Terms & Conditions for Every® Provided by Sandgate Systems Limited

1. INTERPRETATION

1.1. Definitions

"Administrator"	means a User who has full administrative access to the Services, who has the authority to make decisions and bind the Customer and the Users, including without limitation the right to authorise other Users and Authorised Individuals and update the Customer's details.
"Additional Services"	means any services other than the Services including the Request for Quotes service provided by Sandgate Systems to the Customer and the Users under the Contract via the Website and any other service Sandgate Systems may provide to the Customer through the Website in the future.
"Authorised Individual"	means the employees, agents and independent contractors of the Customer and of each User who are authorised by the Customer, Administrator or Sandgate Systems (as the case may be) from time to time, to use the Services, as further described in clause 5.
"Business Day"	means a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.
"Change of Control"	shall be as defined in section 1124 of the Corporation Tax Act 2010, and the expression **change of control** shall be construed accordingly.
"Conditions"	means these terms and conditions as amended from time to time in accordance with clause 20.
"Confidential Information"	means information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in clause 15.5 or clause 15.6.
"Contract"	means the contract between Sandgate Systems and the Customer for the supply of the Services in accordance with these Conditions.
"Customer"	means the school, academy, organisation or Parent Organisation that purchases the Services from Sandgate Systems in accordance with these Conditions.
"Customer Data"	means the data inputted by the Customer, User, Administrator, Authorised Individuals, or Sandgate Systems on the Customer's or a User's behalf, for the purpose of using the Services or facilitating the Customer's and the Users' use of the Services.
"Customer Subscriptions"	means the subscriptions purchased by the Customer pursuant to clause 13.1 which entitles Users to access and use various elements of the Services in accordance with these Conditions.
"Customer Support Services"	means the support services provided by Sandgate Systems in relation to the Services including without limitation the Training Services.

"Customer Trial"	means a trial of new elements of the Software during which Sandgate Systems will provide the Customer with limited access to the new elements of the Software for the duration of the Customer Trial Period;
"Customer Trial Period"	means the duration of the Customer Trial as notified to the Customer by Sandgate Systems;
"Data Protection Legislation"	(a) unless and until the General Data Protection Regulation ((EU) 2016/679) (GDPR) is no longer directly applicable in the UK, the GDPR and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK; (b) the Data Protection Act 2018; and (c) any successor legislation to the GDPR or the Data Protection Act 2018.
"Departing User"	has the meaning set out in clause 13.8;
"Discount"	means any applicable reductions on the published price of the Software based on Sandgate Systems' promotional offers, discounts for multiple Users or Customer Subscriptions, discounts for existing customers, discounts based on the length of the Initial Subscription Term or any other discounts offered by Sandgate Systems from time to time.
"Initial Subscription Term"	means the initial term as detailed in the Customer's Order.
"MAT"	means Multi Academy Trust.
"Normal Business Hours"	means 9.00 am to 5.00 pm local UK time on a Business Day on which Sandgate Systems is open for business.
"Order"	means the Customer's order for the Customer Subscriptions submitted on the Website, provided in writing by the Customer via an Order Form or provided by way of a purchase order number with reference to a quotation produced by Sandgate Systems;
"Order Form"	means the standard form issued by Sandgate Systems to be completed by a Customer in respect of an Order;
"Parent Organisation"	means any organisation or umbrella brand which is responsible for multiple child organisations including without limitation MATs;
"Registered Third Party Suppliers"	means those suppliers who have registered with Sandgate Systems.
"Request for Quotes"	means the platform under which the Customer may request a quote for goods or services to be provided by another Customer of Sandgate Systems or a Registered Third Party Supplier.
"Renewal Period"	means the period described in clause 18.1.
"Sandgate Systems"	means the supplier of the Services to the Customer Sandgate Systems Limited trading as Sandgate Systems incorporated and registered in England and Wales with company number 07442104

	whose registered office is at Regent House, 5 Queen Street, LS1 2TW.
"Services"	means the subscription services, as set out in the Order, provided by Sandgate Systems to the Customer under the Contract via the Website.
"Software"	means the online software applications provided by Sandgate Systems as part of the Services.
"Subscription Fees"	means the subscription fees payable by the Customer to Sandgate Systems for the Customer Subscriptions, at the time of the Customer's Order, as quoted on the Website as set out in the Order Form or in the relevant Proposal.
"Training Services"	means the on-site or telephone training sessions provided by Sandgate Systems to the Customer or Users in relation to the Services.
"Trial"	means a trial of the Software during which Sandgate Systems will provide the Trialist with limited access to the Software for the duration of the Trial Period.
"Trialist"	means any person to whom a Trial is provided;
"Trial Period"	means the duration of the Trial as notified to the Trialist by Sandgate Systems.
"Users"	means: (a) where the Customer is a single school, academy or organisation, the Customer; (b) where a Customer is a single school, academy or organisation with multiple locations, each location where the Services are provided as set out in the Order; (c) where the Customer is a MAT, those schools, academies or other organisations who are part of the MAT and in respect of whom the Customer has paid the relevant Subscription Fees; (d) where a Customer is a Parent Organisation other than a MAT those schools academies or other child organisations for whom the Customer is responsible and in respect of whom the Customer has paid the relevant Subscription Fees; who are authorised by the Customer, Administrator or Sandgate Systems (as the case may be) from time to time, to use the Services, as further described in clause 5.
"Virus"	means 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.
"Website"	means: www.weareevery.com; https://portal.tesfoundation.com; https://portal.propertyprefect.com ; https://www.every.education, or any other website or sub-domain of any website notified to the Customer by Sandgate Systems from time to time.

1.2.   **Interpretation:**

1.2.1.   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.

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

1.2.3.   A reference to a statute or statutory provision is a reference to it as it is in force from time to time.

1.2.4.   A reference to **writing** or **written** does not include e-mail.

2.   BASIS OF CONTRACT

2.1.   The Order constitutes an offer by the Customer to purchase Services in accordance with these Conditions.

2.2.   The Order shall only be deemed to be accepted when Sandgate Systems issues written acceptance of the Order and/or provides the Customer with access to the Software at which point and on which date the Contract shall come into existence ("**Commencement Date**"). Sandgate Systems reserves the right, acting reasonably, to withdraw an acceptance of an Order within a reasonable time from the Commencement Date including in the event of mistakes in the Order.

2.3.   Any samples, drawings, descriptive matter or advertising issued by Sandgate Systems, and any descriptions or illustrations contained on Sandgate Systems' website or in Sandgate Systems' catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.

2.4.   These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.5.   Any quotation given by Sandgate Systems shall not constitute an offer, and is only valid for a period of 20 Business Days from its date of issue.

3.   TRIAL

3.1.   Any person may at any time request a Trial from Sandgate Systems subject always to these Conditions.

3.2.   Sandgate Systems may, at its sole discretion, provide a person with a Trial but shall be under no obligation to do so.

3.3.   The Trial Period shall be determined by Sandgate Systems, at its sole discretion, and notified to the Trialist, however Sandgate Systems reserves the right to terminate the Trial, at its sole discretion, immediately without notice and without liability to the Trialist.

3.4.   During the Trial Period clauses 5, 7, 8, 9, 11, 13, 14, 15.1, 16, 17.3, 17.4, 27, 28 and 29 shall apply as though the Trialist were a Customer, to the extent applicable to the Trial.

3.5.   If following expiry or termination of the Trial Period, the Trialist wishes to purchase the Services, the Trialist shall place an Order and the provisions of clause 2 shall apply.

3.6.   For the avoidance of doubt:

3.6.1.   the Trialist's right to use the Software shall terminate immediately and the Trialist shall immediately cease using the Software on the expiration of the Trial Period in accordance with this clause 3;

3.6.2.   any request made by any person for a Trial shall not be deemed to constitute an Order; and

3.6.3.   any access granted to a Trialist for a Trial by Sandgate Systems shall not constitute any acceptance.

4.   CUSTOMER TRIAL

4.1.   Any Customer may at any time request a Customer Trial from Sandgate Systems.

4.2.   Sandgate Systems may, at its sole discretion, provide a Customer with a Customer Trial but shall be under no obligation to do so.

4.3.   The Customer Trial Period shall be determined by Sandgate Systems, at its sole discretion, and notified to the Customer, however Sandgate Systems reserves the right to terminate the Customer Trial, at its sole discretion, immediately without notice and without liability to the Customer.

4.4.   If following expiry or termination of the Customer Trial Period, the Customer wishes to purchase new elements of the Software, the Customer shall place an Order and the provisions of clause 2 shall apply.

4.5.   For the avoidance of doubt:

4.5.1.   the Customer's right to use the new elements of the Software shall terminate immediately and the Customer shall immediately cease using the new elements of the Software on the expiration of the Customer Trial Period in accordance with this clause 4;

4.5.2.   any request made by a Customer for a Customer Trial shall not be deemed to constitute an Order for new elements of the Software by the Customer; and

4.5.3.   any access granted to a Customer to such new elements of the Software for a Customer Trial by Sandgate Systems shall not constitute any acceptance.

5.   CUSTOMER SUBSCRIPTIONS

5.1.   Subject to the Customer purchasing the Customer Subscriptions in accordance with clause 13.1, the restrictions set out in this clause 5 and subject to these Conditions, Sandgate Systems hereby grants to the Customer a non-exclusive, non-transferable right to permit the Authorised Individuals to use the Services during the Subscription Term solely for the Customer's or User's internal business operations.

5.2.   For the avoidance of doubt, where a Customer is a Parent Organisation it must pay the relevant Subscription Fees for those elements of the Software for each User who is to have access to the relevant elements of the Software and shall only grant access to such Users (or Authorised Individuals using the Software on behalf of such Users) in respect of whom the Subscription Fees have been paid.   The Customer shall ensure that the Users use the Services and the Software in accordance with the Contract and the Customer shall be responsible for any User's breach of the Contract and all other acts or omissions of any User

5.3.   In relation to the Authorised Individuals, the Customer warrants, undertakes and represents that:

5.3.1.   each Authorised Individual shall have the appropriate authority to use the Software in accordance with these Conditions, understand how the Software operates and understand their obligations under these Conditions;

5.3.2.   each Authorised Individual has read and accepted these Conditions and that by using the Software the Authorised Individual is deemed to have accepted these Conditions on behalf of the relevant User if applicable; and

5.3.3.   each Authorised Individual shall keep a secure password for his use of the Services and that each Authorised Individual shall keep his password confidential.

5.4.   Neither the Customer nor any Users or Authorised Individuals shall access, store, distribute, transmit or upload to the Software any Viruses, or any material during the course of its use of the Services that:

5.4.1.   is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;

5.4.2.   facilitates illegal activity;

5.4.3.   depicts sexually explicit images;

5.4.4.   promotes unlawful violence;

5.4.5.   is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or

5.4.6.   is in a manner that is otherwise illegal or causes damage or injury to any person or property;

and Sandgate Systems reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's or any User's or Authorised Individual's access to any material that breaches the provisions of this clause.

5.5.   The Customer and all Users shall only use the Software and the Website for lawful purposes. Neither the Customer nor any of the Users shall use the Software or the Website:

5.5.1.   in any way that breaches any applicable local, national or international law or regulation;

5.5.2.   in any way that is unlawful or fraudulent, or has any unlawful or fraudulent purpose or effect;

5.5.3.   for the purpose of harming or attempting to harm minors in any way;

5.5.4.   to permit any person other than an Authorised Individual authorised by the Customer or an Administrator to access the Software;

5.5.5.   to send, knowingly receive, upload, download, use or re-use any material which does not comply with clause 5.4;

5.5.6.   to transmit, or procure the sending of, any unsolicited or unauthorised advertising or promotional material or any other form of similar solicitation (spam); or

5.5.7.   to knowingly transmit any data, send or upload any material that contains Viruses, trojan horses, worms, time-bombs, keystroke loggers, spyware, adware or any other harmful programs or similar computer code designed to adversely affect the operation of any computer software or hardware.

5.6.   Neither the Customer nor any of the Users shall:

5.6.1.   except as may be allowed by any applicable law which is incapable of exclusion by these Conditions:

5.6.1.1.   and except to the extent expressly permitted under these Conditions attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software (as applicable) in any form or media or by any means; or

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

5.6.2.   access or provide or allow access to all or any part of the Services in order to build a product or service or allow a third party to build a product or service which competes with the Services; or

5.6.3.   use the Services to provide services to third parties unless expressly approved in writing by Sandgate Systems;

5.6.4.   subject to clause 25.1, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services available to any third party except the Users; or

5.6.5.   attempt to obtain, or assist third parties in obtaining, access to the Services, other than as provided under this clause 5.

5.7.   The Customer must appoint an Administrator to manage the Customer Subscriptions and the Customer's the Users' and the Authorised Individuals' use of the Software.

5.8.   The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and in the event of any such unauthorised access or use, promptly notify Sandgate Systems.

5.9.   Subject always to clause 5.2, the rights provided under this clause 5 are granted to the Customer and the Users only, and shall not be considered granted to:

5.9.1.   any subsidiary or holding company of the Customer;

5.9.2.   any school, academy or other organisation which is or becomes part of any MAT which the Customer is or may become part of in respect of whom the Customer has not paid the relevant Subscription Fees;

5.9.3.   where the Customer is a Parent Organisation, any school, academy or other organisation which the Parent Organisation is or becomes responsible for or any school, academy or other organisation in respect of whom the Customer has not paid the relevant Subscription Fees; or

5.9.4.   any school, academy or other organisation with whom the Customer has entered into a partnership or is associated or affiliated whether as an outstanding school which shares best practice with and trains and develops staff of other schools which it is in partnership or otherwise associated or affiliated with, or otherwise.

6.   SERVICES

6.1.   Sandgate Systems shall, during the Subscription Term, provide the Services and make available the Software to the Customer and the Users on and subject to the terms of these Conditions.

6.2.   Sandgate Systems shall use commercially reasonable endeavours to make the Services available 24 hours a day, seven days a week, except for:

6.2.1.   planned maintenance carried out during any maintenance window as notified to the Customer from time to time; and

6.2.2.   unscheduled maintenance where Sandgate Systems in its reasonable commercial judgment deems is necessary. Sandgate Systems will use its reasonable endeavours to perform such maintenance outside Normal Business Hours but maintenance at other times may be necessary in the event of an emergency.

6.3.   Sandgate Systems will, as part of the Services and at no additional cost to the Customer, provide the Customer with support and advice during Normal Business Hours.

7.   REQUEST FOR QUOTES, THE EVERY DIRECTORY AND THIRD PARTY PROVIDERS

7.1.   The Customer and the Users acknowledge and agree that:

7.1.1.   the Request for Quotes service, if and when made available by Sandgate Systems, will enable or assist them to correspond with and enter into contracts with other customers of Sandgate Systems and/or Registered Third Party Suppliers; and

7.1.2.   the Services and Additional Services may enable or assist them to access the website content of, correspond with, and purchase products and services from, third parties via third party websites,

and that they do so solely at their own risk.

7.2.   Sandgate Systems neither makes nor gives any warranty, guarantee, representation or commitment and shall have no liability or obligation whatsoever in relation to the quality, content or use of any products of services or any transactions completed or any contract entered into by the Customer or any User, with any other customer of Sandgate Systems and/or any Registered Third Party Supplier via the Request for Quotes service or with other third parties through third party websites.

7.3.   Any contract entered into and any transaction completed via the Request of Quotes service or third party website is made between the Customer or any User and the relevant third party, as set out in clause 7.2, and not Sandgate Systems.

7.4.   For the avoidance of doubt, the Customer and the Users acknowledge and agree that in their use of the Request for Quotes service, Sandgate Systems acts as an intermediary only and nothing more.

7.5.   Sandgate Systems recommends that the Customer or User refers to the third party's terms and conditions website terms and conditions and privacy policy prior to using the relevant third-party website or concluding a transaction or contract.

7.6.   Sandgate Systems does not endorse or approve any third-party website nor the content of any third-party website made available via the Services or Additional Services.

8.   CUSTOMER DATA

8.1.   The Customer shall own all right, title and interest in and to all of the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data and its ability to use the Customer Data in accordance with the Data Protection Legislation.

8.2.   In the event of any loss or damage to any Customer Data, the Customer's sole and exclusive remedy shall be for Sandgate Systems to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by Sandgate Systems. Sandgate Systems shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party or a force majeure event as described in clause 19.

8.3.   Sandgate Systems shall, in providing the Services, comply with its GDPR compliance statement relating to the privacy and security of the Customer Data available on the Website or such other website address as may be notified to the Customer from time to time, as such document may be amended from time to time by Sandgate Systems in its sole discretion.

8.4.   Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 8 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.

8.5.   If Sandgate Systems processes any personal data on the Customer's or any User's behalf when performing its obligations under the Contract, the parties record their intention that the Customer (or the relevant User) shall be the data controller and Sandgate Systems shall be a data processor. In particular, and without limitation, as between Sandgate Systems and the Customer the Customer is responsible for determining what, if any, personal data will be processed using the Software and for ensuring that it has a legal basis for doing so.

8.6.   The Customer shall ensure:

8.6.1.   that they are entitled to transfer the relevant personal data to Sandgate Systems so that Sandgate Systems may lawfully use, process and transfer the personal data in accordance with these Conditions on the Customer's or the User's behalf; and

8.6.2.   that the relevant third parties have been informed of such use, processing, and transfer as required by the Data Protection Legislation;

8.6.3.   that it reviews and manages retention policies for personal data processed using the Software and Services.

8.7.   Without prejudice to the generality of clause 8.4, Sandgate Systems shall, in relation to any personal data processed in connection with the performance by Sandgate Systems of its obligations under this agreement:

8.7.1.   process that personal data only on the written instructions of the Customer unless Sandgate Systems is required by the laws of any member of the European Union or by the laws of the European Union applicable to Sandgate Systems to process personal data (**Applicable Laws**). Where Sandgate Systems is relying on laws of a member of the European Union or European Union law as the basis for processing personal data, Sandgate Systems shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit Sandgate Systems from so notifying the Customer;

8.7.2.   not transfer any such personal data outside of the European Economic Area and the United Kingdom unless the following conditions are fulfilled:

8.7.2.1.   the Customer or Sandgate Systems has provided appropriate safeguards in relation to the transfer;

8.7.2.2.   the data subject has enforceable rights and effective legal remedies;

8.7.2.3.   Sandgate Systems complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and

8.7.2.4.   Sandgate Systems complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the personal data;

8.7.3.   assist the Customer, at the Customer's cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

8.7.4.   notify the Customer without undue delay on becoming aware of a personal data breach affecting the personal data processed on behalf of the Customer or User;

8.7.5.   delete or return personal data and copies thereof to the Customer on termination of the agreement in accordance with clause 17.4.3; and

8.7.6.   maintain complete and accurate records and information to demonstrate its compliance with this clause 8 and provide access to such records and information to the Customer on the Customer's reasonable request.

8.8.   Each party shall ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting personal data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to personal data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it). The Customer acknowledges that Sandgate Systems does not have knowledge of the extent to which each Customer uses the Services and Software to process personal data and as such, whilst Sandgate Systems will provide the Customer with information about the security measures it has put in place, including the information referred to in clause 8.3, it is for the Customer to assess whether such measures are appropriate.

8.9.   The Customer consents to Sandgate Systems appointing third-party processors of personal data under this agreement. Details of such third party processors are available from Sandgate Systems on the Customer's reasonable request, but must be kept confidential by the Customer in order to ensure that security is maintained. Sandgate Systems confirms that it has entered or (as the case may be) will enter with the third-party processor into a written agreement substantially on that third party's standard terms of business or incorporating terms which are substantially similar to those set out in this clause 8. As between the Customer and Sandgate Systems, Sandgate Systems shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 8.

8.10.   The Customer acknowledges that Sandgate Systems may use anonymised usage information to monitor use of the Services and that Sandgate Systems may access the Customer Data for the purposes of providing support and maintenance, and to audit the Customer's use of the Services under the Contract.

8.11.   The Customer shall indemnify Sandgate Systems against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest,

penalties and legal and other professional costs and expenses) suffered or incurred by Sandgate Systems in connection with any breach by the Customer of this clause 8 including without any limitation any claims for breach of data protection legislation and any penalty, fine or enforcement action taken by the Information Commissioners Office or any other public or regulatory body or authority.

9.   INTERACTIVE SERVICES

9.1.   Sandgate Systems may provide interactive services as part of their Additional Services. Sandgate Systems will provide clear information to the Customer and the Users about the kind of service offered, if it is moderated and what form of moderation is used (including whether it is human or technical).

9.2.   Sandgate Systems will use their reasonable endeavours to assess any possible risks for Users from third parties when they use any interactive service provided via the Services, Additional Services and/or the Website and Sandgate Systems will decide in each case whether it is appropriate to use moderation of the relevant service (including what kind of moderation to use) in the light of those risks. However, Sandgate Systems are under no obligation to oversee, monitor or moderate any interactive service it provides as part of the Services, Additional Services, and/or on the Website, and expressly exclude their liability for any loss or damage arising from the use of any interactive service by a User in contravention of these Conditions including without limitation clause 5, whether the service is moderated or not.

9.3.   Where Sandgate Systems do moderate an interactive service, Sandgate Systems will normally provide the Customer or User with a means of contacting the moderator, should a concern or difficulty arise.

10.   SANDGATE SYSTEMS' OBLIGATIONS

10.1.   Sandgate Systems undertakes that the Services will be performed with reasonable skill and care.

10.2.   The undertaking at clause 11.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to Sandgate Systems' instructions, or modification or alteration of the Software by any party other than Sandgate Systems or Sandgate Systems' duly authorised contractors or agents. If the Services do not conform with the foregoing undertaking, Sandgate Systems will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in clause 11.1. Notwithstanding the foregoing, Sandgate Systems:

10.2.1.   does not warrant that the Customer's or Users use of the Services will be uninterrupted or error-free; or that the Services, or the information obtained by the Customer or User through the Services will meet the Customer's or Users requirements and Sandgate Systems is not responsible for any delays, delivery failures, or any other loss or damage resulting from any interruption or failure of the Services or any failure by the Services to meet the Customer's or User's needs; and

10.2.2.   is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over or any failure of any communications networks and facilities, including without limitation the internet, and the Customer and Users acknowledge that the Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

10.3.   The Contract shall not prevent Sandgate Systems 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 the Contract.

10.4.   Sandgate Systems warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under the Contract.

11. CUSTOMER'S OBLIGATIONS

11.1.   The Customer and the Users shall:

11.1.1.   provide Sandgate Systems with:

11.1.1.1.   all necessary co-operation in relation to the Contract; and

11.1.1.2.   all necessary access to such information as may be required by Sandgate Systems;

in order to provide the Services, including but not limited to Customer Data, security access information and configuration services;

11.1.2.   comply with all applicable laws and regulations with respect to their activities under the Contract;

11.1.3.   carry out all other Customer responsibilities set out in the Contract in a timely and efficient manner. In the event of any delays in the Customer's or a User's provision of such assistance as agreed by the parties, Sandgate Systems may adjust any agreed timetable or delivery schedule as reasonably necessary;

11.1.4.   ensure that the Users use the Services and the Software in accordance with the Contract and the Customer shall be responsible for any User's breach of the Contract and all other acts or omissions of any User;

11.1.5.   obtain and shall maintain all necessary licences, consents, and permissions necessary for Sandgate Systems, its contractors and agents to perform their obligations under the Contractor, including without limitation on the Services;

11.1.6.   ensure that their network and systems comply with the relevant specifications provided by Sandgate Systems from time to time; and

11.1.7.   be solely responsible for procuring and maintaining their network connections and telecommunications links from their systems to Sandgate Systems' data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's or User's network connections or telecommunications links or caused by the internet.

12. CHARGES AND PAYMENT AND DISCOUNTS

12.1.   The Customer shall pay the Subscription Fees to Sandgate Systems in consideration for the Services.

12.2.   The Customer shall on the Commencement Date provide to Sandgate Systems valid, up-to-date and complete credit card details or approved purchase order information acceptable to Sandgate Systems and any other relevant valid, up-to-date and complete contact and billing details and, if the Customer provides:

12.2.1.   its credit card details to Sandgate Systems, the Customer hereby authorises Sandgate Systems to bill such credit card:

12.2.1.1.   on the Commencement Date for the Subscription Fees payable in respect of the first year of the Initial Subscription Term; and

12.2.1.2.   subject to clause 17.1, on each anniversary of the Commencement Date for the Subscription Fees payable in respect of the next year of the Initial Subscription Term or any Renewal Period as applicable;

12.2.2.   its approved purchase order information to Sandgate Systems, Sandgate Systems shall invoice the Customer:

12.2.2.1.   at any time after the provision of such information up to and including the Commencement Date for the Subscription Fees payable in respect of the Initial Subscription Term; and

12.2.2.2.   subject to clause 17.1, prior to each anniversary of the Commencement Date for the Subscription Fees payable in respect of the next year of the Initial Subscription Term or any Renewal Period as applicable,

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

12.3.   If Sandgate Systems has not received payment within 30 days after the due date, and without prejudice to any other rights and remedies of Sandgate Systems:

12.3.1.   Sandgate Systems may, without liability to the Customer, disable the Customer's and any User's password, account and access to all or part of the Services and Sandgate Systems shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and

12.3.2.   interest shall accrue on a daily basis on such due amounts at an annual rate equal to 8% over the then current base lending rate of Barclay's Bank Plc from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.

12.4.   All amounts and fees stated or referred to in the Contract:

12.4.1.   shall be payable in pounds sterling;

12.4.2.   are, subject to clause 16.4.2, non-cancellable and non-refundable;

12.4.3.   are exclusive of value added tax and all other applicable local taxes, which shall be added to Sandgate Systems' invoice(s) at the appropriate rate.

12.5.   Sandgate Systems shall be entitled to increase the Subscription Fees at the start of each Renewal Period upon 90 days' prior notice to the Customer and unless the Customer gives notice in accordance with clause 17.1 the Subscription Fee shall be deemed to have been amended accordingly.

12.6.   Sandgate Systems reserves the right to immediately withdraw any Discount in respect of any Customer who in Sandgate Systems sole opinion is no longer eligible to receive it including without limitation where a discount has been given on the basis of multiple Users or specific User types, if the Customer ceases to be responsible for the relevant User(s).

12.7.   In the event that Sandgate Systems exercises its right pursuant to clause 12.6, the Customer shall pay on demand any amount due to Sandgate Systems on a pro rata basis arising from the withdrawal of the Discount.

12.8.   If a Parent Organisation ceases, for whatever reason, to be responsible for a User ("**Departing User**"), in respect of whom it has paid Subscription Fees:

12.8.1.   the Parent Organisation shall be entitled to retain the licence to use the Software which was initially allocated to such Departing User and reassign such licence to any other school, academy or organisation which it is or becomes responsible for;

12.8.2.   the Parent Organisation shall not be entitled to any refund of any Subscription Fees paid in respect of the Departing User; and

12.8.3.   the Departing User's right to use the Software shall cease immediately unless it or its new Parent Organisation enters into a new Contract with Sandgate Systems and pays the relevant Subscription Fees;

12.8.4.   at the Parent Organisation's option Sandgate Systems shall:

12.8.4.1.   make available the Customer Data relating to the Departing User in accordance with clause 17.4.3; or

12.8.4.2.   delete the Customer Data relating to the Departing User;

provided that if the Parent Organisation does not make a request under clause 12.8.4.1 or 12.8.4.2, Sandgate Systems shall allow the Customer to continue to use the Services in respect of the Customer Data of the Departing User for archive purposes, provided that the Customer shall have no right to add new Customer Data in respect of the Departing User.

12.9.   The Customer shall indemnify Sandgate Systems against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by Sandgate Systems in connection with any breach by the Customer of these Conditions including without limitation any costs incurred by Sandgate Systems in connection with the failure of the Customer to pay the Subscription Fees including the costs of any debt recovery letters or action.

13.   PROPRIETARY RIGHTS

13.1.   The Customer acknowledges and agrees that Sandgate Systems and/or its licensors own all intellectual property rights in the Software and Services. Except as expressly stated herein, these Conditions. Sandgate Systems does not grant the Customer 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.

13.2.   Sandgate Systems confirms that it has all the rights in relation to the Software and Services that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of the Contract.

14.   CONFIDENTIALITY

14.1.   Each party may be given access to Confidential Information from the other party in order to perform its obligations under these Conditions. A party's Confidential Information shall not be deemed to include information that:

14.1.1.   is or becomes publicly known other than through any act or omission of the receiving party;

14.1.2.   was in the other party's lawful possession before the disclosure;

14.1.3.   is lawfully disclosed to the receiving party by a third party without restriction on disclosure;

14.1.4.   is independently developed by the receiving party, which independent development can be shown by written evidence; or

14.1.5.   is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.

14.2.   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 other than that Sandgate Systems may make it available to its employees, agents and sub-contractors for the purposes of performing the Contract in accordance with these Conditions, or use the other's Confidential Information for any purpose other than the implementation of these Conditions.

14.3.   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, agents or sub-contractors in violation of the terms of these Conditions.

14.4.   Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.

14.5.   The Customer acknowledges that details of the Services, and the results of any performance tests of the Services, constitute Sandgate Systems' Confidential Information.

14.6.   Sandgate Systems acknowledges that the Customer Data is the Confidential Information of the Customer.

14.7.   This clause 14 shall survive termination of the Contract, however arising.

14.8.   No party shall make, or permit any person to make, any public announcement concerning these Conditions 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.

15.   INDEMNITY

15.1.   The Customer shall defend, indemnify and hold harmless Sandgate Systems against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Customer's use of the Services, provided that:

15.1.1.   the Customer is given notice of any such claim;

15.1.2.   Sandgate Systems provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and

15.1.3.   the Customer is given sole authority to defend or settle the claim.

15.2.   Sandgate Systems shall defend the Customer, its officers, directors and employees against any claim that the Services infringe any United Kingdom patent effective as of the Commencement Date, copyright,

trade mark, database right or right of confidentiality, and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that:

15.2.1.   Sandgate Systems is given prompt notice of any such claim;

15.2.2.   the Customer provides reasonable co-operation to Sandgate Systems in the defence and settlement of such claim, at Sandgate Systems' expense; and

15.2.3.   Sandgate Systems is given sole authority to defend or settle the claim.

15.3.   In the defence or settlement of any claim under clause 15.2, Sandgate Systems may procure the right for the Customer to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate the Contract on 2 Business Days' notice to the Customer without any additional liability or obligation to pay additional costs to the Customer.

15.4.   In no event shall Sandgate Systems, its employees, agents and sub-contractors be liable to the Customer under clause 15.2 to the extent that the alleged infringement is based on:

15.4.1.   a modification of the Services by anyone other than Sandgate Systems; or

15.4.2.   the Customer's use of the Services in a manner contrary to the instructions given to the Customer by Sandgate Systems; or

15.4.3.   the Customer's use of the Services after notice of the alleged or actual infringement from Sandgate Systems or any appropriate authority.

15.5.   The foregoing and clause 16.4.2 states the Customer's sole and exclusive rights and remedies, and Sandgate Systems' (including Sandgate Systems' employees', agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.

16.   LIMITATION OF LIABILITY

16.1.   This clause 16 sets out the entire financial liability of Sandgate Systems (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer:

16.1.1.   arising under or in connection with the Contract;

16.1.2.   in respect of any use made by the Customer of the Services or any part of them; and

16.1.3.   in respect of any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Contract.

16.2.   Except as expressly and specifically provided in the Contract:

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

16.2.2.   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 these Conditions; and

16.2.3.   the Services are provided to the Customer on an "as is" basis.

16.3.   Nothing in these Conditions excludes the liability of Sandgate Systems:

16.3.1.   for death or personal injury caused by Sandgate Systems' negligence; or

16.3.2.   for fraud or fraudulent misrepresentation.

16.4.   Subject to clause 16.2 and clause 16.3:

16.4.1.   Sandgate Systems 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 the Contract; and

16.4.2.   Sandgate Systems' total aggregate liability in contract (including in respect of the indemnity at clause 15.2), tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the total Subscription Fees paid for the Customer Subscriptions during the 12 months immediately preceding the date on which the claim arose.

17.   TERM AND TERMINATION

17.1.   The Contract shall, unless otherwise terminated as provided in this clause 17, commence on the Commencement Date and shall continue for the Initial Subscription Term and, thereafter, unless agreed otherwise in writing the Contract shall be automatically renewed for successive periods equal to the Initial Subscription Term (each a "**Renewal Period**"), unless:

17.1.1.   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 the Contract shall terminate upon the expiry of the applicable Initial Subscription Term or Renewal Period; or

17.1.2.   otherwise terminated in accordance with the provisions of the Contract;

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

17.2.   The Customer may terminate the Contract at any time during the Initial Subscription Term or any subsequent Renewal Period by giving Sandgate Systems not less 60 days written notice provided always that the Customer shall be liable to pay, to the extent that it has not already, to Sandgate Systems the Subscription Fees until the end of the Initial Subscription Term or the relevant Renewal Period as the case may be. Where the Customer has already paid the relevant Subscription Fees it shall not be entitled to any refund following the exercise of its right pursuant to this clause 17.2.

17.3.   Without affecting any other right or remedy available to it, Sandgate Systems may terminate the Contract with immediate effect by giving written notice to the Customer if:

17.3.1.   the Customer fails to pay any amount due under the Contract on the due date for payment and remains in default not less than 30 days after being notified in writing to make such payment;

17.3.2.   the Customer commits a material breach of any other term of the Contract 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;

17.3.3.   the Customer repeatedly breaches any of the terms of the Contract 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 Contract;

17.3.4.   there is a change of control in respect of the Customer; or

17.3.5.   any warranty given by the Customer in accordance with these Conditions is found to be untrue or misleading.

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

17.4.1.   the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;

17.4.2.   the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

17.4.3.   a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

17.4.4.   an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party;

17.4.5.   the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;

17.4.6.   a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;

17.4.7.   a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;

17.4.8.   any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 17.4.1 to clause 17.4.7 (inclusive); or

17.4.9.   the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

17.5.   On termination of the Contract for any reason:

17.5.1.   all licences granted under the Contract to the Customer and the Users shall immediately terminate;

17.5.2.   each party shall return and make no further use of any equipment, property, documentation and other items (and all copies of them) belonging to the other party;

17.5.3.   the Customer may request, in the period of 60 days following the effective date of the termination of the Contract, the delivery to the Customer of the then most recent back-up of the Customer Data. Sandgate Systems shall use reasonable commercial endeavours to deliver the back-up to the Customer within 30 days of its receipt of such a written request, provided that the Customer has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). If Sandgate Systems does not receive such a request within 60 days following the effective date of termination, Sandgate Systems may delete the Customer Data from its live systems. The Customer Data may be retained on back up systems until the end of Sandgate Systems' back up retention period but Sandgate Systems shall have no obligation to restore a copy of the Customer Data from back up for the Customer. The Customer shall pay all reasonable expenses incurred by Sandgate Systems in returning or disposing of Customer Data;

17.5.4.   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 Contract which existed at or before the date of termination shall not be affected or prejudiced; and

17.5.5.   the Customer shall not be entitled to any refund in respect of any Subscription Fees paid to Sandgate Systems in accordance with the Contract.

18.   FORCE MAJEURE

18.1.   Sandgate Systems shall have no liability to the Customer if it is prevented from or delayed in performing its obligations, 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 Sandgate Systems or any other party), failure of a utility service or transport or telecommunications network, cyber attack or some other analogous event, 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 Sandgate Systems sub-contractors, provided that the Customer is notified of such an event and its expected duration.

19.   SANDGATE SYSTEMS RIGHT TO VARY THESE CONDITIONS

19.1.   Sandgate Systems may amend these Conditions from time to time at their sole discretion. The Customer will be notified of any change to these Conditions including the date on which the new Conditions take effect.

20.   WAIVER

20.1.   No failure or delay by a party to exercise any right or remedy provided under these Conditions 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.

21. RIGHTS AND REMEDIES

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

22. SEVERANCE

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

22.2.   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.

23. ENTIRE AGREEMENT

23.1.   These Conditions, 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.

23.2.   Each of the parties acknowledges and agrees that in entering into these Conditions 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 these Conditions or not) relating to the subject matter of these Conditions, other than as expressly set out in these Conditions.

24. ASSIGNMENT

24.1.   The Customer shall not, without the prior written consent of Sandgate Systems, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.

24.2.   Subject to clause 8.9, Sandgate Systems 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 the Contract.

25. NO PARTNERSHIP OR AGENCY

25.1.   Nothing in these Conditions 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).

26. THIRD PARTY RIGHTS

26.1.   These Conditions do not confer any rights on any person or party (other than the parties to these Conditions and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

27. NOTICES

27.1.   Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, or sent

by pre-paid first class recorded delivery post or other next working day delivery service, commercial courier which is tracked or otherwise recorded.

27.2.　A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 28.1; if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.

27.3.　The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

28.　GOVERNING LAW

28.1.　These Conditions 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.

29.　JURISDICTION

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

——END——