

# TERMS AND CONDITIONS for purchase

**School PUPIL TRACKER Ltd**

Rural Enterprise Centre, Vincent Carey Road, Hereford HR2 6FE

[www.schoolpupiltracker.co.uk](http://www.schoolpupiltracker.co.uk)

[www.spto.co.uk](http://www.spto.co.uk)

[www.schoolpupiltrackeronline.co.uk](http://www.schoolpupiltrackeronline.co.uk)

[www.mychildsreport.co.uk](http://www.mychildsreport.co.uk)

Acceptable use of our Websites can be found in our **ACCEPTABLE USE POLICY**

([www.spto.co.uk/schoolpupiltracker/documents/terms\\_of\\_acceptable\\_use.pdf](http://www.spto.co.uk/schoolpupiltracker/documents/terms_of_acceptable_use.pdf))

and also in our **TERMS OF WEBSITE USE POLICY**

([www.spto.co.uk/schoolpupiltracker/documents/terms\\_of\\_website\\_use.pdf](http://www.spto.co.uk/schoolpupiltracker/documents/terms_of_website_use.pdf)).

The Privacy Policy of our Websites is found in our **PRIVACY POLICY**

([www.spto.co.uk/schoolpupiltracker/documents/privacy\\_policy.pdf](http://www.spto.co.uk/schoolpupiltracker/documents/privacy_policy.pdf)).

The Code of Conduct for using our support service is found in our **CODE OF CONDUCT POLICY**

([www.spto.co.uk/schoolpupiltracker/documents/codeofconduct\\_policy.pdf](http://www.spto.co.uk/schoolpupiltracker/documents/codeofconduct_policy.pdf)).

**ACADEMY LICENCE MIGRATION POLICY**

([www.spto.co.uk/schoolpupiltracker/documents/academy\\_licence\\_migration.pdf](http://www.spto.co.uk/schoolpupiltracker/documents/academy_licence_migration.pdf)).

Purchase of School PUPIL TRACKER Online (“the Service”) from School PUPIL TRACKER Ltd (“the Seller”, “us” or “we”) through the submission of our standard order form (“the Order Form”), any other purchase order or our standard Licence Renewal Form, or your acceptance of our quotation in writing, constitutes an offer by you (“the Buyer” or “you”) to purchase School PUPIL TRACKER Online on these terms and conditions, forming a contract which incorporates the Order Form and these conditions and the five policies referred to above (“the Agreement”). No offer you place shall be accepted by us other than by a written acknowledgement issued and executed by us.

The Service, School PUPIL TRACKER Online, includes the use of the School PUPIL TRACKER Online software, the hosting and maintenance of your information and the support in your use of the School PUPIL TRACKER Online software.

## **THE AGREEMENT**

This Agreement will only be formed when we send you a written confirmation that this Agreement has begun. This Agreement, and any documents referred to in it, constitute the whole agreement between the parties and supersedes any previous arrangement, understanding or agreement between them relating to the subject matter they cover.

Each of the parties acknowledge and agree that in entering into the 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 the Agreement or not) relating to the subject matter of the Agreement, other than as expressly set out in the Agreement.

A waiver of any right under the Agreement is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and to the circumstances for which it is given.

If any provision (or part of a provision) of the 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.

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.

# 1 NOTIFICATIONS and DEFINITIONS

1.1 The following words shall have the following meanings:

- **“Authorised Users”** - those of your employees and independent contractors who you authorise to use the School PUPIL TRACKER Software under our Agreement. This also includes those parents you have contacted with passwords and usernames;
- **“Business Day”** - any day which is not a Saturday, Sunday or public holiday in England;
- **“Licence Agreement Certificate”** – the document we send to you agreeing to provide the Services to you;
- **“Normal School Hours”** - 9.00am to 4.00pm local UK time, Monday to Friday, excluding public holidays and school holiday pattern. The periods of holidays will be published in advance through the School PUPIL TRACKER website;
- **“Support Request Facility”** - as set out in clause 5.5; and
- **“Your Information”** – any and all data input or uploaded into the information fields of the School PUPIL TRACKER Online software by you, your Authorised Users, or by us on your behalf.

1.2 A person includes a corporate or unincorporated body (whether or not having separate legal personality).

1.3 A reference to one gender shall include a reference to the other genders.

1.4 Words in the singular shall include the plural and vice versa.

1.5 Clause and paragraph headings shall not affect the interpretation of these conditions.

1.6 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.

1.7 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.8 A reference to writing or written includes faxes and e-mail.

## **2 PRICE , PAYMENT AND TERM OF AGREEMENT**

- 2.1 The price (exclusive of VAT) for the Goods ("the Price") shall be the price we quoted and payment of the Price shall be made by you within 30 days of the date of the invoice for the Services.
- 2.2 Without prejudice to any right of termination, in the event that any payment due under this agreement is not made on the due date (in the discretion) be entitled to charge interest (both before and after any judgment) on a day to day basis upon the overdue amount at 8% (eight per cent) above the Bank of England base rate from time to time as defined by the Late Payments of commercial Debts (interest) Act 1998. If the Price is not paid by the due date, we also reserve the right to terminate or suspend the Service.
- 2.3 You agree to pay the Price set out on the Order Form for the use, hosting and maintenance and support of the School PUPIL TRACKER Online software. Unless we agree otherwise in writing, this fee shall be paid by you as a single lump-sum payment. We will invoice you upon acceptance of the Order Form you submitted.
- 2.4 All amounts and fees stated or referred to in the Agreement are exclusive of value added tax, which shall be added to our invoice(s) at the appropriate rate as appropriate.
- 2.5 The Agreement shall commence on the Start Date (the "Start Date") as defined on the Licence Agreement Certificate and shall continue for the period set out in the Order Form, unless otherwise terminated as provided in this Agreement.
- 2.6 Without prejudice to any other rights or remedies to which the parties may be entitled, either party may terminate the Agreement without liability to the other if the other party commits a breach of any of the terms of the Agreement and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach.
- 2.7 There is no obligation for either party of this Agreement to extend this Agreement beyond the effective date of the termination or expiry of the Agreement.
- 2.8 Where the termination of this Agreement by School Pupil Tracker Ltd results from a breach of this Agreement by the Buyer, School Pupil Tracker Ltd shall be entitled to retain all the charges paid to School Pupil Tracker Ltd by the Buyer up to and including the date of termination.
- 2.9 Any termination of this Agreement shall be without prejudice to the remedies of either party in respect of a subsisting breach.
- 2.10 School Pupil Tracker Ltd reserves the right to effect immediate termination of this Agreement.
- 2.11 If School Pupil Tracker Ltd terminates your Service and this Agreement, you will be refunded any remaining balance on your account. Such a refund will be calculated based upon the charges already paid by the Buyer being divided by the number of days in the applicable subscription period and multiplied by the number of days remaining until the end of the subscription period.
- 2.12 If School Pupil Tracker Ltd terminates your Service and this Agreement, you will cease to have access to Your Information from the date of termination, unless otherwise agreed in writing.
- 2.13 On expiry or termination of the Agreement for any reason:
- 2.13.1 all licences granted under the Agreement shall immediately terminate;
  - 2.13.2 each party shall return and make no further use of any equipment, property, materials and other items (and all copies of them) belonging to the other party; the Buyer shall have sole responsibility to retrieve Your Information by downloading Your Information from your account prior to the effective date of the termination or expiry of the Agreement;

- 2.13.3 a secure download tool will be provided to the Buyer to enable them to download Your Information, including the assessment data, reports, and stored files the Buyer has stored. This secure download tool is available up to the effective date of the termination or expiry of the Agreement and prior to the disposal of Your Information as set out in 2.13.4;
- 2.13.4 we will destroy or otherwise dispose of any of Your Information in our possession no later than 1 (one) day after the effective date of the termination or expiry of the Agreement or upon request of the Buyer; and
- 2.13.5 the accrued rights of the parties as at expiry or termination, or the continuation after expiry or termination of any provision expressly stated to survive or implicitly surviving expiry or termination, shall not be affected or prejudiced.

### **3 HOSTING**

- 3.1 We will provide web hosting (“Hosting Service”) as part of the Service.
- 3.2 We will procure a hosting environment to provide access to the School PUPIL TRACKER Online software, ensuring that this is accessible to you via a connection to the Internet. The hosting environment will be managed by UKFAST Ltd and Your Information will be stored on physical servers hosted by UKFAST Ltd in Manchester, UK. The Buyer consents to the storage of Your Information on servers by UKFAST Ltd.
- 3.3 You need to make your, and shall ensure that your Authorised Users make their own, arrangements for Internet access in order to use the School PUPIL TRACKER Online software. This arrangement shall include ensuring that access to encrypted information using the https protocol is possible. You are responsible for checking this provision and unblocking any locks set by your or their internet access provider.
- 3.4 We will comply with our back-up schedule (details of which are available on request), perform scheduled back-ups, provide emergency data recovery, and manage any archiving process in relation to Your Information. In the event of any loss or damage to Your Information, your sole and exclusive remedy shall be for us to use reasonable commercial efforts to restore Your Information from the latest back-up. We shall not be responsible for any loss, destruction, alteration or disclosure of Your Information caused by any third party.

## 4 USE OF THE SOFTWARE

4.1 In relation to your use of the School PUPIL TRACKER Online software:

- 4.1.1 you shall not use the School PUPIL TRACKER Online software where the school Number on Roll (all pupils on roll at your school including any nursery provision) exceeds the Authorised Pupil Limit as described in the Order Form;
- 4.1.2 should the number of pupils exceed the Authorised Pupil Limit in a school, School PUPIL TRACKER Online will invoice the difference between the current Authorised Pupil Limit and the appropriate Authorised Pupil Limit, based on the price when the licence was first agreed;
- 4.1.3 we will provide a single master administrator Password and Username. This must be kept securely. For safeguarding and data protection reasons, we will not issue, reissue or retrieve any Passwords and Usernames of any Authorised Users except for the master administrator account. We will always ensure the identity of the person requesting the issue or re-issue is the Headteacher or Acting Headteacher or their deputy before issuing or reissuing the master administrator Password and Username. Security is ensured by only communicating the Password and Username by post to the school's address (marked confidential), by email to the recognised and authorised school email address (marked confidential) or by us telephoning you using our telephone number for you; emails will never be sent containing both the Password and Username together;
- 4.1.4 you must ensure that each Authorised User keeps a secure password for his use of the School PUPIL TRACKER Online software, that such password is changed no less frequently than every 90 days and that each Authorised User keeps his password confidential;
- 4.1.5 you must ensure that each User has their own login details and that you check through the list of Users periodically to ensure this list of Users is accurate and does not include a member of staff who has left. This check should be completed and extraneous Users deleted whenever a member of staff leaves the school;
- 4.1.6 we may audit the use of the Service by you to verify your compliance with the terms of the Agreement.

4.2 In relation to the School PUPIL TRACKER Online software :

- 4.2.1 we hereby grant to you on and subject to the terms and conditions of the Agreement a non-exclusive, non-transferable licence to allow your Authorised Users to access the School PUPIL TRACKER Online software through the Hosting Service and to use the School PUPIL TRACKER Online software solely for the purpose of assessment and reporting procedures in relation to pupils in your school up to the Authorised Pupil Limit;
- 4.2.2 you may not, and shall procure that your Authorised Users do not, store, distribute or transmit any material through the Hosting Service that is unlawful, harmful, threatening, defamatory, obscene, harassing or racially or ethnically offensive; facilitates illegal activity; depicts sexually explicit images; or promotes unlawful violence, discrimination based on race, gender, colour, religious belief, sexual orientation, disability, or any other illegal activities;
- 4.2.3 you may not, and shall procure that your Authorised Users will not, store data or information on the Hosting Service that might be considered overtly sensitive for an individual – for example the details of child protection allegations or other such sensitive information;
- 4.2.4 the right provided under clause 4.2.1 is granted to you, a single school, only, and shall not be considered granted to any associated school; and

- 4.2.5 you may not, and shall procure that your Authorised Users shall not:
  - 4.2.5.1 attempt to duplicate, modify or distribute any portion of the School PUPIL TRACKER Online software;
  - 4.2.5.2 attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form any part of the School PUPIL TRACKER Online software, except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties; and
  - 4.2.5.3 use the School PUPIL TRACKER Online software or Hosting Service to provide services to third parties.
- 4.3 You may not transfer, temporarily or permanently, any of their rights under the Agreement, or attempt to obtain, or assist others in obtaining, access to the School PUPIL TRACKER Online software, other than as expressly provided under these conditions.
- 4.4 You agree to use reasonable endeavours to prevent any unauthorised access to, or use of, the School PUPIL TRACKER Online software and notify us promptly of any such unauthorised access or use of which you become aware.



## 5 SUPPORT

- 5.1 We will provide the maintenance and support service.
- 5.2 Except in the case of an emergency, maintenance of the hosting equipment that may require interruption of the Hosting Service shall not be performed during Normal School Hours. However, we may interrupt the Hosting Service outside Normal School Hours for unscheduled maintenance. We will at all times endeavour to keep any service interruptions to a minimum. Any minor upgrading or patching of the School PUPIL TRACKER Online software, or the minor upgrading or maintenance of other aspects of the Hosting Service, may be completed at any time at our discretion but will be done so as to make the interruptions as minimal as possible.
- 5.3 We will provide maintenance, which will include all regularly scheduled error corrections, software updates and upgrades, limited to improvements to features planned by us.
- 5.4 We will maintain and update the School PUPIL TRACKER Online software. If the School PUPIL TRACKER Online software does not perform substantially, you may at any time file error reports. During maintenance periods, we may, at our discretion, provide upgraded versions of the School PUPIL TRACKER Online software, install error corrections and apply patches to the hosted systems. We will try to avoid unscheduled downtime for School PUPIL TRACKER Online software maintenance but cannot guarantee to do so.
- 5.5 We will provide your nominated Administrator-level Authorised Users with a Support Request Facility. This is a secure web form-based incident submittal. We will use reasonable endeavours to process Support Request Facility submittals in Normal School Hours and determine the source of the problem and respond to you quickly. We reserve the right to temporarily close the Support Request Facility from time to time, and with notification to you through the School PUPIL TRACKER website, for training, hardware upgrading or other organisational reasons.
- 5.6 The Support Request Facility includes support to use reasonable endeavours in an effort to resolve support requests in the Service and Hosting of Your Information. The Support Request Facility does not include training in the use of the software or training in the interpretation of Your Information or support or training in the use of software to browse the web, or any other software not included in the School PUPIL TRACKER Online software.
- 5.7 You must nominate a limited number of Administrator-level Authorised Users who may contact the Support Request Facility. This limited number of Administrator-level Authorised Users should not exceed three.
- 5.8 The Support Request Facility is not available for the use of parental or governor Authorised Users.
- 5.9 You consent to us accessing Your Information when required to support you to check the account is running smoothly, or to support you with training opportunities or to respond to Support Request Facility submittals or account queries received from you. Such access to Your Information will be kept to a minimum and access to Your Information will only be permitted to those authorised by us as detailed in our Data Safeguarding Policy.
- 5.10 You must provide support and maintenance for data integration tools and processes developed or maintained by you in order to connect the School PUPIL TRACKER Online software to other software and databases. We do not provide support or maintenance for such data integration tools and processes held outside the Hosting environment.
- 5.11 Before you make changes to integration interfaces between the School PUPIL TRACKER Online software and your internal data stores or systems, you must provide us with advance notice to ensure your continued access to the School PUPIL TRACKER Online software is not adversely affected by such changes.

## 6 OUR OBLIGATIONS

- 6.1 We undertake that the Services shall be performed with all reasonable skill and care.
- 6.2 We undertake that the School PUPIL TRACKER Online software shall perform as demonstrated in the online demo version at [www.schoolpupiltracker.co.uk](http://www.schoolpupiltracker.co.uk). This undertaking shall not apply to the extent of any non-conformance which is caused by:
- 6.2.1 use of the School PUPIL TRACKER Online software contrary to our instructions, outside the terms of the Agreement, or for a purpose or in a context other than the purpose or context for which it was designed; or
  - 6.2.2 modification or alteration of the School PUPIL TRACKER Online software by any party other than ourselves or our agents.
- 6.3 If the Services do not conform with the online demo version at [www.schoolpupiltracker.co.uk](http://www.schoolpupiltracker.co.uk), we will, at our expense, use all reasonable commercial efforts to correct any such non-conformance promptly, or provide you with an alternative means of accomplishing the desired performance, through the maintenance and support service. Such correction or substitution constitutes your sole and exclusive remedy for any breach of the undertakings set out in 6.2.2 and 6.3. Notwithstanding the foregoing, we do not warrant that your use of the School PUPIL TRACKER Online software and the Services will be uninterrupted or error-free.
- 6.4 In the event we breach any of our obligations under this agreement by failing to perform any part of the Services in accordance with this Agreement, please inform us at once. We will then re-perform the relevant part of the Service. Such re-performance will be your exclusive remedy for such failure.
- 6.5 We may refuse any instruction that does not come from the Headteacher or Acting Headteacher, or a deputy who has been given written authority to act in the place of the Headteacher.

## 7 THE BUYER'S OBLIGATIONS

- 7.1 You shall not, without our prior written consent, assign, transfer, charge, sub-contract or deal in any other manner with all or any of their rights or obligations under the Agreement.
- 7.2 You will:
- 7.2.1 provide us with:
    - 7.2.1.1 all necessary co-operation in relation to the Agreement; and
    - 7.2.1.2 all necessary access to such information as we may require.
  - in order to render the Services, including but not limited to Your Information, security access information and software interfaces to your other applications;
  - 7.2.2 provide such personnel assistance as may be reasonably requested by us from time to time;
  - 7.2.3 comply with, and procure that your Authorised Users comply with, the then current terms of Use and Acceptable Use Policy applicable to any website from which access to the School PUPIL TRACKER Online software is gained;
  - 7.2.4 ensure that your Authorised Users (including those parental users) have up-to-date understanding of data protection, have firewalls installed for internet security and virus protection on their computers connected to the Hosting Service. The security of data on computers connected to the Hosting Service lies solely with you and your Authorised Users once that data has transferred from the Hosting Service. We recommend the use of Google Chrome browser;
  - 7.2.5 will not offer or partake in training other schools in the use of the School PUPIL TRACKER Online software but instead point other schools to the training support offered by School PUPIL TRACKER Online. Training other schools includes one or more members of staff from one school leading, supporting, teaching or coaching members of staff from a different school or schools who have purchased School PUPIL TRACKER Online. Recognised (by ourselves) Federated schools who have all purchased School PUPIL TRACKER may train each other as part of their cycle of professional development;
  - 7.2.6 comply with all applicable laws and regulations with respect to their activities under the Agreement; and
  - 7.2.7 carry out all their other responsibilities set out in the Agreement in a timely and efficient manner.

## 8 DATA PROTECTION

- 8.1 Each party undertakes to fully comply with its obligations under the European Union General Data Protection Regulation; and Data Protection Act 1998.
- 8.2 You consent to us holding and processing any personal data you provide (including personal data included in Your Information and other data relating to your school, its pupils and parents) for the purposes of providing the Services. The type of personal data and categories of data subject stored as Your Information will depend on the data the Buyer chooses to add to School PUPIL TRACKER Online. Minimum data stored for each child: Pupil Unique Pupil Number; Pupil forename; Pupil surname; Pupil gender; Pupil Date of Birth. The Buyer will wish to store more than this minimum, but all other data is optional and stored by choice of the Buyer.
- 8.3 Your Information will be collected, recorded, organised, structured and stored; and made available for the Buyer for retrieval and use.
- 8.4 If we process any personal data on your behalf when performing its obligations under this Agreement, the parties record their intention that you shall be the data controller and we shall be a data processor and in any such case:
- 8.4.1 you shall ensure that you are entitled to transfer the relevant personal data to us so that we may lawfully process the personal data in accordance with this agreement on your behalf;
  - 8.4.2 we shall process the personal data only in accordance with the terms of this agreement and any lawful written instructions reasonably given by you from time to time;
  - 8.4.3 we shall ensure the School Pupil Tracker Ltd staff processing Your Information are subject to a duty of confidence; and
  - 8.4.4 each party shall take appropriate technical and organisational measures to ensure the security of processing.
- 8.5 We cannot take responsibility for Your Information until and unless Your Information or whatsoever data you are passing to us is transferred by the secure transferring tools provided by us and is then received on the Hosting environment. We do not accept the transfer of Your Information or any other data if it is sent by email, post, on disks or via any storage media.
- 8.6 You consent to us making personal data you provide available to regulatory authorities, governmental or quasi governmental organisations, but only where we are compelled to do so. We will only engage sub-processors with the prior consent of the Buyer and under a written contract.
- 8.7 We will assist the Buyer in meeting its European Union General Data Protection Regulation obligations in relation to the security of processing, the notification of personal data breaches and data protection impact assessments, submitting to audits and inspections, and providing the Buyer with whatever information it needs to ensure that we and the Buyer are both meeting the European Union General Data Protection Regulation obligations.
- 8.8 We will tell the Buyer immediately if it is asked to do something infringing the European Union General Data Protection Regulation or other data protection law of the EU or a member state
- 8.9 You acknowledge that nothing in the foregoing shall prevent us from using the personal data you provide in ways that are permitted by the European Union General Data Protection Regulation; and Data Protection Act 1998.

## **9 CONFIDENTIALITY**

- 9.1 Each party may be given access to confidential information concerning the business, affairs, customers, employees, pupils or parents of pupils of the other party from the other party in order to perform its obligations under the Agreement. Each party shall hold the other's confidential information in confidence and not make the other's confidential information available to any third party, or use the other's confidential information for any purpose other than the performance of its obligations under the Agreement.
- 9.2 You consent to us sharing anonymised data between users of School PUPIL TRACKER Online and others to allow self-evaluation comparisons. We will ensure such anonymous data is unidentifiable to you, and shall only include data referenced from groups of two or more. Such data will be stored separately from Your Information.
- 9.3 The obligation of confidence under clause 9.1 shall not apply to information that:
- 9.3.1 is or becomes publicly known other than through any act or omission of the receiving party;
  - 9.3.2 was in the receiving party's lawful possession before the disclosure;
  - 9.3.3 is lawfully disclosed to the receiving party by a third party without restriction on disclosure;
  - 9.3.4 is independently developed by the receiving party, which independent development can be shown by written evidence; or
  - 9.3.5 is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.
- 9.4 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 breach of the terms of the Agreement.
- 9.5 You acknowledge that the structure, source code and object code of the School PUPIL TRACKER Online software and the construction of the Services is part of our confidential information.
- 9.6 We acknowledge that Your Information is part of your confidential information.
- 9.7 This clause 9 shall survive expiry or termination of the Agreement, however arising.

## **10 PROPRIETARY RIGHTS**

- 10.1 You acknowledge and agree that we own all intellectual property rights in the School PUPIL TRACKER Online software and Services. Except as expressly stated herein, the Agreement does not grant you any rights to, or in, patents, copyrights, database rights, rights in designs, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the School PUPIL TRACKER Online software, Services or any related documentation.
- 10.2 We confirm that we have all the rights in relation to the School PUPIL TRACKER Online software that are necessary to grant all the rights we purport to grant under, and in accordance with, the terms of the Agreement.
- 10.3 You shall own all rights, title and interest in and to all of Your Information and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of Your Information.

## 11 INDEMNITY

- 11.1 You shall defend, indemnify and hold us harmless against all claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with your use of the School PUPIL TRACKER Online software or Services, processing of Your Information and any breach of the warranty in clause 8.3, provided that:
- 11.1.1 you are given prompt notice of any such claim;
  - 11.1.2 we provide reasonable co-operation to you in the defence and settlement of such claim, at your expense; and
  - 11.1.3 you are given sole authority to defend or settle the claim.
- 11.2 We will defend you against any claim that the School PUPIL TRACKER Online software infringes any United Kingdom patent effective as of the Start Date, copyright or database right, and shall indemnify you for any amounts awarded against you in judgment or settlement of such claims, provided that:
- 11.2.1 we are given prompt notice of any such claim;
  - 11.2.2 you provide reasonable co-operation to us in the defence and settlement of such claim, at our expense; and
  - 11.2.3 we are given sole authority to defend or settle the claim.
- 11.3 In the defence or settlement of the claim, we may obtain for you the right to continue using the School PUPIL TRACKER Online software, replace or modify the School PUPIL TRACKER Online software so that it becomes non-infringing or, if such remedies are not reasonably available, terminate the Agreement without any liability to you.
- 11.4 We shall have no liability under clause 11.2 above if the alleged infringement is based on:
- 11.4.1 a modification of the School PUPIL TRACKER Online software by anyone other than us;
  - 11.4.2 your use of the School PUPIL TRACKER Online software is in a manner contrary to the instructions we give to you; or
  - 11.4.3 your use of the School PUPIL TRACKER Online software after we or an appropriate authority notifies them of the alleged or actual infringement.
- 11.5 The foregoing states your sole and exclusive rights and remedies, and our entire obligations and liability, for patent, copyright or database infringement.

## 12 LIMITATION OF LIABILITY

12.1 This clause 12 sets out our entire financial liability (including any liability for the acts or omissions of our employees, agents and sub-contractors) to you in respect of:

12.1.1 any breach of the Agreement;

12.1.2 any use made by you of the Services or the School PUPIL TRACKER Online software or any part of them; and

12.1.3 any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Agreement.

12.2 Except as expressly and specifically provided in our Agreement:

12.2.1 You assume sole responsibility for the results obtained from your use of the School PUPIL TRACKER Online software and the Services, and for conclusions drawn from such use. We will have no liability for any damage caused by errors or omissions in any information, instructions or scripts you provide to us in connection with the Services, or any actions we take at your direction; and

12.2.2 all other conditions, warranties or other terms which might have effect between the parties or be implied or incorporated into the Agreement or any collateral contract, whether by statute, common law or otherwise, are hereby excluded.

12.3 Nothing in the Agreement excludes our liability:

12.3.1 for death or personal injury caused by our negligence; or

12.3.2 for fraud or fraudulent misrepresentation.

12.4 Subject to clause 12.3:

12.4.1 We will have no liability for any losses or damages which you may suffer, whether the same are suffered directly or indirectly or are immediate or consequential, and whether the same arise in contract, tort (including negligence) or otherwise howsoever, which fall within any of the following categories:

12.4.1.1 special damage, even though we were aware of the circumstances in which such special damage could arise;

12.4.1.2 consequential or indirect losses;

12.4.1.3 loss of profits;

12.4.1.4 loss of anticipated savings;

12.4.1.5 loss of business opportunity;

12.4.1.6 loss of goodwill; and

12.4.1.7 loss of data; and

12.4.2 our total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Agreement shall be limited to 200 per cent of the fee set out in the Order Form.



## **13 FORCE MAJEURE**

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

## **14 THIRD PARTY RIGHTS**

- 14.1 The Agreement is made for the benefit of the parties to it and (where applicable) their successors and permitted assigns, and is not intended to benefit, or be enforceable by, anyone else.

## **15 NOTICES**

- 15.1 Any notice required to be given under the 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 on the Order Form or sent by fax to the other party's fax number as set out on the Order Form.
- 15.2 A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9 am on the first Business Day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice sent by fax shall be deemed to have been received at the time of transmission (as shown by the timed printout obtained by the sender).

## **16 VARIATION**

- 16.1 All variations to this Agreement must be in writing and signed by the parties.

## **17 GOVERNING LAW AND JURISDICTION**

- 17.1 The Agreement and any disputes or claims arising out of or in connection with its subject matter are governed by and construed in accordance with the law of England.
- 17.2 The parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Agreement.