



Mappix Licence Agreement

THIS AGREEMENT comes into effect on the date of agreeing to subscribe to the Mappix software platform.

Parties:

- (1) **Topiq Limited** incorporated and registered in England and Wales with company number 08026343 whose registered office is at Little Trevarrack Cottage, Laity Lane, Carbis Bay, St. Ives, Cornwall TR26 3HQ ("**Topiq**").
- (2) The subscriber to the Mappix platform implementing the platform for their education institution (the "**School**").

Background:

- (A) Topiq has developed certain software applications and platforms which it makes available to school subscribers via the internet on a pay-per-use basis for the purpose of educational development of school pupils.
- (B) The School wishes to use Topiq's service in its educational programmes.
- (C) Topiq has agreed to provide and the School has agreed to take and pay for Topiq's service subject to the terms and conditions of this agreement.

KEY TERMS:

The Subscription Fees shall amount to those agreed at the point of accepting the quote for the service.

Additional Class Subscriptions may be purchased by the School in accordance with clause 3

Initial Subscription Term: If on a **Pay Monthly** subscription, the minimum term is 3 months; On an **Annual** subscription, the minimum term offered is one year. The subscription term is agreed at the pointing of accepting the quote for the service.

1. DEFINITIONS AND INTERPRETATION

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

"Authorised Users"	those employees, agents and independent contractors of the School who are authorised by the School to use the Services and the Documentation, as further described in clause 2.
"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 whether or not clearly labelled as such or identified as Confidential Information in clause 11.
"Documentation"	the documentation made available to the School by Topiq online via www.beam-education.co.uk/terms-and-conditions or such other web address notified by Topiq to the School from time to time which sets out a description of the Services and the user instructions for the Services.
"Initial Subscription Term"	the initial term of this agreement as set out in the Key Terms.
"Normal Business Hours"	8.00 am to 6.00 pm local UK time, each Business Day.
"Pupil Subscriptions"	the subscriptions purchased by the School pursuant to this agreement which entitle Authorised Users to access and use the Services and the Documentation in accordance with this agreement.
"Renewal Period"	the period described in clause 14.1.
"School Data"	the data inputted by the School, Authorised Users, or Topiq on the School's behalf, for the purpose of using the Services, or facilitating the School's use of the Services.
"Service Commencement Date"	as set out in the Key Terms.

"Services"	the subscription services provided by Topiq to the School under this agreement via www.beam-education.co.uk/terms-and-conditions or any other website notified to the School by Topiq from time to time, as more particularly described in the Documentation.
"Software"	the online software applications provided by Topiq as part of the Services.
"Subscription Fees"	the subscription fees payable by the School to Topiq for the Pupil Subscriptions, as set out in the Key Terms.
"Subscription Term"	has the meaning given in clause 14 (being the Initial Subscription Term together with any subsequent Renewal Periods).
"Support Services Policy"	Topiq's policy for providing support in relation to the Services as made available at [www.beam-education.co.uk/terms-and-conditions] or such other website address as may be notified to the School from time to time.
"Virus"	any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.3 A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors or permitted assigns.
- 1.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 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.
- 1.8 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.
- 1.9 A reference to writing or written includes e-mail.
- 1.10 References to clauses are to the clauses of this agreement.
- 1.11 Any words that follow 'include', 'includes', 'including', 'in particular' or any similar words and expressions shall be construed as illustrative only and shall not limit the sense of any word, phrase, term, definition or description preceding those words.

2. **PUPIL AND CLASS SUBSCRIPTIONS**

- 2.1 Subject to the School purchasing the Pupil or Class Subscriptions in accordance with clause 3.3 and clause 9.1, the restrictions set out in this clause 2 and the other terms and conditions of this agreement, Topiq hereby grants to the School a non-exclusive, non-transferable right to permit the Authorised Users to use the Services and the Documentation during the Subscription Term solely for the School's educational operations.

- 2.2 In relation to the Authorised Users, the School undertakes (and where necessary shall procure) that:
- 2.2.1 the maximum number of Authorised Users that it authorises to access and use the Services and the Documentation shall not exceed the number of Authorised Users approved by Topiq from time to time;
 - 2.2.2 each Authorised User shall keep a secure password for his use of the Services and Documentation, that such password shall be changed frequently (and in accordance with good security practice) and that each Authorised User shall keep his password confidential;
 - 2.2.3 it shall maintain a written, up to date list of current Authorised Users and provide such list to Topiq within 5 Business Days of Topiq's written request;
 - 2.2.4 it shall permit Topiq to audit the Services in order to establish the name and password of each Authorised User. Such audit may be conducted no more than once per quarter, at Topiq's expense, and this right shall be exercised with reasonable prior notice, in such a manner as not to substantially interfere with the School's normal conduct of business;
 - 2.2.5 if any of the audits referred to in clause 2.2.4 reveal that any password has been provided to any individual who is not an Authorised User, then without prejudice to Topiq's other rights, the School shall promptly disable such passwords and comply with all lawful instructions of Topiq, and Topiq shall not issue any new passwords to any such individual; and
 - 2.2.6 if any of the audits referred to in clause 2.2.4 reveal that the School has underpaid Subscription Fees to Topiq, then without prejudice to Topiq's other rights, the School shall pay to Topiq an amount equal to such underpayment as calculated in accordance with the prices set out in the Key Terms within 10 Business Days of the date of the relevant audit.
- 2.3 The School shall not, and shall procure that each Authorised User shall not, access, upload, store, distribute or transmit any Viruses or any material during the course of its use of the Services that:

- 2.3.1 is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
- 2.3.2 facilitates illegal activity;
- 2.3.3 depicts sexually explicit images;
- 2.3.4 promotes unlawful violence;
- 2.3.5 is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
- 2.3.6 in a manner that is otherwise illegal or causes damage or injury to any person or property;

and Topiq reserves the right, without prejudice to its other rights and remedies and without liability to the School, to disable the School's access to any material that breaches the provisions of this clause.

2.4 The School shall not, and shall procure that each Authorised User shall not, upload or use any personal data or sensitive personal data (whether of pupils or any other person) unless they have a lawful basis for doing so.

2.5 The School shall not:

2.5.1 except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties:

(a) and except to the extent expressly permitted under this agreement, 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

(b) attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or

- 2.5.2 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
- 2.5.3 use the Services and/or Documentation to provide services to third parties; or
- 2.5.4 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
- 2.5.5 attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation, other than as provided under this clause 2.

2.6 The School shall comply with its data protection and child protection policies.

2.7 The School shall appoint a 'technical' administrator of appropriate seniority and authority to manage access to the Services and compliance with the terms of this agreement by the School and Authorised Users, including for the purposes of inviting Authorised Users to access the Services, monitoring usage and assigning, revoking and limiting roles and levels of access to the Services, as appropriate.

2.8 The School shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Software, Services and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify Topiq and comply with Topiq's reasonable and lawful instructions.

2.9 The rights provided under this clause 2 are granted to the School only.

3. **ADDITIONAL PUPIL AND CLASS SUBSCRIPTIONS**

3.1 Subject to clause 3.2 and clause 3.3, the School may, from time to time during any Subscription Term, purchase additional Pupil or Class Subscriptions in excess of the number set out in the Key Terms and Topiq shall grant access to the Services and the Documentation to such additional Authorised Users in accordance with the provisions of this agreement.

- 3.2 If the School wishes to purchase additional Pupil or Class Subscriptions, the School shall notify Topiq in writing. Topiq shall evaluate such request for additional Subscriptions and respond to the School with approval or rejection of the request (such approval not to be unreasonably withheld).
- 3.3 If Topiq approves the School's request to purchase additional Pupil or Class Subscriptions, the School shall, within 30 days of the date of Topiq's invoice, pay to Topiq the relevant fees for such additional Subscriptions as set out in the Key Terms and, if such additional Subscriptions are purchased by the School part way through the Initial Subscription Term or any Renewal Period (as applicable), such fees shall be pro-rated for the remainder of the Initial Subscription Term or then current Renewal Period (as applicable).

4. **SERVICES**

- 4.1 Topiq shall, during the Subscription Term, provide the Services and make available the Documentation to the School on and subject to the terms of this agreement.
- 4.2 Topiq shall use commercially reasonable endeavours to make the Services available 24 hours a day, seven days a week, except for:
- 4.2.1 planned maintenance carried out during the maintenance window of 10.00 pm to 2.00 am UK time; and
 - 4.2.2 unscheduled maintenance performed outside Normal Business Hours, provided that Topiq has used reasonable endeavours to give the School at least 6 Normal Business Hours' notice in advance.
- 4.3 Topiq will, as part of the Services and at no additional cost to the School, provide the School with Topiq's standard School support services during Normal Business Hours in accordance with Topiq's Support Services Policy in effect at the time that the Services are provided. Topiq may amend the Support Services Policy in its sole and absolute discretion from time to time. The School may purchase enhanced support services separately at Topiq's then current rates.

5. SCHOOL DATA

- 5.1 The School shall have responsibility for the legality, reliability, integrity, accuracy, quality and use of the School Data.
- 5.2 Topiq shall follow its archiving procedures for School Data as set out in its relevant policies as may be notified to the School from time to time, as such document may be amended by Topiq in its sole discretion from time to time. In the event of any loss or damage to School Data, the School's sole and exclusive remedy shall be for Topiq to use reasonable commercial endeavours to restore the lost or damaged School Data from the latest back-up of such School Data maintained by Topiq in accordance with its archiving procedure. Topiq shall not be responsible for any loss, destruction, alteration or disclosure of School Data caused by any third party (except those third parties sub-contracted by Topiq to perform services related to School Data maintenance and back-up).
- 5.3 Topiq shall, in providing the Services, comply with its policies relating to the privacy and security of the School Data as may be notified to the School from time to time, as such document may be amended from time to time by Topiq in its sole discretion.
- 5.4 If Topiq processes any personal data on the School's behalf when performing its obligations under this agreement, the parties record their intention that the School shall be the data controller and Topiq shall be a data processor and in any such case:
- 5.4.1 the School acknowledges and agrees that the personal data may be transferred or stored outside the EEA or the country where the School and the Authorised Users are located in order to carry out the Services and Topiq's other obligations under this agreement;
 - 5.4.2 the School shall ensure that the School is entitled to transfer the relevant personal data to Topiq so that Topiq may lawfully use, process and transfer the personal data in accordance with this agreement on the School's behalf;
 - 5.4.3 the School shall ensure that the relevant third parties have been informed of, and have given their consent to, such use, processing, and transfer of personal data as required by all applicable data protection legislation;

5.4.4 Topiq shall process the personal data only in accordance with the terms of this agreement and any lawful instructions reasonably given by the School from time to time; and

5.4.5 each party shall take appropriate technical and organisational measures against unauthorised or unlawful processing of the personal data or its accidental loss, destruction or damage.

5.5 The School and Topiq may (to the extent permitted by applicable laws and regulations, and subject to the School and Topiq complying with all applicable laws and regulations and obtaining all necessary consents or permissions), share any data pertaining to academic progress only (such as, by way of example, daily marking, uploads of pupil work and media) with other educational professionals for the benefit of raising standards for schools and supporting individual pupils with their academic progress. For example, pupil marking may travel with a pupil to a new school so that the next teacher can pick up where the last one left off.

5.6 Any transfer of School Data under clause 5.5 above or otherwise under this agreement must be authorised by a representative with the appropriate authority within the School or Topiq (as the case may be).

6. **THIRD PARTY PROVIDERS**

The School acknowledges that the Services may enable or assist it (the School) 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. Topiq makes no representation 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 School, with any such third party. Any contract entered into and any transaction completed via any third-party website is between the School and the relevant third party, and not Topiq. Topiq recommends that the School refers to the third party's website terms and conditions and privacy notice prior to using the relevant third-party website. Topiq 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. TOPIQ'S OBLIGATIONS

- 7.1 Topiq 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 that any non-conformance is caused by use of the Services contrary to Topiq's instructions, or modification or alteration of the Services by any party other than Topiq or Topiq's duly authorised contractors or agents. If the Services do not conform with the foregoing undertaking, Topiq will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the School with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the School's sole and exclusive remedy for any breach of the undertaking set out in clause 7.1. Notwithstanding the foregoing, Topiq:
- 7.2.1 does not warrant that the School's use of the Services will be uninterrupted or error-free; or that the Services, Software, Documentation and/or the information obtained by the School through the Services will meet the School's requirements; and
- 7.2.2 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 School acknowledges that the Services, Software, 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 Topiq 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 Topiq warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this agreement.

8. SCHOOL'S OBLIGATIONS

8.1 The School shall:

8.1.1 provide Topiq with:

- (a) all necessary co-operation in relation to this agreement; and
- (b) all necessary access to such information and material as may be required by Topiq (including but not limited to: School Data, security access information and login credentials, and configuration services);

in order for Topiq to provide the Services, support Authorised Users, resolve any technical issues and monitor the smooth running of the Services;

8.1.2 comply with all applicable laws and regulations with respect to its activities under this agreement and those activities Topiq undertakes on its behalf, including in relation to the processing of personal data processed pursuant to this agreement;

8.1.3 carry out all other School responsibilities set out in this agreement in a timely and efficient manner. In the event of any delays in the School's provision of such assistance as agreed by the parties, Topiq may adjust any agreed timetable or delivery schedule as reasonably necessary;

8.1.4 ensure that the Authorised Users use the Services and the Documentation in accordance with the terms and conditions of this agreement and all applicable laws and regulations and the School shall be responsible for any breach of this agreement or non-compliance with applicable laws and regulations by Authorised Users or any third party;

8.1.5 obtain and shall maintain all necessary licences, consents, and permissions necessary for Topiq, its contractors and agents to perform their obligations under this agreement, including without limitation the Services;

- 8.1.6 ensure that its network and systems comply with the relevant specifications provided by Topiq from time to time; and
- 8.1.7 be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to Topiq's data centres, and for any and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the School's network connections or telecommunications links or caused by the internet.

9. CHARGES AND PAYMENT

- 9.1 The School shall pay the Subscription Fees to Topiq for the Pupil or Class Subscriptions in accordance with this agreement.
- 9.2 On the signing of this agreement the School shall pay any upfront sums which have been agreed to in relation to any special offers.
- 9.3 The School shall before the Service Commencement Date provide to Topiq valid, up-to-date and complete credit card details or approved purchase order information acceptable to Topiq and any other relevant valid, up-to-date and complete contact and billing details and, if the School provides:
 - 9.3.1 its credit card details to Topiq, the School hereby authorises Topiq to bill such credit card:
 - (a) on the Service Commencement Date for the Subscription Fees payable in respect of the Initial Subscription Term; and
 - (b) subject to clause 14.1, on each anniversary of the Service Commencement Date for the Subscription Fees payable in respect of the next Renewal Period;
 - 9.3.2 its approved purchase order information to Topiq, Topiq shall invoice the School:
 - (a) on the Service Commencement Date for the Subscription Fees payable in respect of the Initial Subscription Term; and

(b) subject to clause 14.1, at least 30 days prior to each anniversary of the Service Commencement Date for the Subscription Fees payable in respect of the next Renewal Period,

and the School shall pay each invoice within 30 days after the date of such invoice.

9.4 If Topiq has not received payment within 30 days after the due date, and without prejudice to any other rights and remedies of Topiq:

9.4.1 Topiq may, without liability to the School, disable the School's password, account and access to all or part of the Services and Topiq shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and

9.4.2 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 Topiq'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:

9.5.1 shall be payable in pounds sterling;

9.5.2 are, subject to clause 13.4.2, non-cancellable and non-refundable;

9.5.3 are exclusive of value added tax.

9.6 If, at any time whilst using the Services, the School exceeds the amount of data storage space specified in the Documentation, Topiq shall charge the School, and the School shall pay, Topiq's then current excess data storage fees.

9.7 Topiq shall be entitled to increase the Subscription Fees, the fees payable in respect of the additional Pupil Subscriptions purchased pursuant to clause 3.3 and/or the excess storage fees payable pursuant to clause 9.6 at the start of each Renewal Period upon 90 days' prior notice to the

School and the Key Terms shall be deemed to have been amended accordingly.

10. **PROPRIETARY RIGHTS**

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

11. **CONFIDENTIALITY**

- 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:
- 11.1.1 is or becomes publicly known other than through any act or omission of the receiving party;
 - 11.1.2 was in the other party's lawful possession before the disclosure;
 - 11.1.3 is lawfully disclosed to the receiving party by a third party without restriction on disclosure;
 - 11.1.4 is independently developed by the receiving party, which independent development can be shown by written evidence; or
 - 11.1.5 is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.
- 11.2 Each party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information

available to any third party, or use the other's Confidential Information for any purpose other than the implementation of 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 Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.
- 11.5 The School acknowledges that details of the Services, and the results of any performance tests of the Services, constitute Topiq's Confidential Information.
- 11.6 Topiq acknowledges that the School Data is the Confidential Information of the School.
- 11.7 This clause 11 shall survive termination of this agreement, however arising.
- 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.

12. **INDEMNITY**

12.1 The School shall defend, indemnify and hold harmless Topiq 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 School's use of the Services and/or Documentation, provided that:

- 12.1.1 the School is given prompt notice of any such claim;
- 12.1.2 Topiq provides reasonable co-operation to the School in the defence and settlement of such claim, at the School's expense; and
- 12.1.3 the School is given sole authority to defend or settle the claim.

- 12.2 Topiq shall defend the School, its officers, directors and employees against any claim that the Services or Documentation infringes any United Kingdom: patent effective as of the Service Commencement Date, copyright, trade mark, database right or right of confidentiality, and shall indemnify the School for any amounts awarded against the School in judgment or settlement of such claims, provided that:
- 12.2.1 Topiq is given prompt notice of any such claim;
 - 12.2.2 the School provides reasonable co-operation to Topiq in the defence and settlement of such claim, at Topiq's expense; and
 - 12.2.3 Topiq is given sole authority to defend or settle the claim.
- 12.3 In the defence or settlement of any claim, Topiq may procure the right for the School 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 School without any additional liability or obligation to pay liquidated damages or other additional costs to the School.
- 12.4 In no event shall Topiq, its employees, agents or sub-contractors be liable to the School to the extent that the alleged infringement is based on:
- 12.4.1 a modification of the Services or Documentation by anyone other than Topiq; or
 - 12.4.2 the School's use of the Services or Documentation in a manner contrary to the instructions given to the School by Topiq; or
 - 12.4.3 the School's use of the Services or Documentation after notice of the alleged or actual infringement from Topiq or any appropriate authority.
- 12.5 The foregoing, and clause 13.4.2, set out the School's sole and exclusive rights and remedies, and Topiq's (including Topiq's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any intellectual property right, whether patent, copyright, trade mark, database right or right of confidentiality, or otherwise.

13. **LIMITATION OF LIABILITY**

13.1 This clause 13 sets out the entire financial liability of Topiq (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the School:

13.1.1 arising under or in connection with this agreement;

13.1.2 in respect of any use made by the School of the Services and Documentation or any part of them; and

13.1.3 in respect of any representation, statement or tortious act or omission (including negligence) arising under or in connection with this agreement.

13.2 Except as expressly and specifically provided in this agreement:

13.2.1 the School assumes sole responsibility for results obtained from the use of the Services and the Documentation by the School, and for conclusions drawn from such use. Topiq shall have no liability for any damage caused by errors or omissions in any information, instructions, scripts or materials provided to Topiq by the School in connection with the Services, or any actions taken by Topiq at the School's direction;

13.2.2 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

13.2.3 the Services, Software and the Documentation are provided to the School on an "as is" basis.

13.3 Nothing in this agreement excludes the liability of Topiq:

13.3.1 for death or personal injury caused by Topiq's negligence; or

13.3.2 for fraud or fraudulent misrepresentation.

13.4 Subject to clause 13.2 and clause 13.3:

- 13.4.1 Topiq shall not be liable whether in tort (including for negligence or 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
- 13.4.2 Topiq'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 Pupil Subscriptions during the 12 months immediately preceding the date on which the claim arose.

14. **TERM AND TERMINATION**

14.1 This agreement shall, unless otherwise terminated as provided in this clause 14, commence on the Service Commencement Date and shall continue for the Initial Subscription Term and, thereafter, this agreement shall be automatically renewed for successive periods of 12 months (each a Renewal Period), unless:

- 14.1.1 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 Period, in which case this agreement shall terminate upon the expiry of the applicable Initial Subscription Term or Renewal Period; or
- 14.1.2 otherwise terminated in accordance with the provisions of this agreement;

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

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

- 14.2.1 the other party fails to pay any amount due under this agreement on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment;
 - 14.2.2 the other party commits a material breach of any other term of this agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 7 days after being notified in writing to do so;
 - 14.2.3 the other party repeatedly breaches any of the terms of this 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 this agreement;
- 14.3 On termination of this agreement for any reason:
- 14.3.1 all licences granted under this agreement shall immediately terminate;
 - 14.3.2 each party shall return and make no further use of any equipment, property, materials, Documentation and other items (and all copies of them) belonging to the other party;
 - 14.3.3 Topiq may destroy or otherwise dispose of any of the School Data in its possession unless Topiq receives, no later than 10 days after the Service Commencement Date of the termination of this agreement, a written request for the delivery to the School of the then most recent back-up of the School Data. Topiq shall use reasonable commercial endeavours to deliver the back-up to the School within 30 days of its receipt of such a written request, provided that the School 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 School shall pay all reasonable expenses incurred by Topiq in returning or disposing of School Data; and
 - 14.3.4 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

Topiq shall have no liability to the School 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 Topiq 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, advice or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of Topiq or sub-contractors, provided that the School is notified of such an event and its expected duration.

16. CONFLICT

If there is any inconsistency between any of the provisions in the main body of this agreement and the Key Terms, the provisions in the Key Terms shall prevail.

17. VARIATION

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, and any documents referred to in it, constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover.
- 21.2 Each of the parties acknowledges and agrees that in entering into this agreement it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to this agreement or not) relating to the subject matter of this agreement, other than as expressly set out in this agreement.

22. ASSIGNMENT

- 22.1 The School shall not, without the prior written consent of Topiq, 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 Topiq 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.

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, or sent by email to the other party's email address as set out in this agreement or notified to the other party from time to time.

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 email shall be deemed to have been received at the time of transmission.

26. **GOVERNING LAW**

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.

27. **JURISDICTION**

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