

Prepared on 9 September 2021



## **MASTER SUBSCRIPTION AGREEMENT**

Education Horizons

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## BACKGROUND

- A Education Horizons owns, or has the right to make available, the Solutions. The Solutions are made available to end users, on an “as a service” basis, by way of a subscription.
- B The Client wishes to use one or more of the Solutions and any associated Services.
- C The Client has agreed to acquire, and Education Horizons has agreed to provide, the Solution(s) and Services on the terms and conditions of the Agreement.

## AGREED TERMS

### 1 DEFINITIONS AND INTERPRETATION

1.1 In the Agreement capitalised terms shall have the following meanings:

**Additional Training** means any training for which an additional Fee is payable by the Client, as determined in accordance with a Product Agreement.

**Adverse Event** means, in respect of the Client, any one or more of the following events occurring:

- (a) a resolution is passed for the winding up of the Client (other than for the purposes of reconstruction or amalgamation, which is on terms which have been previously approved in writing by Education Horizons);
- (b) a liquidator, provisional liquidator or receiver or receiver and manager, voluntary administrator, or administrator of a deed of company arrangement is appointed to all or any part of the property of the Client;
- (c) a receiver, receiver and manager, voluntary administrator or an administrator of a deed of company arrangement, is appointed to, or a mortgagee takes possession of, all or any part of the business or assets of the Client;
- (d) the Client makes any composition or arrangement or assignment with or for the benefit of its creditors;
- (e) the Client or any creditor appoints a voluntary administrator or a resolution is passed for the Client to execute a deed of company arrangement;
- (f) the Client ceases, or threatens to cease to carry on its business; or

the Client becomes unable to pay its debts as and when they become due.

**Agreement** means this agreement comprising of the document listed in clause 3.4.

**Associated Documentation** means all user guides, the Terms of Use and other documents describing the Solution.

**Authorised User** means a member of the Client’s Personnel who is authorised to use the Solution under the Agreement.

**Bug** means a reproducible malfunction of the Solution that prevents the Solution from performing in accordance with the operational specifications described in the then current Associated Documentation.

**Business Day** means a day other than a Saturday, Sunday or a national public holiday in the Jurisdiction.

**Client** means the person or entity specified in the Product Agreement.

**Client Data** means all data, information, text, drawings, statistics, reports, analysis and other materials relating to the Client which are created, generated, placed in, stored in, accessed or retrieved by using the Solution.

**Cloud Hosting Service** means the third party hosting service for the Solution, which may be procured by Education Horizons on behalf of the Client if specified in a Product Agreement.

**Commencement Date** means the date on which the Product Agreement is executed by both parties.

**Confidential Information** means in relation to a party, information that is by its nature confidential, is designated by that party as confidential, or the other party knows or ought reasonably to know is confidential, and includes including any information relating to the financial affairs, assets or liability of a party, or any information relating to the internal management of a party, its personnel, policies, plans, strategies, customers, suppliers, products or services. Education Horizons' Confidential Information includes the terms of the Agreement, Intellectual Property Rights and all Associated Documentation. Confidential Information does not include information or material which:

- (a) is or becomes generally known to the public other than through a breach of the Agreement;
- (b) at the time it was first disclosed to a party, was already in that party's lawful possession;
- (c) is developed independently by a party; or
- (d) is disclosed to a party by a third party entitled to disclose it.

**Implementation Services** means the implementation, customisation, configuration and/or testing services of the Solution and all related services, including setting up an environment, on-boarding and initial training..

**Contact Person** means the person or persons nominated by the Client in the Product Agreement.

**Controller** means the natural or legal person, public authority, agency or any other body which, alone or jointly with others, determines the purposes and means of the Processing of Personal Data.

**Currency** means the currency set out in the Product Agreement.

**Current Rates** means Education Horizons' then current time and materials rates.

**Data Protection Law** means any applicable laws relating to the Processing of, privacy and use of Personal Data as applicable to either party or the services, including, without limitation

- (a) Privacy Act 1988 (Australia);
- (b) POPI Act (South Africa);
- (c) Privacy Act 2020 (New Zealand);
- (d) GDPR;
- (e) UK GDPR;

- (f) European Privacy and Electronic Communications Directive (Directive 2002/58/EC);
- (g) any other applicable legislation in force in the European Economic Area, European Union member states and the United Kingdom relating to privacy or the Processing of Personal Data; and
- (h) all guidance, guidelines, codes of practice and codes of conduct issued by any relevant supervisory authority in respect of the foregoing (in each case to the extent legally binding).

**Data Subject** means an identifiable natural person who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.

**EHG Contact Email** means the email address set out in the Product Agreement.

**Education Horizons** means the Education Horizons entity described in full in the Product Agreement.

**Equipment** means the computer system, including peripheral equipment and operating system software, used by the Client and its Personnel in order to access and/or use the Solution and Services.

**Fees** mean all fees and charges payable by the Client to Education Horizons for provision of the Solution and the Services set out in the Product Agreement and varied from time to time in accordance with the Agreement.

**Force Majeure Event** means an event that is beyond the reasonable control of a party and includes an act of God, strike, lockout or other industrial disturbance or labour difficulty, war, act of public enemy, blockade, revolution, riot, insurrection, civil commotion, pandemic, lightning, storm, flood, fire, earthquake, explosion, embargo, unavailability of any essential equipment or materials, unavoidable accident, lack of transportation or anything done or not done by or to a person, government or other competent authority, except by a party to this Agreement.

**GDPR** means General Data Protection Regulation (EU) 2016/679 on the protection of natural persons with regard to the Processing of Personal Data and on the free movement of such data.

**GST** means goods and services tax or similar value added tax levied or imposed by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) or otherwise on a supply.

**Harmful Code** means any virus, Bug, Trojan horse, malware, worm, time bombs, back doors or any similar device, mechanism, code or routine that manifests harmful, contaminating, destructive or disabling properties.

**Improvement** has the meaning given to that term in clause 12.2.

**Intellectual Property Rights** or **IPR** means all present and future rights, whether registered or unregistered (including all rights in all applications to register these rights) including renewals and extensions, conferred by law or equity, in or in relation to:

- (a) patents, copyright (including future copyright), circuit layout rights, designs, trade marks, plant varieties, inventions and confidential information, business and domain names, inventions, trade secrets, know-how and Confidential Information, database rights and software; and
- (b) other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields.

**IPR Claim** has the meaning given to that term in clause 16.1.

**Jurisdiction** means:

- (a) for Clients located in Australia: Victoria, Australia; and
- (b) for all other Clients: England and Wales.

**Late Payment Interest Rate** means:

- (a) for Clients located in Australia, 2% above the then current rate fixed under section 2 of the *Penalty Interest Rates Act 1983* (Vic);
- (b) for Clients located in South Africa, 3% per annum above the ABSA Bank base rate from time to time; and
- (c) for all other Clients, 3% per annum above Lloyds Bank Plc's base rate from time to time.

**Minimum Subscription Period** means a period of 12 months commencing on the Commencement Date, subject to earlier termination in accordance with the terms of the Agreement.

**Minimum Technical Requirements** has the meaning given to that term in clause 7.1.14.

**Non Excludable Guarantee** has the meaning given to that term in clause 8.5.

**Personal Information** has the meaning given to that term in the *Privacy Act 1988* (Cth).

**Personal Data** means all personal data, as defined in Data Protection Law, that Education Horizons or any Sub-Processor receives from the Client, or otherwise obtains, stores, generates, has access to, or otherwise Processes in connection with this Agreement.

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

**Personnel** of a party means the officers, employees, agents and contractors of that party.

**Privacy Laws** means **Data Protection Laws**

**Processing** means any operation or set of operations which is performed on Personal Data or on sets of Personal Data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction and "Process" and "Processes" will be construed accordingly.

**Processor** means a natural or legal person, public authority, agency or any other body which Processes Personal Data on behalf of the Controller.

**Product Agreement** means a document which sets out the Solutions and Services that Education Horizons will provide to the Client under this Agreement and the additional standard terms that apply specifically to the provision of that category of Solution and Service, including the applicable Service Level Agreement, the Subscription Metrics and the Subscription Fees.

**Renewal Period** has the meaning given to that term in clause 3.2.2.

**Service Level Agreement** means the service level agreement applicable to the Solution and available at [www.educationhorizons.com/master-subscription-agreement](http://www.educationhorizons.com/master-subscription-agreement).

**Services** means the services (or any of them) which are to be provided by Education Horizons under the Agreement and specified in the Product Agreement, including the Support and Maintenance Services, Implementation Services and Additional Training.

**Solution** means the software product or service to be provided by Education Horizons under the Agreement and specified in the Product Agreement.

**Sub-Processors** means Education Horizons' sub-contractors with access to Personal Data.

**Subscription** has the meaning given to that term in clause 3.2.1.

**Subscription Fee** means the fees payable by the Client for a Subscription, as specified in the Product Agreement and varied from time to time in accordance with the Agreement.

**Subscription Metrics** means the variable element identified in the Product Agreement as the basis on which the Client's right to use the Solution, and the Subscription Fees payable by the Client for use of the Solution, have been calculated.

**Support and Maintenance Services** means the services to be provided by Education Horizons in accordance with the Product Agreement and the Service Level Agreement.

**Term** has the meaning given to that term in clause 3.1.

**Terms of Use** means the terms of use available at [www.educationhorizons.com/termsfuse](http://www.educationhorizons.com/termsfuse).

**UK GDPR** means the UK version of the GDPR, which is part of UK law by virtue of the European Union (Withdrawal) Act 2018.

**VAT** means value added tax as provided for in the *Value Added Tax Act 1994* (UK).

1.2 In the Agreement (unless the context requires otherwise):

- 1.2.1 any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms;
- 1.2.2 references to a clause, schedule, paragraph or appendix are references to the clause, schedule, paragraph or appendix of, or to, the Agreement;
- 1.2.3 reference to any agreement, contract, document or deed shall be construed as a reference to it as varied, supplemented or novated from time to time;
- 1.2.4 words importing persons shall include natural persons, bodies corporate, un incorporated associations and partnerships (whether or not any of them have separate legal personality);
- 1.2.5 the headings, index and front sheet are all for reference only and shall be ignored when construing the Agreement;
- 1.2.6 if the Agreement is translated and there is any conflict, ambiguity or inconsistency between the English language version and the translated version, then the English version shall prevail; and
- 1.2.7 reference to any legislative provision shall be deemed to include any statutory instrument, bye-law, regulation, rule, subordinate or delegated legislation or order and rules and regulations which are made under it, and any subsequent re-enactment or amendment of the same.

## **2 NON-EXCLUSIVE APPOINTMENT**

- 2.1 The Client appoints Education Horizons on a non-exclusive basis to provide the Solution(s) and Services to the Client subject to the terms and conditions of the Agreement.

## **3 TERM AND GUIDE TO THIS AGREEMENT**

- 3.1 This Agreement commences on the Commencement Date and continues until it is terminated or expires (**Term**).
- 3.2 Subject to clause 5.1 and unless the Agreement is otherwise terminated in accordance with clause 18:
- 3.2.1 Education Horizons will commence providing to the Client the Solution on the date specified in the Product Agreement or, if not specified in the Product Agreement, the Commencement Date and continue for the Minimum Subscription Period (a **Subscription**); and
- 3.2.2 following expiry of the Minimum Subscription Period, the Subscription will automatically renew for successive periods of one calendar month (each a **Renewal Period**).
- 3.3 Following the Minimum Subscription Period, if either party notifies the other party in writing that it wishes to cease providing or cease receiving (as the case may be) the Solution (**Cessation Notice**), the Subscription will end and Education Horizons will cease providing the Solution and all other related Services, and this Agreement will terminate, at the end of the Renewal Period that is at least:
- 3.3.1 if the Client provides the Cessation Notice, one calendar month after the provision of the Cessation Notice; or
- 3.3.2 if Education Horizons provides the Cessation Notice, 24 calendar months after the provision of the Cessation Notice.
- 3.4 The Agreement is comprised of the following documents:
- 3.4.1 clauses 1 to 26 of these terms and conditions;
- 3.4.2 the Product Agreement; and
- 3.4.3 Schedules 1 and 2 of these terms and conditions.
- 3.5 In the event and to the extent of any inconsistency between the documents listed in clause 3.4, the provisions or documents higher in the list will prevail to the extent of the inconsistency.

## **4 PRODUCT AGREEMENT**

- 4.1 Education Horizons is not obliged to provide to the Client the Solution or any related Services unless and until a Product Agreement is executed on behalf of both parties.

## **5 PROVISION OF THE SOLUTION**

- 5.1 Subject to payment of the Subscription Fees, Education Horizons grants to the Client a non-exclusive, non-transferable and non-sublicensable licence for it and its Authorised Users to:
- 5.1.1 use the Solution for its internal business purposes;



- 5.1.2 use the Associated Documentation in connection with use of the Solution; and
- 5.1.3 copy the Associated Documentation solely as required for the Client's own internal operational use, in-house educational and training purposes and backup or archival purposes, provided that the Solution, Associated Documentation and any titles, trade mark symbols, copyright symbols and legends and other proprietary markings are not be modified in any way.

## **6 SERVICES**

### **6.1 Education Horizons will:**

- 6.1.1 provide the Client with Support and Maintenance Services; and
- 6.1.2 if specified in the Product Agreement and subject to payment of additional Fees, provide the Client with all other Services, including the Implementation Services which will be provided in accordance with Schedule 1 and/or Additional Training.

### **6.2 Education Horizons will:**

- 6.2.1 make the Solution available in accordance with the relevant Service Level Agreement;
- 6.2.2 provide the Support and Maintenance Services in accordance with the Product agreement and the Service Level Agreement;
- 6.2.3 perform the Services with due care and skill and in a professional, punctual and diligent manner;
- 6.2.4 obtain and maintain all necessary authorisations required for the provision of the Solution and the Services; and
- 6.2.5 use reasonable endeavours to complete the Services within the timeframes specified in the Agreement. The parties agree that any timeframe specified in the Agreement is an estimate only and Education Horizons will not be liable for any failure or delay in completing the Services in accordance with the specified timeframe.

## **7 CLIENT RESPONSIBILITIES**

### **7.1 The Client must:**

- 7.1.1 provide Education Horizons with all necessary co-operation in relation to the Agreement, and all necessary access to such information as may be required in order to provide the Solution and Services;
- 7.1.2 conduct business with Education Horizons in a courteous and professional manner and in accordance with any protocols and procedures set out in the Agreement;
- 7.1.3 comply with all applicable laws and regulations with respect to its activities under the Agreement, including the Privacy Laws;
- 7.1.4 ensure that its Authorised Users:
  - 7.1.4.1 are properly trained in the use and application of the Solution; and

- 7.1.4.2 use the Solution in accordance with the terms and conditions of the Agreement and the Associated Documentation;
- 7.1.5 ensure that the Solution is used in accordance with this Agreement, including the Subscription Metrics and the Associated Documentation;
- 7.1.6 provide on request all information as may be required by Education Horizons to determine the Subscription Metrics that may be required to calculate the Subscription Fees from time to time;
- 7.1.7 obtain and maintain all necessary licences, consents and permissions necessary for Education Horizons to perform its obligations under the Agreement, including providing the Solution and Services to the Client;
- 7.1.8 document and promptly report all errors in or malfunctions (including Bugs) of the Solution to Education Horizons;
- 7.1.9 use all reasonable endeavours to complete procedures for the rectification of errors or malfunctions in the Solution within a reasonable time after such procedures are notified to it by Education Horizons;
- 7.1.10 protect the Solution from access, use, damage or destruction by any third party, including by implementing and maintaining up-to-date software to protect against viruses and other Harmful Code and appropriate information security controls on all Equipment;
- 7.1.11 provide all information required by Education Horizons to open a support request;
- 7.1.12 once a support request has been submitted, make Personnel available, as appropriate, to work with Education Horizons to ensure that the scope of the support request is fully understood and that, if applicable, site-testing can be undertaken in a timely manner;
- 7.1.13 provide all necessary and requested documentation, information, and knowledge capital to Education Horizons as appropriate in respect of a support request;
- 7.1.14 ensure that its Equipment and any other hardware, software and infrastructure comply with the minimum requirements specified by Education Horizons from time to time, including as part of the Associated Documentation, where applicable (**Minimum Technical Requirements**); and
- 7.1.15 be solely responsible for procuring and maintaining the network connections required to access and use the Solution, including the internet connection, and be solely responsible for the resolution of all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to its network connections or telecommunications links or caused by the internet.
- 7.2 Any Services (including any Support and Maintenance Services) which Education Horizons is required to provide as a result of the Client's failure to provide Authorised Users with the Minimum Technical Requirements are not included within the Fees specified in the Product Agreement and will be performed by Education Horizons at its Current Rates.
- 7.3 The Client will be responsible for all acts and omissions of its Authorised Users and all acts and omissions of Authorised Users will be treated as the acts and omissions of the Client.

- 7.4 Except to the extent permitted by law or the Agreement, the Client must not directly or indirectly, whether through any of its Authorised Users or third party or otherwise:
- 7.4.1 transfer, sell, assign, lease, rent, sublicense, encumber, redistribute or otherwise permit any unauthorised person to use or access the Solution, in whole or in part;
  - 7.4.2 reproduce, modify, adapt, translate or create derivative works based upon the Solution or the Associated Documentation;
  - 7.4.3 decompile, disassemble, or reverse engineer any portion of the Solution or attempt to do so;
  - 7.4.4 use the Solution to provide processing services to third parties or for commercial timesharing, rental or sharing arrangements;
  - 7.4.5 create or permit any link between the Solution and any third party software without Education Horizon's prior written consent; or
  - 7.4.6 provide, disclose, divulge or make available to, or permit use of the Solution by persons other than the Authorised Users without Education Horizons' prior written consent.

## **8 WARRANTIES**

- 8.1 The Client warrants and undertakes to Education Horizons that:
- 8.1.1 it has all legal rights and powers to enter into, and perform its obligations under, this Agreement; and
  - 8.1.2 it will comply with the requirements of any applicable laws, authorisations and statutory regulations with respect to the use of the Solution, Services and the performance of its obligations under this Agreement.
- 8.2 Education Horizons warrants to the Client that:
- 8.2.1 it has the rights in relation to the Solution and the Services that are necessary to grant all the rights it purports to grant to the Client under, and in accordance with, the terms of the Agreement;
  - 8.2.2 the Associated Documentation contains sufficient information to enable the Client to understand the basic operation of the Solution; and
  - 8.2.3 the Services will be performed with reasonable care and skill using appropriately qualified, experienced and skilled Personnel.
- 8.3 Subject to clause 8.2 and any Non Excludable Guarantees, to the fullest extent allowed by law, Education Horizons:
- 8.3.1 makes no warranties, whether express or implied, relating to the Solution or the Services; and
  - 8.3.2 excludes all implied warranties of merchantability, satisfactory quality and fitness for a particular purpose (even if Education Horizons had been informed of such purpose) with respect to the Solution and the Services.

- 8.4 Without limiting the generality of clause 8.3, but subject to clause 8.2 and any Non Excludable Guarantees, to the fullest extent allowed by law, Education Horizons:
- 8.4.1 does not warrant, represent or guarantee that the Solution will be error free or will perform in an uninterrupted manner;
  - 8.4.2 does not warrant, represent or guarantee that the Solution, Associated Documentation and/or the information and/or results obtained by the Client through the Solution will meet the Customer's requirements; and
  - 8.4.3 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 Client agrees that the Solution and Associated Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 8.5 If a mandatory term is implied by law or a mandatory consumer guarantee (each a **Non Excludable Guarantee**) applies to goods or services provided in connection with the Agreement, to the maximum extent permitted by law, Education Horizons' liability for breach of the Non Excludable Guarantee is limited, at Education Horizons' option, to:
- 8.5.1 in the case of goods not of a kind ordinarily acquired for personal, domestic or household use or consumption, either replacement or repair of the goods or payment of the cost of replacing or repairing the goods; and
  - 8.5.2 in the case of services not of a kind ordinarily acquired for personal, domestic or household use or consumption, to either resupply of the services or payment of the cost of the resupply of the services.
- 8.6 Education Horizons' Personnel have no authority to bind Education Horizons in respect of any oral representations or warranty concerning the Solution or any Services. Other than the Non Excludable Guarantees, any representation or warranty not expressly contained in the Agreement cannot be relied upon by the Client.

## 9 **CONTRACT MANAGEMENT**

- 9.1 The Client must appoint a Contact Person who will be the primary point of contact for all communications with Education Horizons in relation to the Agreement.
- 9.2 The Client may change its Contact Person by providing written notice to Education Horizons.
- 9.3 In respect of day-to-day communications and communications relating to the Solutions and Services, the Contact Person may contact Education Horizons using the EHG Contact Email.
- 9.4 Education Horizons' may schedule meetings as required with both technical and management Personnel of each party to review the status of the Agreement. The Client must ensure that the relevant Personnel attend any such meetings requested by Education Horizons, acting reasonably.

## 10 **FEES AND INVOICING**

- 10.1 The Client must pay to Education Horizons:
- 10.1.1 the Fees; and

- 10.1.2 any out-of-pocket expenses incurred by Education Horizons, including travel and travel-related expenses and any identified pass-through expenses, in connection with Education Horizons' performance of its obligations under the Agreement. Education Horizons will include all such reimbursable expenses on its invoices.
- 10.2 Unless specified otherwise in the Product Agreement, the Fees payable by the Client in respect of:
  - 10.2.1 the Minimum Subscription Period will be payable in the following manner:
    - 10.2.1.1 the first payment will be for an amount that relates to the period commencing on the Commencement Date and ending on last day of the next calendar month, and will be due and payable on the first day of the calendar month following the Commencement Date; and
    - 10.2.1.2 each subsequent payment will be a monthly payment, and will be due at the start of each remaining calendar month of the Minimum Subscription Period; and
  - 10.2.2 each Renewal Period will be payable in full at the start of each Renewal Period.
- 10.3 The Client must pay invoices by direct debit unless specified otherwise in the Product Agreement. .
- 10.4 The Client acknowledges that the Fees are calculated in accordance with the Subscription Metrics and that if the Client wishes to make any change to the variables within the Subscription Metrics, the Client must notify Education Horizons immediately and a corresponding increase or decrease in the Subscription Fees may be payable by the Client.
- 10.5 If the Client fails to pay the Fees by the relevant date required under this Agreement (**Overdue Amounts**), the Client must pay to Education Horizons:
  - 10.5.1 interest on the Overdue Amount at the Late Payment Interest Rate with such interest accruing on a daily basis from the due date of the relevant Fees until the Client makes payment of the Overdue Amount whether before or after judgment;
  - 10.5.2 an amount equal to all reasonable expenses (including contingent expenses such as debt collection commission) and legal costs (on a full indemnity basis) incurred by Education Horizons as a result of or in connection with a failure by the Client to comply with its payment obligations under the Agreement.
- 10.6 Education Horizons may vary the Fees payable under the Agreement at any time by providing the Client 90 days' written notice.
- 10.7 An increase in the Fees under clause 10.6 will take effect at the beginning of the Renewal Period that commences at least 90 days after Education Horizons provides the Client notice under clause 10.6.
- 10.8 The Client is not entitled to raise a set off or counterclaim in respect of any amount it owes to Education Horizons and all amounts to be paid by the Client under the Agreement will be paid in full without deduction or withholding. An amount owed includes any amount owed, whether actually, contingently or prospectively.
- 10.9 All amounts and fees stated or referred to in the Agreement:
  - 10.9.1 subject to clause 10.10, must be paid in the Currency; and
  - 10.9.2 are, subject to clause 19.2, non-cancellable and non-refundable.

- 10.10 The parties may agree in the Product Agreement that payments made by the Client under the Agreement will be in a currency other than the Currency provided that Education Horizons may, from time to time, invoice the Client for more than the amount specified in the Product Agreement to ensure that the amount received by Education Horizons is the same as the amount which Education Horizons would have received had the payment been made in the Currency.
- 10.11 All third party fees related to the method of payment selected by the Client will be the responsibility of, and must be paid by, the Client.

## **11 TAX**

- 11.1 All amounts and fees stated or referred to in this Agreement are exclusive of applicable sales tax, including GST and VAT (as applicable), which will be added to Education Horizons' invoices at the appropriate rate.
- 11.2 The Client agrees to pay or reimburse Education Horizons for all sales, personal property, excise or other taxes or duties imposed by a governmental authority in any jurisdiction and arising out of or in connection with the Agreement or the transactions contemplated by the Agreement, other than taxes imposed on Education Horizons' income.

## **12 INTELLECTUAL PROPERTY**

- 12.1 The Client acknowledges that Education Horizons owns and will own all existing and future rights, title and interest (including all Intellectual Property Rights) in each of the following:
- 12.1.1 the Solution;
  - 12.1.2 the Associated Documentation; and
  - 12.1.3 any other materials or outputs made available to the Client, including documents, reports, information, data and software.
- 12.2 If the Client or any person or entity acting on its behalf makes, devises, discovers or otherwise acquires rights in any improvement, enhancement or modification to the Solution (**Improvement**) it must promptly notify Education Horizons in writing, giving details of the Improvement and must provide any further information relating to the Improvement if requested by Education Horizons.
- 12.3 The Client assigns to Education Horizons all right, title and interest, including IPR, in each Improvement. Such assignment will be effective immediately on creation (including as a present assignment of future copyright) without the need for further assurance.

## **13 CLIENT DATA AND SECURITY**

- 13.1 All right, title and interest (including all Intellectual Property Rights) in all Client Data stored and/or processed by the Client using the Solution is and remains vested in the Client.
- 13.2 The Client is solely responsible for:
- 13.2.1 the accuracy, quality, integrity, legality, reliability, appropriateness, access to, and ownership of all such Client Data; and
  - 13.2.2 where an Alternative Hosting Solution is used, maintaining the security of its Client Data, and ensuring that copies of Client Data are adequately stored.

- 13.3 The Client grants to Education Horizons a non-exclusive, sub-licensable and royalty-free licence to:
- 13.3.1 use the Client Data to the extent necessary to fulfil its obligations under the Agreement;
  - 13.3.2 use Client Data and usage statistics regarding the Client's use of the Solution for improving product and user experience and, in respect of de-identified data only, for commercial purposes;
  - 13.3.3 access the Client Data for technical and support purposes at any time in connection with the Support and Maintenance Services; and
  - 13.3.4 disclose Client Data where required to do so by law or court order, provided that Education Horizons will use reasonable endeavours to notify the Client of any such request.
- 13.4 The Client acknowledges and agrees that security risks cannot be eliminated and the internet is not a secure medium and, as with all systems that permit data upload or transmission over the internet, the use of the Solution carries with it the risk that the Client or any Authorised User may send, receive, upload, download or transmit a file that contains Harmful Code, and that Harmful Code may damage the Client's or any Authorised User's computers, systems and Client Data, and may spread and damage other persons' computers, systems and data.
- 13.5 Education Horizons will follow its back-up and archiving procedures for Client Data as in force from time to time. In the event of any loss or damage to Client Data, the Client's sole and exclusive remedy against Education Horizons will be for Education Horizons to use reasonable commercial endeavours to restore the lost or damaged Client Data from the latest back-up of such Client Data maintained by Education Horizons in accordance with its standard back-up and archiving procedures.
- 13.6 On termination or expiration of the Agreement, the Client may access the Solution for 30 days immediately following the termination or expiration of the Agreement for the sole purpose of making a copy of all Client Data. Immediately following the completion of this 30 day period, Education Horizons will destroy or otherwise dispose of any of the Client Data in its possession

## **14 CONFIDENTIALITY**

- 14.1 A recipient of Confidential Information may only use the Confidential Information of the discloser for the purposes of performing the recipient's obligations or exercising the recipient's rights under the Agreement.
- 14.2 A recipient must:
- 14.2.1 not disclose the Confidential Information of the other party to any person except if the Agreement permits;
  - 14.2.2 not assist or permit any person to make any unauthorised use of the discloser's Confidential Information; and
  - 14.2.3 take reasonable steps to safeguard the Confidential Information, including co-operating with the discloser as reasonably required to protect the confidentiality of its Confidential Information.
- 14.3 A recipient may only disclose Confidential Information to:
- 14.3.1 its Personnel on a "need to know basis"; or

14.3.2 any other person only with the discloser's prior written consent,

and, before doing so, the recipient must ensure that those persons are aware of the confidential nature of the Confidential Information and are bound by confidentiality obligations consistent with this clause 14.

14.4 On expiry or termination of the Agreement, or at any other time, Education Horizons may request the Client to deliver to it, or destroy and certify the destruction of, all documents and other materials in any medium in the Client's possession or control which contain or refer to Education Horizons' Confidential Information. However, the Client may retain a single copy of any document or other material containing or referring to Education Horizons' Confidential Information to the extent it is required to do so by law or any other Confidential Information which is required to use the Solution whilst the Subscription is ongoing.

14.5 Notwithstanding this clause 14, the Client agrees that Education Horizons may use its name in press releases, product brochures, Education Horizons websites, Education Horizons social media posts and financial reports indicating that the Client is a customer of Education Horizons.

## **15 PRIVACY**

15.1 In this clause 15, clauses 15.2 to 15.4 apply where the Processing by Education Horizons on behalf of the Client of Personal Data is not subject to the application of Data Protection Law. This will depend on the specific circumstances of each Client and includes Clients located in Australia.

15.2 Education Horizons acknowledges that some of the Client Data may be subject to the Privacy Laws. Education Horizons will:

15.2.1 only use the Client's Personal Information for the purposes set out in the Agreement;

15.2.2 take reasonable steps to protect the Client's Personal Information from unauthorised access, modification or disclosure and from misuse, interference or loss; and

15.2.3 use reasonable endeavours to comply with written directions from the Client regarding its use and handling of such Client Data, and only to the extent that such directions do not require Education Horizons to make any change to the Solution or Service.

15.3 The Client warrants and represents on a continuing basis that, in respect of any Personal Information which it discloses or otherwise makes available to Education Horizons in connection with the Agreement (including Personal Information within the Client Data):

15.3.1 it complies with, has done and will continue to do all things necessary to ensure and maintain its compliance with Privacy Laws in relation to:

15.3.1.1 the collection, use and disclosure of the Personal Information; and

15.3.1.2 the disclosure of Personal Information to Education Horizons for the purposes permitted by and contemplated under the Agreement;

15.3.2 it has collected Personal Information by lawful and fair means and otherwise in accordance with the Privacy Laws; and

15.3.3 without limiting any other clause in this Agreement, it has informed individuals from whom such Personal Information is collected of any matters which an organisation is required to inform an individual about when such Personal Information is collected under the Privacy Laws, in the manner and to the extent so required.



- 15.4 The Client acknowledges that Education Horizons uses third party service providers to provide Cloud Hosting Services in connection with the Solution, which involves the processing and storage of Client Data (including Personal Information). As at the Commencement Date, such third party is Amazon Web Services, whose privacy policy is available at [www.educationhorizons.com/privacy](http://www.educationhorizons.com/privacy).
- 15.5 This clause 15.5 and Schedule 2 only applies to the Processing by Education Horizons on behalf of the Client of Personal Data which is subject to the application of Data Protection Law:
- 15.5.1 The Client and Education Horizons agree that the Client is the Controller of Personal Data and Education Horizons is Processor of such Personal Data.
- 15.5.2 Education Horizons will:
- 15.5.2.1 aside from where required by applicable law, Process the Personal Data only on written instructions of the Client, including with regard to transfers of Personal Data to any third country or an international organisation, provided such instructions do not infringe Data Protection Law (in which case Education Horizons will notify the Client of such infringing instruction in accordance with clause 15.5.2.3, and will not sell, commercially exploit, use for direct marketing or analytics purposes or assign rights in any Personal Data (including in a de-identified form);
- 15.5.2.2 inform the Client if, in its opinion, an instruction from the Client infringes Data Protection Law, or if it believes it is required to Process Personal Data outside of Customer's instructions in order to comply with a legal obligation;
- 15.5.2.3 ensure that all its Personnel with access to Personal Data are informed of its confidential nature, have agreed to keep Personal Data confidential and are subject to appropriate binding confidentiality obligations;
- 15.5.2.4 put in place appropriate technical and organisational measures necessary to ensure that Personal Data is protected against unauthorised or unlawful processing, access, or disclosure and against accidental loss or accidental or unlawful destruction of, alteration or damage to, Personal Data, which are appropriate to the risk including the measures set out in Schedule 2 and all measures pursuant to Article 32(1) GDPR/UK GDPR which will not be amended where such amendments would reduce such protection of Personal Data, without the Client's approval;
- 15.5.2.5 comply with all obligations in clause 15.5.3 in connection with the engaging of a Sub-Processor;
- 15.5.2.6 taking in to account the nature of the Processing, assist the Client by implementing appropriate technical and organisation measures, insofar as this is possible, for the fulfilment of the Client's obligations to respond to a Data Subject exercising their rights set out in Chapter III of the GDPR/UK GDPR and as is reasonably required to deal with requests and communications from Data Subjects and any regulatory authority in relation to Personal Data;
- 15.5.2.7 provide the Client with reasonable assistance in ensuring compliance with the Client's obligations under Articles 32 to 36 of the GDPR/UK GDPR, taking into account the nature of Processing and the information available to Education Horizons;

- 15.5.2.8 at the request and option of the Client (whether during or following termination or expiry of this Agreement, return or destroy all Personal Data in the possession or control of Education Horizons and confirm to the Client that such deletion has taken place, except to the extent that Education Horizons is required by law to retain such Personal Data;
  - 15.5.2.9 make available to the Client all information in its possession or control that is necessary to demonstrate its compliance with the obligations set out in this clause 15.5.2, and allow the Client, on reasonable prior written notice and during the business hours of Education Horizons, access to Education Horizons' premises, records, staff and systems (and reasonable related assistance) to enable the Client to verify Education Horizons' compliance with its obligations under this clause 15.5.2; and
  - 15.5.2.10 not transfer Personal Data outside of the United Kingdom or European Economic Area where the Client is located in one of those jurisdictions without ensuring that there is a lawful basis for the transfer, and seeking the Client's prior written consent, and putting in place any applicable contractual or technical measures as required by Data Protection Law for the transfer.
- 15.5.3 The Client gives general authorisation to Education Horizons to appoint Sub-Processors provided that Education Horizons will:
- 15.5.3.1 only engage a Sub-Processor pursuant to a written and legally binding agreement which contains obligations which are equivalent to those set out in this clause 15.5.2; and
  - 15.5.3.2 inform the Client of any addition or replacement of a Sub-processor so as to give the Client an opportunity to object to the change before Personal Data is communicated to the new Sub-processor.
- Education Horizons will remain liable to the Client for the acts and omissions of its Sub-Processors in relation to its Processing obligations to the same extent that Education Horizons would be liable if performing the services of each Sub-processor directly under the terms of this Agreement.
- 15.5.4 Education Horizons will notify the Client in writing at [privacy@educationhorizons.com](mailto:privacy@educationhorizons.com) without undue delay after becoming aware of a Personal Data Breach and will provide all cooperation and information reasonably required by the Client.

## 16 INTELLECTUAL PROPERTY INFRINGEMENT

- 16.1 Subject to clauses 16.2 and 16.3, Education Horizons indemnifies the Client against any court awarded damages arising directly out of a claim by a third party that the Solution infringes any Intellectual Property Right of that third party (**IPR Claim**).
- 16.2 Where the Client wishes to enforce the indemnity in clause 16.1, it must:
- 16.2.1 give written notice to Education Horizons as soon as practicable after becoming aware of the IPR Claim;
  - 16.2.2 permit Education Horizons, at Education Horizons' expense, to handle all negotiations for settlement and, as permitted by law, to control and direct any litigation that may follow in relation to the IPR Claim; and

- 16.2.3 provide all reasonable assistance to Education Horizons in the handling of any negotiations and litigation.
- 16.3 The indemnity in clause 16.1 does not apply to the extent the claim of infringement arises as a result of:
  - 16.3.1 modifications to the Solution not made or approved in writing by Education Horizons;
  - 16.3.2 any configurations or other changes to the Solution created to the Client's specifications, including as part of the Implementation Services;
  - 16.3.3 the Client's use of the Solution in a manner contrary to the instructions given to the Client by Education Horizons, including under this Agreement or set out in the Associated Documentation;
  - 16.3.4 the Client's use of the Solution after notice of the alleged or actual infringement from Education Horizons or any appropriate authority; or
  - 16.3.5 the combined use of the Solution with any software, hardware or services not provided by Education Horizons.
- 16.4 If an IPR Claim is made or Education Horizons considers there is a possibility that an IPR Claim may arise, the Client must permit Education Horizons, in its sole and absolute discretion, to:
  - 16.4.1 replace or modify the infringing component of the Solution so that it is non-infringing; or
  - 16.4.2 obtain a licence for the Client to use the infringing component of the Solution.

If Education Horizons considers that the actions under this clause 16.4 are not commercially viable in the circumstances, Education Horizons may at its sole discretion either remove the infringing component of the Solution so that it is non-infringing or terminate this Agreement by providing the Client 30 days' written notice.
- 16.5 To the maximum extent permitted by law, the remedies under this clause 16 constitute the Client's sole and exclusive rights and remedies, and Education Horizons' (including its Personnel's) entire obligations and liability, for infringement of any IPR.
- 16.6 The Client must defend, indemnify and hold harmless Education Horizons 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 Client's use of the Services and/or the Solution that is not consistent with this Agreement.

## **17 LIABILITY**

- 17.1 Subject to clauses 8.5 and 17.2:
  - 17.1.1 Education Horizons' total aggregate liability arising in out of or in connection with the Agreement and any other agreement entered into between Education Horizons and the Client is limited to the lesser of:
    - 17.1.1.1 the Fees paid by the Client in the previous 12 months in respect of the Solution to which the event giving rise to the liability relates; and
    - 17.1.1.2 \$50,000; and

- 17.1.2 Education Horizons will not be liable for any loss that does not naturally arise from the breach, 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 the Agreement.
- 17.2 The limitations and exclusions in clause 17.1 will not apply in respect of Education Horizons' liability for personal injury and death.
- 17.3 The limitations and exclusions of the liability set out in this clause 17 apply regardless of the basis on which such liability arises, whether in contract, breach of statutory duty, tort (including negligence), in equity or under statute.
- 17.4 To the extent permitted by law, a party's liability to each other party under or in connection with the Agreement is reduced to the extent that the loss or damage is caused or contributed to by any or all of the following:
- 17.4.1 the negligence or wilful misconduct of the other party, its Personnel or a third party engaged by it;
  - 17.4.2 any breach of the Agreement by the other party;
  - 17.4.3 any failure by the other party to mitigate its loss; or
  - 17.4.4 in the case of any liability of Education Horizons, an error of an Authorised User in the use of the Solution, including a data input error.

## **18 SUSPENSION**

- 18.1 Without limiting its rights under the Agreement or at law, Education Horizons may suspend access to the Solution or its performance of any or all of the Services under this Agreement if
- 18.1.1 the Client does not pay the Fees in accordance with clause 10.3;
  - 18.1.2 the Client fails, or any of its Authorised Users fail, to comply with this Agreement. or
  - 18.1.3 Education Horizons has suspended the Client from accessing another solution or services under a separate agreement.

## **19 TERMINATION**

- 19.1 Education Horizons may, by notice in writing, terminate the Agreement immediately if any of the following occurs:
- 19.1.1 the Client does not pay Fees in accordance with the terms in clause 10;
  - 19.1.2 the Client fails to rectify a breach of the Agreement which is able to be rectified within 20 Business Days after receiving a written notice from Education Horizons specifying the breach and requiring the Client to rectify it;
  - 19.1.3 the Client commits a breach of the Agreement which cannot be rectified;
  - 19.1.4 the Client repeatedly breaches any of the terms of the Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Agreement;

- 19.1.5 if a separate agreement between Education Horizons and the Client terminates or expires;  
or
- 19.1.6 an Adverse Event happens to the Client.
- 19.2 The Client may, by notice in writing, terminate the Agreement immediately if Education Horizons fails to rectify a breach of the Agreement which is able to be rectified within 20 Business Days after receiving a written notice from the Client specifying the breach and requiring Education Horizons to rectify it.
- 19.3 If the Client terminates the Agreement under clause 19.2, Education Horizons will refund to the Client, on a pro rata basis, any Fees paid in advance by the Client which relate to the period after termination of the Agreement.
- 19.4 All clauses in the Agreement relating to payment, confidentiality, privacy, warranties, indemnities, limitations on liability, non-exclusivity, licensing or assigning of Intellectual Property, non-solicitation, insurance, disputes, the provisions of clause 26 and any clauses which are by their nature intended to survive termination or expiry shall survive the termination or expiry of the Agreement.
- 19.5 On termination of the Agreement for any reason, 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 will not be affected or prejudiced.
- 19.6 Upon termination or expiry of the Agreement, the Client must:
- 19.6.1 immediately cease using the Solution ; and
- 19.6.2 deliver to Education Horizons or destroy all copies of the Associated Documentation and any other Education Horizons' materials in the possession or under the control of the Client or its Authorised Users.

## **20 AUDIT AND ACCESS**

- 20.1 The Client agrees to give Education Horizons access and assistance as may reasonably be necessary, at Education Horizons' cost, for Education Horizons to audit the Client's premises and records to confirm the Client's compliance with the Agreement.
- 20.2 Education Horizons may conduct an audit under clause 20.1 on no more than one occasion per calendar year during the Term and for 2 years thereafter.
- 20.3 If an audit referred to in clause 20.1 reveals that the Client has underpaid any Fees (including Subscription Fees) to Education Horizons, then without prejudice to Education Horizons' other rights, Education Horizons may invoice the Client for an amount equal to such underpayment as calculated in accordance with the Product Agreement and the Client must pay such invoice within 14 days of receipt.
- 20.4 Education Horizons will use reasonable steps to ensure that an audit causes minimal disruption to the Client's business and operation.

## **21 DISPUTE RESOLUTION**

- 21.1 The parties agree that if a dispute arises out of or in relation to the Agreement (**Dispute**), a party may not commence any court proceedings relating to the Dispute unless it has complied with the provisions of this clause, except to seek urgent interlocutory relief.

- 21.2 If a Dispute arises, the parties must meet to attempt to resolve the Dispute in consensual discussions between nominated contacts of the parties. If the dispute cannot be resolved using that method within 14 Business Days of the initial request by a party for a meeting, the parties will each refer the Dispute to its own senior representatives who must meet to attempt to resolve the Dispute in consensual discussions.

## **22 INSURANCE**

- 22.1 Education Horizons must maintain the following insurances during the Term:

- 22.1.1 public and product liability insurance for an insured amount no less than \$10 million per event and in the annual aggregate;
- 22.1.2 Worker's Compensation as required by law; and
- 22.1.3 professional indemnity insurance for an insured amount no less than \$10 million per event and in the annual aggregate.

## **23 NOTICES**

- 23.1 Any notice given to a party under the Agreement is only given if it is in writing and delivered or posted or sent via facsimile or email to the relevant address or email address set out in the Product Agreement.
- 23.2 If a party gives the other party 3 Business Days' notice of a change of its address, fax number or email address, any notice is only given by that other party if it is delivered, posted, faxed or emailed to the latest address, fax number or email address.
- 23.3 Subject to clause 23.4, any notice is to be treated as given at the following time:
- 23.3.1 if it is delivered, when it is left at the relevant address;
- 23.3.2 if it is sent by post, 2 (or, in the case of a notice or communication posted to another country, 9) Business Days after it is posted;
- 23.3.3 if it is sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number; or
- 23.3.4 if it is sent by email, upon receipt of a delivery notice or other explicit acknowledgement of receipt.
- 23.4 If any notice is given at the place of the party to whom it is sent on a day that is not a Business Day or after 5.00pm on a Business Day, it is to be treated as having been given at the beginning of the next Business Day.

## **24 NON-SOLICITATION**

- 24.1 During the Term and for a period of 6 months after the expiry or termination of the Agreement, neither party may, for its benefit nor for the benefit of another, directly or indirectly solicit or retain the services of any Personnel of the other party without that party's prior written consent.
- 24.2 A party must promptly notify the other if it intends to make an offer to employ or contract a person who is employed or contracted by the other party prior to the expiration of the period referred to in clause 24.1.

24.3 Clause 24.1 does not restrict a party from employing or engaging any person who makes an unsolicited application in response to a bona fide recruitment campaign.

## **25 FORCE MAJEURE**

25.1 If a Force Majeure Events prevents Education Horizons from performing an obligation under this Agreement (**Affected Obligation**), Education Horizons will not liable for a failure to perform, or for a delay in performing, the Affected Obligation and any other obligations that are dependent on the performance of the Affected Obligations for as long as, and until, Education Horizons is able to resume full performance of the Affected Obligations.

25.2 Education Horizons must notify the Client if a Force Majeure Event prevents Education Horizons from performing an obligation under this Agreement.

25.3 If the cause and resulting failure or delay lasts more than 30 days, either party is entitled to terminate the Agreement immediately by giving the other party written notice.

## **26 AMENDMENT**

26.1 Education Horizons may vary the terms of the Agreement by providing the Client with at least 30 days' written notice. Notice will be deemed to be given if information relating to the variation is made available on Education Horizons' support centre or equivalent online portal from time to time.

26.2 Any variations to the Agreement under this clause 26 will take effect:

26.2.1 if a variation is made during the Minimum Subscription Period, 30 days after Education Horizons provides the Client with written notice. If Education Horizons makes a variation to this Agreement during the Minimum Subscription Period that materially affects the Client's rights and the Client does not accept the variation, the Client may terminate this agreement by providing written notice to Education Horizons; or

26.2.2 if the variation is made after the Minimum Subscription Period, at the start of the next Renewal Period. If the Client does not accept the variation, the Client may provide Education Horizons with a Cessation Notice.

26.3 Subject to clause 26.1, any changes to the Agreement must be agreed in writing by Education Horizons and the Client.

## **27 GENERAL**

27.1 The Agreement forms the entire agreement between Education Horizons and the Client in relation to its subject matter and replaces all previous agreements, arrangements, understandings, representations or other communications between the parties in relation to that subject matter.

27.2 The Client must not assign, novate or deal in any way with all or any part of the benefit of, or its rights or benefits under, the Agreement without the prior written consent of Education Horizons, which consent will not be unreasonably withheld. Education Horizons may impose any conditions it sees fit when granting its consent under this clause.

27.3 EHG may assign, novate or deal in any way with all or any part of the benefit of, or its rights or benefits under, the Agreement at its discretion and will notify the Client if it exercises its rights under this clause.

27.4 Education Horizons may engage subcontractors for the performance of aspects of the Services under the Agreement. Education Horizons will be responsible for the acts or omissions of its subcontractors

as if they were Education Horizons' own acts or omissions.

- 27.5 The Agreement is governed by the laws of the Jurisdiction. The parties submit to the non-exclusive jurisdiction of the courts of the Jurisdiction.
- 27.6 No waiver of a right or remedy under the Agreement is effective unless it is in writing and signed by the party granting it. It is only effective in the specific instance and for the specific purpose for which it is granted. A single or partial exercise of a right or remedy under the Agreement does not prevent a further exercise of that or of any other right or remedy.
- 27.7 Any provision of the Agreement which is wholly or partially void or unenforceable is severed to the extent that it is void or unenforceable. The remainder of the Agreement will remain in full force and effect.
- 27.8 A Product Agreement may be executed in any number of counterparts, each of which, when executed, is an original. Those counterparts together make one instrument.
- 27.9 Except where expressly stated to the contrary in the Agreement, the rights of a party under the Agreement are cumulative and are in addition to any other rights available to that party, whether those rights are provided for under the Agreement, any other document or by law.
- 27.10 Except as expressly provided in the Agreement, no party is an agent, representative, trustee, employee or partner of any other party by virtue of the Agreement and no party may represent itself as such in any circumstances.
- 27.11 No term or condition of the Agreement will be construed adversely to a party solely on the ground that the party was responsible for the preparation of the Agreement or that provision.
- 27.12 Neither party will transfer, directly or indirectly, the Solution (including technical data or software furnished provided to it under the Agreement), or the direct output of the Solution, to any country for which the United States or any other applicable Government entity requires an export licence or other governmental approval without first obtaining such licence or approval.
- 27.13 No term in this Agreement is enforceable under the *Contracts (Rights of Third Parties) Act 1999* (UK) by a third party.



## **SCHEDULE 1: IMPLEMENTATION SERVICES**

- 1      IMPLEMENTATION SERVICES**
  
- 2      SYNERGETIC IMPLEMENTATION SERVICES – STANDARD**
  
- 3      SYNERGETIC IMPLEMENTATION SERVICES – PREMIUM**

**Schedule 2: DATA PROCESSING DETAILS**

<b>Data Processing Details (if cl 15.4 applies):</b>		
1.	Controller	The Client
2.	Processor	<p>Education Horizons, except that:</p> <ul style="list-style-type: none"> <li>• where the Client has chosen to use an Alternative Hosting Solution for an on-premise product, the Client is the Controller and the Alternative Hosting Solution provider is the Processor for the purposes of processing Personal Data in connection with that part of the support services and any internet or hosting services; and in such cases it is the responsibility of the Client and the Alternative Hosting Solution provider to comply with their respective Controller and Processor obligations under the Data Protections Laws; and</li> <li>• where the Client has chosen to use an Alternative SMS Solution, the Client is the Controller and the Alternative SMS Solution provider is the Processor for the purposes of processing Personal Data in connection with that part of the support services and any SMS services; and in such cases it is the responsibility of the Client and the Alternative SMS Solution provider to comply with their respective Controller and Processor obligations under the Data Protections Laws.</li> </ul>
3.	Subject matter and duration of the Processing of the Personal Data	<p>The subject matter and duration of the Processing of the Personal Data are:</p> <p>Education Horizons will process Personal Data to provide to the Client the Services. The processing of Personal Data will be for the term of the Agreement or until Education Horizons' legal obligations in relation to the processing of the Personal Data have ceased.</p>
4.	The nature and purpose of the Processing of the Personal Data	<p>The nature and purpose of the Processing of the Personal Data are:</p> <p>The purpose of Processing is to provision and supply the Solution and Services in relation to this agreement. This is inclusive of, but not limited to hosting (where agreed to, or where hosting is integral to a SaaS service offering), and facilitating software solutions that allow the Client to manage the ongoing activities of their organisation.</p>
5.	The type of Personal Data	<p>The Personal Data that will be Processed may include some or all of the following:</p> <p>The types of Personal Data that the Company processes to provide the Solutions depend on factors such as (but not limited to):</p> <ul style="list-style-type: none"> <li>• the features selected by the Client as part of the Solution,</li> <li>• the data fields and types of detail added to the system and used by the Client as part of the selected system features;</li> <li>• the types of data input directly into the system by the Client and teachers, pupils and students, parents of the school operated by the Client or other users of the system as determined by the Client; and</li> <li>• the people added by the Client as users of the software system.</li> </ul> <p>In accordance with the Agreement to provide the Solution and Services to the Client, Education Horizons may process (but not limited to) the following types of Personal Data depending on the factors above:</p> <p>5.1. In relation to pupils and students, and parents: name of child, date of birth, place of birth, private address, private telephone number, email address, parents name and contact details, date of birth, race or ethnicity, student unique identifiers, emergency contact, sexual orientation, religion, bank account details of parents, information</p>

		<p>about ad-hoc payments and billing, references, performance and educational needs reports, recording of medical data and incidents, tuition and extracurricular accounts, incident reports involving pupils or students;</p> <p>5.2. In relation to staff of the Client’s school: name, job title, date of birth, place of birth, private address, private telephone number, email address, emergency contact, employee number, supervisor information, National Insurance Number, bank account details, court orders, trade union membership, race or ethnicity, religion, pension information, tax code, grade, Occupational Health Services, related TUPE documentation, disciplinary and grievance information, accident reports, medical and health information right to work checks (passport details), referees, CRB disclosures and beneficiary information;</p> <p>5.3. For non-academic billing for rentals or the sale of goods and services: personal data regarding any supplier’s staff and sub-contractors;</p> <p>5.4. Any other types of Personal Data collected by the Customer which may be processed by the Company for the purposes of providing the Goods.</p>
6.	Special categories of Personal Data	<p>The special categories of Personal Data that will be Processed will depend on the features chosen and related choices contained within clause 5 above, but may include some or all of the following depending on Client’s use of the system:</p> <ul style="list-style-type: none"> <li>• Health and medical information</li> <li>• Criminal history checks</li> <li>• Information regarding race or ethnicity</li> <li>• Religion</li> <li>• Sexual orientation</li> <li>• Trade union membership (staff and contractors only)</li> </ul>
7.	The categories of Data Subject to whom the Personal Data relates	<p>The categories of Data Subject may include some or all of the following: As noted in previous clauses, this will depend on the features selected by the Client. Education Horizons does not control the types of Data Subjects for which or from which the Client may collect or process Personal Data. Subject to that it is confirmed that Education Horizons may typically process (but not limited to) Protected Data in relation to the following Data Subjects:</p> <ul style="list-style-type: none"> <li>• the Client’s current and former employees;</li> <li>• the Client’s contractors and sub-contractors;</li> <li>• the Client’s job applicants;</li> <li>• the Client’s employee’s emergency contacts;</li> <li>• students and parents of the Client using the Solutions and Services under the Contract;</li> <li>• relatives of the students of the Client using the Solutions and Services under the Contract, friends, tradesmen, visiting schools, examination bodies or agencies, other schools, non-teaching staff, friends who want to help pay tuition fees of pupils, visiting staff from other schools, exam invigilators, and</li> <li>• any other categories of Data Subjects which may be added by the Client for the use of the Solutions and therefore in relation to who</li> </ul>

		the Client may process Personal Data to provide the Solutions and Services to the Client.
8.	Technical and Organisational Security Measures:	<p>The Company shall implement and maintain the following technical and organisational security measures to protect the Protected Data:</p> <ul style="list-style-type: none"> <li>• In accordance with the Data Protection Laws, taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of the processing of the Protected Data to be carried out under or in connection with the Agreement, as well as the risks of varying likelihood and severity for the rights and freedoms of natural persons and the risks that are presented by the processing, especially from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to the Protected Data transmitted, stored or otherwise processed, Education Horizons shall implement appropriate technical and organisational security measures appropriate to the risk, including as appropriate those matters mentioned under Data Protection Laws.</li> <li>• Education Horizons is committed to protecting restricted, confidential or Sensitive Data from loss to avoid reputation damage and to avoid adversely impacting its customers.</li> <li>• The following principles are applied by the Company in relation to data security: <ul style="list-style-type: none"> <li>○ Users of Education Horizons’ systems and services are required to adhere to and comply with the principles and restrictions in the Terms of Use which can be viewed here: <a href="http://www.educationhorizons.com/termsfuse">www.educationhorizons.com/termsfuse</a></li> <li>○ Education Horizons issues to the Client the Education Horizons’ Product Systems Requirements with the Education Horizons’ recommendations based upon testing and experience of the Education Horizons’ software products running on different hardware platforms. Every effort is made to provide as much information as possible to guide the Client and ensure the correct environment is deployed to get the safest and fastest possible experience from the Education Horizons’ software products.</li> </ul> </li> <li>• The Client is, however, responsible for: <ul style="list-style-type: none"> <li>○ maintaining the security of its data through appropriate access control and allocation of permissions;</li> <li>○ in addition, if the Client has opted for a self-hosted solution or chooses an Alternative Hosting Solution, then it is responsible for ensuring: <ul style="list-style-type: none"> <li>▪ that adequate backup and disaster recovery processes are in place</li> <li>▪ all Education Horizons intellectual property is protected from unauthorised access or disclosure</li> <li>▪ ensuring the correct environment is configured to get the safest and fastest</li> </ul> </li> </ul> </li> </ul>

		<p>possible experience from the Education Horizons' software products; and</p> <ul style="list-style-type: none"> <li>▪ protecting its systems from any bugs in any third party software or other software, viruses, corrupt data and back-up failures.</li> </ul> <ul style="list-style-type: none"> <li>• All directors and employees of Education Horizons, together with anyone contracted to work on behalf of Education Horizons and anyone who is offered work placement roles under the Education Horizons' work experience agreement are required to adhere to and comply with the Education Horizons' Information Security Policy.</li> </ul> <p>Users of Education Horizons' Systems, services and website are required to adhere to and comply with the principles and restrictions in the Company's Terms of Use which can be viewed here: <a href="http://www.educationhorizons.com/termsfuse">www.educationhorizons.com/termsfuse</a>.</p>
9.	The obligations and rights of the Client:	The obligations and rights of Client are set out above.