevail.

17. **Variation**

17.1 The Supplier may vary these Terms and Conditions on thirty (30) days' notice to the Customer, any such variations to these Terms and Conditions will be posted on this page of the Supplier's website or any successor website the Supplier notifies to the Customer. During such notice period, the Customer may terminate this Agreement on written notice to the Supplier.

17.2 Any access to or use of the Services following the expiry of the notice period referenced in clause 17.1 shall constitute Customer's irrevocable agreement to the terms of this Agreement as amended by the Supplier pursuant to clause 17.1.

17.3 Save as provided in clause 17.1, no variation of this agreement 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 this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

19. **Rights and remedies**

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

20. **Severance**

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

20.2 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.

21. **Entire agreement**

21.1 This agreement constitutes the entire agreement between the Parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.



21.2 Each Party acknowledges that in entering into this agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement.

21.3 Each Party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

21.4 Nothing in this clause shall limit or exclude any liability for fraud.

22. **Assignment**

22.1 The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this agreement.

22.2 The Supplier may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this agreement.

23. **No partnership or agency**

Nothing in this agreement is intended to or shall operate to create a partnership between the Parties, or authorise either Party to act as agent for the other, and neither Party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

24. **Third party rights**

This agreement does not confer any rights on any person or party (other than the Parties to this agreement and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999. Without limitation to the generality of the foregoing, this agreement does not confer any rights on any Associated School.

25. **Notices**

25.1 Any notice required to be given under this agreement 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 this agreement, or such other address as may have been notified by that Party for such purposes, sent by fax to the other Party's fax number as set out in this agreement, or sent by email to the other Party's email address as notified by the other Party.

25.2 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 fax shall be deemed to have been received at the time of transmission (as shown by the timed printout obtained by the sender).



26. Governing law and Jurisdiction

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

THIS AGREEMENT has been entered into on the Effective Date.

Firefly Learning Limited, 2018